

Department of Banking and Consumer Finance
Theresa L. Brady, Commissioner



Title 5: Banking and Consumer Finance

Part 1: Banking Activities

Table of Contents

Regulation Number 1: Bank Operations	1
Regulation Number 2: Bank Parity	4
Mississippi S.A.F.E. Mortgage Licensing Act of 2009	23
Small Loan Regulatory Law and Small Loan Privilege Tax Law	30
Debt Management Services Act	39
Mississippi Check Casher's Act	39
Mississippi Title Pledge Act	44
DBCF Method of Operation	46
Rulemaking Oral Proceedings	53
Requests for Declaratory Opinions	55



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Part 1: Banking Activities

Part 1 Chapter 1: Regulation 1: Bank Operations

Rule 1.1 Purpose - Repeal of Prior Rules. This regulation was adopted as an amendment to the previous Bank Regulation 1 to conform to the Department's current practice and to eliminate obsolete provisions and to add clarification. Pursuant to the Mississippi Administrative Procedures Law, Section 25-43-1.101 et seq., Mississippi Code Annotated, the Department of Banking adopted the Regulation 1, which upon their effective date, superseded and repealed the prior Bank Regulation 1. The provisions addressed in the regulation include banking hours, document filing fees, fees for special services, maximum percentages of the value of all loans and discounts, and preservation of bank records.

1. BANKING HOURS

The legal holidays for the State of Mississippi as allowed under Section 3-3-7, Mississippi Code of 1972, are:

1. First day of January (New Year's Day)
2. Third Monday of January (Robert E. Lee's and Martin Luther King, Jr.'s Birthday)
3. Third Monday of February (George Washington's Birthday)
4. Last Monday of April (Confederate Memorial Day)
5. Last Monday of May (National Memorial Day and Jefferson Davis' Birthday)
6. Fourth of July (Independence Day)
7. First Monday of September (Labor Day)
8. Eleventh day of November (Armistice or Veteran's Day)
9. Day fixed by proclamation by The Governor of Mississippi (Thanksgiving Day)
10. Twenty-fifth day of December (Christmas Day)

In the event any state or federal legal holiday shall fall on a Saturday, a bank may observe the preceding Friday as a legal holiday or in the event any state or federal legal holiday shall fall on a Sunday, a bank may observe the next following Monday as a legal holiday.

No bank shall close more than one whole day in any week, state and federal holidays and Sunday excepted.

All banks shall promulgate and adopt banking hours for the convenience of the public so as not to prevent the rendering of proper and reasonable banking service to the community and trade area in which the bank or branches are located. The banking hours so promulgated and adopted shall define the opening and closing on a day to day basis of the bank and branches and said hours shall be approved by the Board of Directors.

Any closing of a half day or a whole day during the week or on Saturdays shall be included in your Board of Directors' authority. However, exceptions shall include the closing of your parent bank or branches as result of any calamity, catastrophe, or emergency such as hurricane, tornado, fire, civil riots, declaration of material law or other acts which would endanger or threaten the lives and property of your personnel, customers, or facilities wherever located.

Any opening or closing procedure or practice which is an exception to your bank's regular opening and closing routine shall also be approved by the Board of Directors.

2. DOCUMENT FILING FEES

Documents filed with the Department shall be accompanied by a fee as fixed by the Commissioner:

	<u>Fee</u>
1. Filing articles of incorporation of banking and credit unions, and issuing a certificate of incorporation.	\$2,500
2. Filing articles of merger when the resulting bank or credit union is a state bank or credit union.	\$2,500
3. Filing application for conversion from a national bank, state or federal thrift, or credit union to a state bank or credit union.	\$2,500
4. Filing application for a branch bank or credit union.	\$750
5. Filing application for a Loan Production Office (LPO)	\$100
6. Filing application to establish out of state branch office by in-state bank and credit union.	\$750

For any of the above services, should any additional special services be rendered in the examination or investigation, and considered to be out of routine, or extraordinary, the Commissioner, Department of Banking and Consumer Finance, may charge an additional fee up to and not to exceed the maximum fee as established by 81-1-115.

3. FEES FOR SPECIAL SERVICES

1. Personnel costs (per hour)	15.00
2. Reproduction (per page)	.50
3. Postage	Actual
4. FAX transmittal (per page)	\$1.00
5. Licensee listing	\$35.00
6. State Board of Banking Review Parity Regulations	\$35.00

4. MAXIMUM PERCENTAGES OF THE VALUE OF ALL LOANS AND DISCOUNTS

The maximum percentage of the par value of all loans and discounts secured as provided for in Section 81-5-77(b), Mississippi Code of 1972, is hereby fixed at one-hundred percent (100%) of par value up to twenty-five (25%) of capital and surplus, and ninety-five (95%) of par value of all amounts above twenty-five percent (25%) of capital and surplus.

5. PRESERVATION OF BANK RECORDS (Section 81-5-7, Mississippi Code of 1972)

Each bank shall permanently retain certain records as follows:

1. Minute books of meetings of its shareholders and directors
2. Capital stock ledger
3. Capital stock certificate ledger
4. Daily statements of condition
5. General journal
6. Investment (Securities) ledger
7. All bank Reports of Examination
8. All ledger sheets showing unpaid balances in favor of depositors

Provided, however, that any or all records may be reproduced in a format of storage commonly used and any such reproduction retained in lieu of the original records.

All bank records shall be retained for a period of three years from the date of transaction. Thereafter, at the discretion of its Board of Directors, all banks are hereby permitted to destroy any and all records except those specifically outlined above.

In addition to amending the above regulations, DBCF amended and restated Banking Division Memos. The memos were amended as follows:

1. Real Estate Acquisitions – Banks are no longer required to request permission for major capital expansion to new or existing banking house buildings. This does not change branch procedures.
2. “CAMELS” Ratings – Withdrew outdated memo
3. Payment of Dividends – Withdrew outdated memo

Source: *Miss. Code Ann.* §81-5-97; §81-1-115; §81-5-77(b); §81-5-7; *Effective date February 14, 2008*

Part 1 Chapter 2: Regulation 2: Bank Parity

Rule 2.1 Purpose - Bank Parity. This regulation amended Regulation 2 and entitles state chartered banks, state chartered savings and loan associations, and state chartered savings banks the same privileges as federally chartered depository institutions. The intent of Regulation 2 is to clarify the rights, powers, privileges, immunities, duties and obligations of a national bank that may be enjoyed by state chartered banks. The adoption of such regulation in no way restricts or modifies the rights, powers, privileges, or immunities otherwise possessed or enjoyed by state-chartered banks.

The parity covers various areas of corporate governance, as well as operational activities of state chartered banks. A state chartered institution with documented data, can request parity with their federal counterpart which operates within the state. The submission of proof and request for parity must be done prior to beginning the activity. The Commissioner will determine whether to approve the request.

The list below details the numerous activities for which a state chartered institution may request parity. These items were included in the previous amendment to Regulation 2 and parity for these items may be requested with the most recent amendment. Any activity, allowed by a federal regulator, not listed must be documented and submitted for approval.

1. Corporate Governance
 - a. Branching – A state chartered bank, before establishing a branch bank, must obtain prior approval of the Commissioner, Department of Banking and Consumer Finance upon satisfactory demonstration of public convenience and necessity; automated teller machines (ATMs) are deemed to be branch banks; and state chartered branch banks may be established without regard to any population restriction or territorial restriction and may be established outside municipalities or in unincorporated areas. Source: 12 U.S. C. § 36, 12 C. F. R. §5.30 and Department of Banking and Consumer Finance v. Clarke, 809 F. 2d 266, cert denied, 483 U. S. 1010.
 - b. Directors’ Qualifying Shares – A state-chartered bank, with prior approval from the Commissioner, Department of Banking and Consumer Finance, shall have authority to exchange directors’ qualifying shares of stock of a bank and to substitute in lieu thereof a like amount of qualifying shares of a holding company, with the holding company stock to be considered as directors’ qualifying shares as set forth under the provisions of Miss. Code Ann. §81-5-45. Source: 12 U.S.C. § 72 and 12 C.F.R. § 7.4210
 - c. Extensions of Credit to Directors, Executive Officers and Principal Shareholders - A state-chartered bank shall have authority to extend lines of credit to directors,

executive officers, and principal shareholders in accordance with 12 U.S.C. § 375b(4) and §215.4 of Regulation O. Source: 12 U.S.C §84,12 U.S.C. § 375b(4), 12 C.F.R. § 215

- d. Indemnification of Directors, Officers, Employees, and Agents – A state-chartered bank, with prior approval from the Commissioner, Department of Banking and Consumer Finance, shall have authority to amend its Articles of Incorporation to provide for the indemnification of its directors, officers, employees, and agents against liabilities and expenses incurred by them in their official capacities and for the payment of premiums for insurance insuring the liability of its directors, officers, employees and agents. Source: 12 C.F.R. § 7.5217

2. Activities

- a. Acceptances – Sale of small denominations in acceptances created by another bank subject to reserve requirements unless there is a pro rata transfer of ownership rights. Source: 12 C.F.R. § 7.7420; Interpretive Letter 268

- b. Agency Activities

- i. In accordance with the rules, regulations, policies, and procedures of the Department of Banking and Consumer Finance, and Mississippi state-chartered financial institution that is a subsidiary of a bank holding company may agree to receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and other obligations as an agent for an affiliated depository institution.
- ii. Notwithstanding any other provision of law, any Mississippi financial institution acting as an agent in accordance with Subsection A of this Section shall not be considered to a branch of the other financial institution for which it acts as agent.
- iii. In acting as an agent pursuant this Section, a state –chartered bank may not:
 - 1. Conduct any activity which such institution is prohibited from conducting as a principal under any applicable federal or state law, or
 - 2. As a principal, have an agent conduct under this Section any activity which the institution is prohibited from conducting under any applicable federal or state law.
- iv. No provision of this Section shall be construed as affecting either of the following:
 - 1. The authority of any financial institution to act as an agent on behalf of any other financial institution under any other provision of law.
 - 2. Whether a financial institution which conducts any activity as an agent on behalf of any other financial institution under any other provision of law shall be considered to be a branch of such other institution.

- v. Agency relationships by and between financial institutions as provided in this Section shall be on terms that are consistent with safe and sound banking practices and all applicable regulations of any appropriate state or federal banking supervisory agency. Source: 12 U.S.C. § 1828(r)
- c. Agent for Deposit Placement – A bank may act as agent and place deposits in other financial institutions on behalf of customer. (Must register as a deposit broker). Source: Investment Securities Letter 32
- d. ATM Network – Operation via Subsidiary. A bank may form an operating subsidiary to enter into a partnership or joint venture with another bank to establish an automated teller machine network subject to certain conditions. Source. Interpretive Letter 289.
- e. ATM Networks – Conversion of proprietary ATM network into a shared network where it provides service for other banks in the network. Source: No Objection Letter 87-11; Interpretive Letter 381
- f. Attachment, Injunction and Execution – No attachment, injunction or execution shall be issued against a state chartered bank or its property before final judgment in any suit, action or proceeding, any state, county or municipal court. Source: 12 U.S.C § 91 and U.S. v. Lemaire 86 F.2d 387 (5th Cir. 1987), rehearing denied 831 F. 2d cert. denied 108 S. Ct. 1223
- g. Automatic Payment Plan Account – Source: 12 C.F.R §7.7560
- h. Balloon Loans – A bank may make either conventional or repurchase balloon loans. Source: Interpretive Letter 364
- i. Certificates of Deposits – Purchase and Sale of Participations – A bank may either purchase certificates of deposits and sell participation interest to its customers. Source: Interpretive Letter 385
- j. Charitable Contributions – A bank may contribute to community funds or to charitable philanthropic or benevolent instrumentalities conducive to public welfare such sums as the board of directors may deem expedient and in the interest of the bank, provided that investment in any one project does not exceed 2% of capital and surplus and investments in all such projects do not exceed 5% of capital and surplus. Source: 12 U.S.C §24 Eighth and 12 C.F.R. §7.7480
- k. Check Certification – Source: 12 U.S.C. §501
- l. Check Guarantee Plans – A bank may enter into check guarantee arrangements. Source: 12 C.F.R. §7.7015
- m. Credit Card Bank – A bank may establish a credit card bank as a subsidiary.

Source: Interpretive Letter 565

- n. Credit Card Customer List – Sale of – A bank may sell credit card customer list to an insurance agency offering insurance. Source: Interpretive Letter 316
- o. Credit Card Issuance – Source: 12C.F.R. §7.7378
- p. Data Processing Services – A bank may directly or through an operating subsidiary provide data processing services for itself and other depository institutions. Source: Interpretive Letter dated May 1, 1985, [1986 WL 149765]; Interpretive Letter dated April 25, 1986, [1986 WL 143931]; Interpretive Letter dated August 3, 1977; Interpretive Letter 449; Interpretive Letter 346; Interpretive Letter 345
- q. Data Processing – Marketing of Bank Related Computer Software – Bank’s operating subsidiary may be a general partner with a corporation where the purpose of the partnership is to develop a market banking-relating computer software to financial institutions and companies that process items for financial institutions; Bank may market software. Source: Interpretive Letter dated July 13, 1987. [1987 WL 149776]; Letter December 6, 1990 [1990 WL 362196].
- r. Debt Collection and Asset Management Services – Source: Interpretive Letter 498; Interpretive Letter 538
- s. Economic Development Loans to Native Americans – Loans to certain authorized Indian organizations, at least 20% of which are guaranteed, without being subject to restrictions of other statutes regarding loan to value ratios, maturity, security, priority of lien or percentage of assets that may be invested. Source: 25 U.S.C. §1489
- t. EFT Network Via Subsidiary – Source: Interpretive Letter 289; Interpretive Letter 160
- u. Electronic Funds Transfer Switch – A bank may enter into a general partnership to provide an electronic funds transfer switch for use by financial institutions. Source: Interpretive Letter 382
- v. Guaranty of Obligation of Others – A bank may lend its credit, act as a surety or otherwise become a guarantor if it has a substantial interest in the performance of the transaction involved or has a segregated deposit sufficient amount to cover the bank’s total potential liability. Source: 12 C.F.R. §7.7010 and §7.7012; Interpretive Letter 218; Interpretive Letter 94
- w. Incidental Powers Necessary to Business Banking – Source: 12 U.S.C. §24 (Seventh)

- x. Indemnification of Officers and Directors – Source: Interpretive Letter dated August 2, 1977; 12 C.F.R. §7.5217; Interpretive Letter 404
- y. Individual Retirement Accounts – A bank without trust powers may act as an IRA custodian if the individual retirement account funds are held in savings or in time deposits accounts. Source: OCC Banking Cir. 61; Interpretive Letter 302
- z. Insurance Activities and Investments
 - i. Acting as General Insurance Agent – authorizes national banks located in communities of less than 5,000 inhabitants to act as an insurance agent even if the principal office is in a larger community. Note, however, that Miss. Code Ann. §83-17-227 sets a limit of 7,000 and prohibits banks who maintain an office in a larger community from acting as an agent. Source: 12 U.S.C. §92; 12 C.F.R. §7.7100
 - ii. Annuities – A bank may act as an agent for sale of fixed rate annuities (may be subject to challenge of regulation by Insurance Department. Source: Interpretive Letter 475; Interpretive Letter 331; Interpretive Letter 499
 - iii. Collateral Property Protection Insurance – A bank may sell in connection with an extension of credit from the bank, vendor’s single or double insurance rate. Source: Unnumbered Interpretive Letter dated June 3, 1986; Interpretive Letter 91
 - iv. Credit Life Insurance – Sale of - Source: Interpretive Letter 495; Interpretive Letter 330; Interpretive Letter 283; Interpretive Letter 152; Interpretive Letter 9; Interpretive Letter dated November 7, 1977; Interpretive Letter 8; Interpretive Letter 18; Interpretive Letter 45; Interpretive Letter 26; C.F.R. §2.4 and §2.6.
 - v. Credit Life Insurance – Underwriting of – A bank may acquire as an operating subsidiary, insurance company that is engaged in the business of underwriting credit life and accident health insurance in connection with loans made by the bank and its subsidiaries or may participate as a shareholding in such a company provided certain safeguards are met. Source: Interpretive Letter 277; Letter of February 24, 1993
 - vi. Debt Cancellation Contracts – A bank may establish reserves against losses arising from cancellation of outstanding debt upon death of borrower by establishing additional charges. Source: 12 C.F.R. §7.7495
 - vii. Deferred Fee and Death Benefit Insurance – A bank may purchase insurance to protect its interest, including interest in the performance of its personnel. Source: Interpretive Letter 401

- viii. Key Man Insurance – A bank may purchase insurance for the benefit of bank on life of a bank officer. Source: 12 C.F.R. §7.7115
- ix. Lease of Bank Lobby to Unaffiliated Entities – An unaffiliated entity engaging in brokerage activities and insurance activities with rental payments made to the bank based on a percentage of gross commissions received by the tenant; note, however, subject to Mississippi Insurance Law. Source: Interpretive Letter 562; Interpretive Letter 533; Interpretive Letter 408; Interpretive Letter 407; Interpretive Letter 406; and Interpretive Letter 274
- x. Life Insurance on Directors and Employees – A bank may purchase single premium life insurance policy for a director in connection with a deferred fee program. Source: Interpretive Letter 401
- xi. Loan Customer List – A bank may sell list of loan customers to an insurance agency have a percentage lease arrangement with the bank. Source: Interpretive Letter 316
- xii. Split Dollar Life Insurance – A bank may purchase a split dollar life insurance policy on an officer or director under which the bank transfers the benefit portion of the policies to the officer or director upon retirement or resignation while retaining ownership of a portion of the policy sufficient to recover investment. Source: Interpretive Letter 429; OCC Banking Circular 249
- xiii. Stock in Company Affiliated with Captive Insurer – A bank may purchase shares of stock in a company affiliated with an industry captive insurance company as a condition precedent to obtaining insurance from the captive. Source: Interpretive Letter 554
- xiv. Leasing Equipment and Personal Property – A bank may invest in tangible personal property, including without limitation vehicles, manufactures homes, machinery equipment or furniture or lease financing transactions on a net lease basis, provided the aggregate book value of all such property does not exceed 10% of the consolidated assets of the bank. Source: 12 U.S.C. §24 (Seventh); 12 C.F.R. §23.7; Interpretive Letter 556.
- xv. Lease, Full Payout – A bank may reasonably rely on the residual value of leased property in structuring a full net payout lease recouping 100% of the investment plus cost of handling. Source: Interpretive Letter 20; OCC Banking Circular 125
- xvi. Lease Consulting Services via Subsidiary – A bank may engage in property leasing activities through a subsidiary, including lease consulting services, finder services, and lease servicing. Source: Interpretive Letter

- xvii. Lease Financing - Source: 12 C.F.R. § 7.3400; 12 C.F.R. Part 23; OCC Banking Bulletin 91-47; Interpretive Letter 97
- xviii. Lease of Bank Lobby to Unaffiliated Entities – An unaffiliated entity engaging in brokerage activities and insurance activities with rental payments made to the bank based on a percentage of gross commissions received by the tenant; note however, subject to Mississippi Insurance Law. Source: Interpretive Letter 562; Interpretive Letter 533; Interpretive Letter 408; Interpretive Letter 407; Interpretive Letter 406; Interpretive Letter 274
- xix. Leasing of Bank Employees from Third Party – A bank may lease services of its employees from third parties so long as the Board of Directors continues to retain and exercise general supervision over the affairs of the bank. Source: Interpretive Letter 431
- xx. Loan Origination Services Active Through Operating Subsidiary - Source: Interpretive Letter 387
- xxi. Loan Production Offices – Approval and funding as main or branch officer. Source: OCC Banking Circular 199; 12 C.F.R. §7.7380
- xxii. Loan Repurchase Agreements – A bank may agree to repurchase loans or other assets. Source: 12 C.F.R. §7.7519
- xxiii. Merger with Insured Depository Institution – A national bank may acquire be acquired by any insured depository institution. Source: 12 U.S.C. §215c
- xxiv. Money Orders – Sale of Non-Bank Locations – Source: 12 C.F.R. §7.7500
- xxv. Participations in Equipment Lease Financing Receivable –A bank may purchase a participation interest of less than 100% in an equipment lease financing receivable and such purchase would not be a participation in a partnership. Source: Interpretive Letter 374
- xxvi. Participation in Small Business Administration Guaranteed Loans – A bank may purchase participations in SBA guaranteed loans, subject to certain conditions and limitations. Source: Interpretive Letter 350
- xxvii. Pass-Through Participation Certificates – Purchase of - A bank may purchase pass through participation certificates that represent interest in pools of FHA – Insured Title I property improvement loans. Source: Interpretive Letter 579

- xxviii. Payroll Insurer – A bank may act as payroll issuer for its customers. Source: 12 C.F.R. §7.7485
 - xxix. Pledging Assets – A bank may pledge investment securities to secure its borrowings, within limits imposed by the need to maintain adequate liquidity. Source: Interpretive Letter dated December 16, 1987 at 1987 WL 149807
 - xxx. Pledging Assets to Secure Public Deposits – Source: 12 U.S.C. §90; 25 U.S.C. 162a and 12 C.F.R. §7-7410
 - xxxi. Preparing Income Tax Returns – A bank may not serve as an expert tax consultant. Source: 12 C.F.R. §7.7430
- aa. Real Estate Activities and Investments
- i. Adjustable Rate Mortgages – Source: 12 C.F.R. 34.6
 - ii. Appraisals – A bank may perform real estate appraisals for loans it originates as well as for other financial institutions. Source: Interpretive Letter 467
 - iii. Collateralized Mortgage Obligations – Purchase of – A bank may purchase without limit collateralized mortgage obligations that the meeting the requirement of 12 U.S.C. §24 (Seventh). Source: Interpretive Letter dated April 16, 1987
 - iv. Exchanging OREO for Mortgages on Other Property – Source: Interpretive Letter dated June 4, 1986 [1986 WL 143934]
 - v. Investing in Mortgage Related Securities via Mutual Funds – A bank may generally purchase related securities and may, therefore, invest in mutual funds which own eligible mortgage-related securities. Source: Investment Securities Letter 15
 - vi. Lease of DPC Property – A bank may enter into a lease agreement regarding DPC property. Source: Interpretive Letter dated September 2, 1977
 - vii. Lease of Public Facilities – A bank may lease a building to a municipality so long as the lease agreement provides that municipality will become owner of building upon expiration of lease. Bank may purchase or construct a municipal building and as holder of legal title lease it to a public authority having resources sufficient to make rental payments. Source: 12 C.F.R. §7.3300
 - viii. Mortgage Banking Subsidiary – A bank may establish an operating

subsidiary as a mortgage company. Source: Interpretive Letter dated December 19, 1986 [1986 WL 143894].

- ix. Mortgage Servicing – A bank may act as agent to service mortgage and may, through an operating subsidiary, be a 50% equity partner and sole general partner in limited partnership from the purpose of conducting a mortgage servicing operation. Source: 12 C.F.R. §7.7379 and Interpretive Letter dated July 23, 1986 [1986 WL 143932].
- x. Purchase of Property to Secure Previously Contracted Debt – A bank may purchase real property in order to protect a partial interest or title that was acquired to secure previously contracted debt, but bank may not enter into a joint venture to operate such property. Source: Interpretive Letter 12
- xi. Real Estate Management Services – An operating subsidiary may furnish real estate asset management and advisory services to other financial institutions. Source: Interpretive Letter 389
- xii. Real Estate Consulting via Subsidiary – An operating subsidiary may act as finder in locating, analyzing and making recommendations regarding the purchase of property and may make recommendations concerning the sale of property, but may not act as broker in performing these activities. Source: Interpretive Letter 238
- xiii. Real Estate Loan via Subsidiary – A bank’s operating subsidiary may make commercial real estate loans, including construction and development loans, as originator or participant. Source: Interpretive Letter 389
- xiv. Real Estate Swaps – A bank may exchange OREO for other property provided the transaction is undertaken to substantially reduce or avoid potential loss on OREO property. Source: Interpretive Letter 349
- xv. Selling OREO with Bank Financing – Source: Interpretive Letter dated July 30, 1986 [1986 WL 143914]
- xvi. Services for Homeowners Associations – A bank may perform various types of review and analysis required for homeowner associations and their management companies, including projections for future reserve needs, timing of contributions, and economic forecasts. Source: Interpretive Letter dated August 20, 1987 [1987 WL 149774]
- xvii. Shared Appreciation Mortgage Loans – A bank may make shared appreciation loan to developer for the conversion of residential property into condominium units and receive a fixed amount or percentage of the sales price of each unit sold; and the bank may finance the acquisition or

improvement of real property on which the borrower will operate its business. Source: Interpretive Letter 244

- xviii. Mortgage Related Securities – A bank may purchase mortgage related securities and may therefore invest in mutual funds which own eligible mortgage related securities. Source: Investment Securities Letter 15
- xix. Other Real Estate Owned – OREO may be an equity investment subject to the five year holding limitation. Source: 12 U.S.C §29 and 12 C.F.R. §7.3025
- xx. Real Estate, Residence for Bank Officer – For the development and efficient utilization of bank personnel, a bank may purchase the residence of an employee who has been transferred to another area, in order to spare the employee a loss in the prevailing market. A bank may own real property that is to be used as a residence for bank officer when working out of town as long as IRS allows an expense deduction. Source: 12 C.F.R. §7.5230; Interpretive Letter 263

bb. Securities Activities

- i. Advisory and Discount Brokerage Services and Automatic Investment Services – Source: Interpretive Letter 353; Interpretive Letter 562; Interpretive Letter 360; Interpretive Letter 332; and C.F.R. 12.1-12.7
- ii. Agent for Sale of Government Securities – A bank may act as agent for purchase and sale of government securities on an unsolicited basis. Source: Investment Securities Letter 31
- iii. Closed End Collective Investment Funds – Source: Trust Interpretation 208
- iv. Collateralized Mortgage Obligations – Issuing and Selling of - A bank may issue and sell CMOs backed by pool of conventional FHA guaranteed and VA insured residential mortgages through an unaffiliated underwriter. Source: Interpretive Letter 378; Interpretive Letter 171
- v. Collateralized Mortgage Obligations – Issuing Underwriting and Dealing in Via Subsidiary – A bank's operating subsidiary may issue, underwrite and deal in bonds partially collateralized by pools of mortgages, including GNMA certificates, FNMA certificates, FHLMC certificates, and/or non-federally insured conventional residential mortgage loans. Source: Interpretive Letter 362
- vi. Commercial Paper Replacement – A bank may place third party commercial paper. Source: Interpretive Letter 329

- vii. Discount Brokerage Activities – A bank may acquire stock of company as operating subsidiary to perform discount brokerage services and provide investment advice. Source: Interpretive Letter 380; Interpretive Letter dated June 30, 1987, [1987 WL 149813]; Interpretive Letter 403
- viii. Financial Advice and Counseling – A bank may offer strategic planning of a financial nature and market economic information to customers in general. Investment advice may be given through a subsidiary. Source: Interpretive Letter 137; Interpretive Letter 367; and Interpretive Letter 403
- ix. Financial Advice and Counseling for Mutual Funds – A bank or its operating subsidiary may offer investment advice to a mutual fund. Source: 12 U.S.C. 92a(a); Interpretive Letter 403; and Interpretive Letter 298; 12 C.F.R. §9.2105
- x. Lease of Bank Lobby to Unaffiliated Entities – An unaffiliated entity may engage in brokerage activities and insurance activities with rental payments made to the bank based on a percentage of gross commissions received by the tenant; note, however, subject to Mississippi Insurance Law. Source: Interpretive Letter 562; Interpretive Letter 533; Interpretive Letter 408; Interpretive Letter 407; Interpretive Letter 406; Interpretive Letter 274
- xi. Municipal Finance Consulting – Source: Interpretive Letter 122
- xii. Municipal Leases and Installment Purchase Contracts – Underwriting the Sale of – A bank may underwrite the sale of municipal leases and installment purchase contracts. Source: Interpretive Letter 250
- xiii. Municipal Securities Dealers, Acting as - Source: 12 U.S.C.; §78c(a)(30)(c)(B); 12 C.F.R. § §10.1-10.41
- xiv. Mutual Fund Shares – Purchase and Sale of – A bank may purchase or sell shares in mutual funds as agent without recourse upon a customer’s order. Source: Interpretive Letter 363
- xv. Private Placement of Securities and Equity Investments – A bank may participate in private placement of investment securities with equity interest in real estate as agent for bank customer. Source: Interpretive Letter 194; Interpretive Letter 25; Interpretive Letter 463; Interpretive Letter 271; and Interpretive Letter 32
- xvi. Securities Lending – A bank may lend U.S. Government securities to another bank for the second bank to pledge to state deposits, subject to the bank’s legal lending limit. Source: Interpretive Letter 376

- xvii. Security Monitoring Services –A bank may provide security monitoring services to other financial institutions. Source: Interpretive Letter dated June 6, 1985 [1985 WL 143955]
- xviii. Stand By Letters of Credit – A bank may issue a standby letter of credit subject to conditions and limitations. Source: Interpretive Letter dated September 5, 1985 [1985 WL 73110]; Interpretive Letter 57
- xix. Stock Acquired in Lieu of DPC – A bank may acquire newly issued stock in other banks in settlement of debts previously contracted so long as stock is acquired primarily as a means of preventing or limiting loan losses. Source: Interpretive Letter 444
- xx. Stock Warranties (Equity Kickers) – A bank may establish an operating subsidiary that will enter into two tandem limited partnerships, one of which will make commercial loans in connection with highly leveraged transactions, while the other will hold stock warrants as “equity kickers” in connection with such loans. Source: Interpretive Letter 517
- xxi. Trust Powers, Exception to Requirement of Security for Trust Funds Deposited on Commercial Side – Requirement that securities be pledged for trust funds deposited on commercial side while awaiting investment or distribution, does not apply to accounts where the bank acts in the capacity of agent and does not have investment discretion. Source: 12 C.F.R. §9.2700; 12 C.F.R. §9.3210

3. Investments

- a. Bank Premises – A bank may invest in bank premises or in a corporation holding the bank premises. Source: 12 U.S.C. §29; 12 U.S.C. §371(d); 12 C.F.R. §7.3005; 12 C.F.R. §7.3100
- b. Bank Service Corporations – A bank may invest in bank service corporations subject to certain conditions and limitations in an amount not to exceed 10% if the bank’s paid in and unimpaired capital and unimpaired surplus in any one corporation of 5% of assets in all such investments. Source: 12 U.S.C. §1862 and 12 C.F.R. §5.35
- c. Bankers Bank Stock – A bank may invest in stock of an FDIC insured bank or of a holding company which owns or controls an insured bank that is exclusively owned by depository institutions (excepting requisite directors qualifying shares), which exclusively provides depository institution related services. Source: 12 U.S.C. §24 (Seventh) and 12 U.S.C. §27(b)
- d. Community Development Corporations – Allows equity interest in projects of predominantly civic, community or public nature – 2% of capital and surplus per project and 5% of capital and surplus for all projects. Source: 12 U.S.C., §24

(Eighth): 12 C.F.R. §7.740; OCC Banking Bulletin 91-18; OCC Advisory Letter number 92-3; OCC Banking Bulletin 92-37; Interpretive Letter 603

- e. Equity Kickers – A bank may take as consideration for a loan share in the profit, income or earnings from a business enterprise of a borrower. Source: 12 C.F.R. §7.732
- f. Equity Securities in Government Sponsored Enterprises:
 - i. Federal Agricultural Mortgage Corporation – Source: Interpretive Letter 427
 - ii. Federal Home Loan Mortgage Corporation – Source: Interpretive Letter 577
 - iii. Federal National Mortgage Association of Stock - Source: 12 U.S.C. 1718(f)
 - iv. Federal Home Loan Bank – Source: 12 U.S.C. §1424 and 1426
 - v. Government Securities Clearing Corporation – Source: Interpretive Letter 421
 - vi. Housing Development Corporations – A bank may purchase stock for its own account and corporations pursuant Title IX of the Housing and Urban Development Act of 1968, the purpose of such corporation is to provide low and moderate income housing. Source: 12 U.S.C. §24 (Seventh)
 - vii. National Housing Partnership – A bank may invest in partnerships, limited partnerships and joint ventures formed pursuant to Sections 907a or 907c of the Housing and Urban Development Act of 1968 to provide low and moderate income housing. Source: 12 U.S.C. §24 (Seventh); OCC Banking Circular 21
 - viii. Public Purpose Corporation Stock – A bank may invest in stock of a public purpose corporation, for profit or nonprofit, to carry out activities to benefit low and moderate income areas and residence or small businesses. Source: OCC Banking Bulletin 92-37
 - ix. State Housing Corporation – A bank may invest in shares of stock issued by a State Housing Corporation up to 5% of capital and surplus. Source: 12 U.S.C. §24 (Seventh)
 - x. Mandatory Convertible Security – Purchase and Holding of – A bank may purchase mandatory convertible security where the corporation cannot exercise its conversion option prior to a date certain, so long as the bank disposes of the security before that date. Source: Interpretive Letter dated

April 22, 1986 [1986 WL 143927]; 12 C.F.R. §19

- x. Municipal Parking Lots – A bank may own a municipal parking lot, but expense occurred to acquire must be charged off and is not an equity investment. Source: 12 C.F.R. §7.3010
- xii. Mutual Fund Shares – A bank may purchase for its own account shares of investment companies provided portfolios of such companies consist solely of obligations which are eligible for investment by a national bank. Source: OCC Banking Circular 220
- xiii. Operating Subsidiaries – A bank may engage in banking business by means of an operating subsidiary corporation in which the parent bank owns at least eighty percent of the subsidiary voting stock. Source: 12 C.F.R. 5.34
- xiv. Purchase of Debt Obligations in U.S. Government, State and Local Government and Government Sponsored Enterprises, Dealing and Underwriting of:
 - 1. African Development Bank – Source: 12 C.F.R. §§1.3(d), 1.7
 - 2. Asian Development Bank Obligations – Source: 12 C.F.R. §§1.3(d), 1.7
 - 3. Bonds for Housing Purposes – Bonds issued by state agency for housing purposes, subject to limitations. Source: Interpretive Letter 167
 - 4. Canadian Government Obligations – Source: 12 U.S.C. §24 (Seventh)
 - 5. Environmental Financial Authority Obligations – Source: 12 U.S.C. §24 (Seventh)
 - 6. European Bank for Reconstruction and Development Obligations - Source: 12 U.S.C. §24 (Seventh); 12 C.F.R. §§ 1.3(d)
 - 7. Federal Farm Loan Obligations - – Source: 12 U.S.C. §24 (Seventh)
 - 8. Federal Financing Bank Obligations - – Source: 12 U.S.C. §24 (Seventh)
 - 9. Federal Home Loan Bank Obligations – Source: 12 U.S.C. §24 (Seventh)

10. Federal Home Loan Mortgage Corporation Mortgages and Other Security - Source: 12 U.S.C. §24 (Seventh)
11. Federal National Mortgage Association - Source: 12 U.S.C. §24 (Seventh)
12. Government National Mortgage Association - Source: 12 U.S.C. §24 (Seventh)
13. Obligations Insured by the Secretary of Housing and Urban Development (Under Title XI of the NHA) - Source: 12 U.S.C. §24 (Seventh); 12 U.S.C. §1749aaa; 12 U.S.C. §1713
14. Industrial Development Revenue Bonds – Source: Interpretive Letter 174
15. Inter-American Development Bank – Source: C.F.R. §§1.3(d) and 1.7
16. Inter-American Investment Corporation– Source: C.F.R. §§1.3(d) and 1.7
17. International Bank for Reconstruction and Development– Source: C.F.R. §§1.3(d) and 1.7
18. International Finance Corporation – Source: C.F.R. §§1.3(d) and 1.7
19. Local Public Housing Agency if Secured by an Agreement Between such Agency and HUD or by Pledge of Annual Contributions- Source: 12 U.S.C. §24 (Seventh)
20. Indirect Obligations of the United States – Source: Interpretive Letter 90
21. Original Issue Discount Municipal Bonds – Source: OCC Banking Bulletin 85-15
22. Federal Agriculture Mortgage Board – Source: Interpretive Letter 512
23. Small Business Administration Guaranteed Portions of Loans or Pool Certificates – Source: Interpretive Letter 373; Interpretive Letter 141

24. State and Political Subdivision Obligations – Source: 12 U.S.C. §24 (Seventh); 12 C.F.R. §1; Interpretive Letter 65
25. Student Loan Marketing Association Obligations – Source: 12 U.S.C. §24 (Seventh); 12 U.S.C. §84(c)(10)
26. TDA Obligations – Source: 12 U.S.C. §24 (Seventh) and 12 C.F.R. §§ 1.3(d) and 1.7
27. U.S. Postal Service Obligations – Source: 12 U.S.C. §24 (Seventh) and 12 C.F.R. §§ 1.3(d) and 1.7
28. Safe Deposit Corporation – A bank may invest in the capital stock of a corporation organized to conduct a safe deposit business subject to a 15% of capital limitation. Source: 12 U.S.C. §24 (Seventh)
29. Small Business Investment Company Stock - An investment is subject to 5% of bank capital limit. Source: 15 U.S.C. §682(b) and 12 C.F.R. §7.7535

Source: *Miss. Code Ann.* §81-5-1(9); §81-12-49(r); §81-14-321; *Effective date August 19, 1999*

Title 5: Banking and Consumer Finance

Part 2: Mortgage Company Activities

Part 2 Chapter 1: Mississippi S.A.F.E. Mortgage Licensing Act of 2009

Rule 1.1 Purpose. This regulation was adopted as an amendment to the Regulations for the Mississippi Mortgage Consumer Protection Law dated November 10, 2007 and 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.

These regulations are promulgated pursuant Section 81-18-1, et seq., Mississippi Code of 1972, Annotated, also known as the Mississippi S.A.F.E. Mortgage Licensing Act of 2009, 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 registrants under the Mississippi S.A.F.E. Mortgage Licensing Act of 2009. 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 are these Regulations intended to apply to any business transaction of a Licensee not covered by Mississippi Law. Pursuant to the Mississippi Administrative Procedures Law, Section 25-43-1, et seq. the Department of Banking and Consumer Finance adopted the Mississippi S.A.F.E. Mortgage Licensing Act, which upon the effective date supersedes the Mississippi Mortgage Consumer Protection Law.

Source: *Miss. Code Ann.* §81-18-1; *Effective date July 31, 2009*

Rule 1.2 Loan Originators. Loan originators are required to be licensed per Section 81-18-7(4), Mississippi Code of 1972, Annotated, and to follow specific requirements outlined in this section.

Loan originators include W-2 employees as well as 1099 employees.

1. If a loan originator leaves a licensed mortgage broker or lender to be licensed with another licensed mortgage broker or lender, then the initial loan originator application must be fully completed in the Nationwide Mortgage Licensing System and Registry (NMLSR) system. All licenses issued by the Department are non-transferrable.
2. A Sponsorship Removal must be completed by the company within the NMLSR within thirty (30) days of his/her last day of employment.
3. The movement from one licensed mortgage broker or lender to another licensed mortgage broker or lender does not waive the requirement of approved continuing education for the loan originator to renew.
4. Examples of activities that may be considered as taking an application or offering or negotiating by an individual and will cause the requirement of licensure as a loan originator are:

- a. Completing, in whole or part, an application, or assisting a borrower in the completion of an application, or assisting the borrower in making an application for a loan. Assisting may include instructing or otherwise directing a borrower in completing any sections of an application form or providing advice or counsel in the lending process, but does not include communication of generic information related to the process, such as the typing of information necessary to complete a form.
 - b. Advising or counseling a borrower on loan terms, including amount, payment period, payment amount, interest rates, credit related fees, financing costs or options.
 - c. Recommending or referring a borrower to specific lender based upon the borrower's credit history, income, or any other facts specific to the borrower.
 - d. Taking of an application which means the receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower. This does not include an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. However, any other type of assistance beyond purely physical tasks would cause the requirement of licensure.
 - e. Obtaining financial information in connection with the above, including obtaining a credit report or credit score, from the borrower to be used by a person in making a credit decision.
 - f. Assisting a borrower in obtaining or applying to obtain a residential mortgage loan by, among other things, advising on loan terms (including rates, fees, other costs).
5. The licensed mortgage broker or mortgage lender shall maintain loan originator information for each loan in a handwritten or computer generated format that specifically states the names of the individual(s) that conduct all aspects of the loan application process, the date that such activity is conducted and the licensed location where the tasks are performed. This information is to be kept as part of each borrower's loan file or may be kept as part of the required Journal of Mortgage Transactions. At a minimum, the below items are to be notated in the required information:
- a. Taking the Mortgage Loan Application or assisting the borrower in completing the Mortgage Loan Application
 - b. Requesting the credit report.
 - c.. Negotiating or offering to negotiate the terms of the residential mortgage loan.
6. The interpretation of the Federal S.A.F.E. Act included here is from the United States Department of Housing and Urban Development (HUD) and would also apply to the Mississippi S.A.F.E. Mortgage Licensing Act of 2009.

“HUD interprets an individual who "takes a residential mortgage loan

application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the exclusion defined in section 1503(3)(C) of the SAFE Act. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act provided by section 1503(3)(B). As a result, an individual who offers or negotiates residential mortgage loan terms for compensation or gain could not avoid applicability of the SAFE Act standards by having another person or entity take the application from the prospective borrower and then pass the application to the individual.”

Source: *Miss. Code Ann. §81-18-7(4); Effective date July 31, 2009*

Rule 1.3 Licensing Criteria. In order to determine the applicant’s suitability for a license, the Commissioner and/or the NMLSR shall forward the fingerprints submitted with the application to the Mississippi Department of Public Safety and 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 with the department.

If the application is withdrawn or denied, the license fees are non-refundable. Final verification of the background check does include any subsequent investigation that must occur to determine the disposition of an arrest indicated on the background check.

A person must be named the principal officer for a company applying for a mortgage broker or lender license.

1. Principal Officer means an employee of the mortgage broker or lender who submits documentation of a minimum of two (2) years experience within the previous four (4) years of the date of application directly in mortgage lending. Proof of experience includes, but is not limited to: letter(s) from previous or current employers stating job description, copies of other state licenses, etc. Resumes and W-2 forms may be included, but are not sufficient proof of experience.
2. If the required mortgage lending experience does not include experience on Mississippi residential mortgage lending, then the principal officer must complete four (4) hours of approved courses on the Mississippi S.A.F.E. Mortgage Licensing Act of 2009.
3. The residency of the principal officer must be within 125 miles of the mortgage broker or lender’s address listed on their main license with the Department.
4. This person is not required to be an owner or co-owner of the company.
5. The principal officer must be licensed as a loan originator and meet the requirements as outlined in the Mississippi S.A.F.E. Mortgage Licensing Act of 2009.
6. The Principal Officer will have to complete twelve (12) hours of approved continuing education as outlined in the Mississippi S.A.F.E. Mortgage Licensing

Act of 2009 in order for the mortgage broker or lender to renew their mortgage broker or lender license.

7. The principal officer may only work for one mortgage broker or lender.

Source: *Miss. Code Ann.* §81-18-29; *Effective date July 31, 2009*

Rule 1.4 Change in Location, Name, Principal Officer, Loan Originator. Each licensee shall notify the Department through the NMLSR system of any change in address of its principal place of business or of any additional location of business within thirty (30) days prior to the change. Failure to notify will cause the company to be issued a civil money penalty.

Each company shall notify the Department through the NMLSR system when a loan originator resigns or is released from the employment of a licensed mortgage broker or lender, or any change of officer, director, or principal of the licensee within thirty (30) days. Failure to notify the Department within the thirty days will cause the broker or lender to be issued a civil money penalty.

Source: *Miss. Code Ann.* §81-18-29; *Effective date July 31, 2009*

Rule 1.5 Branch Offices. Wholesale lending offices only (have no direct contact with a consumer) are not required to be licensed. No origination or any type of consumer contact may occur at this location.

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.

The branch office must display the original issued branch license, not a copy, in a place visible to the public.

Source: *Miss. Code Ann.* §81-18-29; *Effective date July 31, 2009*

Rule 1.6 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:

1. The location shall be in compliance with local zoning ordinances; however, zoning shall not be residential. 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 should include a letter from the City or County on their official letterhead stating the zoning of the property. A Privilege Tax License is not sufficient proof of zoning.
2. The location shall 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.

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Rule 1.7 Advertisements. Advertisements are considered to be in print or by electronic means and do include internet websites and advertisements. Business cards are considered by the Department to be a form of advertisement and must meet the requirements for such.

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Rule 1.8 Required Contents of Individual Borrower Files. The required mortgage company files will be kept at the Books and Records Information address listed on the NMLSR system.

The individual borrower files of a mortgage broker and lender shall contain at least the following items. Please note, that the use of correction fluid on any document associated with the mortgage loan, which includes, but are not limited to the below listed items, is considered a fraudulent activity.

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:

1. Application – copy of the original signed and dated by the mortgage company
2. Credit File (Authorizations to order credit report, verifications, credit reports, etc)
3. Appraisal and invoice from appraiser – complete copy of appraisal
4. Right of Rescission
5. Broker or Co-Broker Agreement
6. Good Faith Estimate – within 3 working days of taking application. If mailed, must have a copy of the cover letter stating date mailed and address where the GFE was mailed
7. Preliminary Trust in Lending (within 3 days of the application date)
8. Servicing Disclosure (if funding the loan)
9. Notice of Right to Receive Copy of Appraisal, Controlled Business Agreement (when applicable), Proof of Assignment (transfer) of loan (if applicable).
10. Equal Credit Opportunity Act disclosure (within 3 days of application)
11. Fair Lending
12. Lock-in agreement from lender
13. Copy of Turndown (if applicable)
14. Copy of Notice of Cancellation from Broker/Lender
15. Mortgage Origination Agreement (sample one on website) containing specific statements
16. Final HUD Settlement Statement – copy of signed original
17. Final Truth in Lending – for all Lenders or Brokers who table fund – at settlement
18. Promissory Note (copy)
19. Deed of Trust (copy)
20. Final Uniform Residential Loan Application (1003) – signed and dated by Loan

Originator of the Mortgage Company and the Borrower(s)

These records are to be maintained for a minimum of thirty-six (36) months from the date of the loan application, maintained in a secure format and maintained separately from any and all other business records (this includes other state mortgage records). The records must be kept in a secure location. An off-site secure location would include a storage facility with security, etc and would not include a person's home, unless this is the licensed location of the mortgage broker or lender. The Commissioner in his sole discretion, after giving written notice, may require records to be maintained for a longer period of time. The following federal regulations may also be used as guides to supplement the minimum recordkeeping requirements 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.

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Rule 1.9 Penalties assessed by the 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.

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Rule 1.10 Journal of Mortgage Transactions. Each licensee shall maintain a journal of mortgage transactions at the principal place of business as stated on the license. The journal may be in electronic or handwritten format. The journal should include the following:

1. Name of applicant(s) and co-applicant(s)
2. Date of Application – if the entry is for a prequalification (no subject property is identified), then this must be notated on the journal.
3. Disposition of loan application, indicating date of loan funding per the HUD-1 Settlement Statement, loan denial, withdrawal and name of lender if applicable

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Rule 1.11 Lock-in Fee and Lock-in Agreement. The Lock-in Fee may be collected by the broker only on behalf of the lender. 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.

The mortgage broker may not charge or collect a lock-in fee that is not on behalf of a named lender. If the lock-in fee is refundable, then the lock-in agreement is to 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.

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Rule 1.12 Guidelines on Nontraditional Mortgage Product Risks. The Department is incorporating the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators “Guidance on Nontraditional Mortgage Products Risks”, which was issued on November 14, 2006, into Department Regulations. In addition, this Guidance will be incorporated into the Examination of all licensed Mortgage Brokers and Mortgage Lenders.

Source: *Miss. Code Ann. §81-18-29; Effective date July 31, 2009*

Title 5: Banking and Consumer Finance

Part 3: Consumer Finance Activities

Part 3 Chapter 1: Small Loan Regulatory Law and Small Loan Privilege Tax Law:

Rule 1.1 Purpose - Amendment of Prior Rules- These Regulations are promulgated pursuant to Miss. Code Ann. §75-67-129 of the Small Loan Regulatory Law, Miss. Code Ann. §75-67-243 of the Small Loan Privilege Tax Law, and other applicable statutes to establish administrative procedures required by the Department of Banking and Consumer Finance and shall be applicable to Licensees under the Small Loan Privilege Tax Law and to transactions covered by the Small Loan Regulatory 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, nor are these Regulations intended to apply to any business transaction of a Licensee 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 small loan business. These Regulations do not create any new or substantive rights in favor of any borrower or against any Licensee, regardless of whether the loan was made prior to or after the effective date of these Regulations.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.2 Definitions. The following words and phrases, when used in these Regulations or in the related statutes shall, for the purposes of these Regulations, have the meanings respectively ascribed to them in this section, except where the context clearly describes and indicates a different meaning:

1. “Actuarial Method” shall have the same meaning as it is used in the Federal Truth-In-Lending Act in determining the annual percentage rate.
2. “Commissioner” means the Commissioner of the Department of Banking and Consumer Finance of the State of Mississippi.
3. “Department” means the Department of Banking and Consumer Finance of the State of Mississippi.
4. “Licensee” means any person holding a license from the Department of Banking and Consumer Finance to conduct business under the Small Loan Privilege Tax Law and the Small Loan Regulatory Law.
5. “Loan” means a loan that is made to individuals primarily for personal, family or household purposes. Licensing under the Mississippi Small Loan Regulatory Law and Small Loan Privilege Tax Law does not apply to persons engaged in the business of extending credit to borrowers primarily for business or commercial purposes.
6. “Pre-computed Loan” means a loan on which the finance charge is calculated for the entire term of the loan and added to the State Amount Financed to determine the total amount of payments.
7. “State Amount Financed” means the amount financed as defined by the Federal Truth-In-

Lending Act and Regulation Z, plus the closing fee authorized by state law, including all charges in the amount of credit extended which are not a part of the finance charge, the total being the amount of credit which will be paid to the borrower or to another person on his behalf. The following are a part of the State Amount Financed and not a part of the finance charge: (i) actual cost of authorized insurance premiums (ii) closing costs excluded from the definition of finance charge by State law; and (iii) any reasonable fee paid to an attorney for the investigation of a title.

8. "State Contract Rate" means the annual percentage rate of the finance charge determined by the actuarial method for the term of the loan, calculated on the State Amount Financed, as defined herein.
9. "State Finance Charge" represents an amount paid by the debtor for receiving a loan that is calculated by using the State Contract Rate, the term of the note and the State Amount Financed.
10. "Term of Loan" means the period of time from the date of the loan through the scheduled date of the final payment.
11. "The Rule of 78's" is a formula used for calculating earnings and rebates for pre-computed loans.
12. "Total Amount of Note," "Total Amount of Loan," "Total Payments" and "Total Amount Repayable" each mean the total sum of payments to be paid by the borrower to the lender according to the schedule of payments.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.3 Insurance: General

1. All insurance policies issued by or through a Licensee or an agent of a Licensee shall be written only through insurance companies authorized to do business in the State of Mississippi and only through an insurance agent or broker licensed by the State of Mississippi. Only licensed agents or brokers shall solicit sales of insurance coverage. The insurance license of the agent or broker shall be current and conspicuously posted in the Licensee's office.
2. A Licensee shall not require additional insurance from or procure additional insurance for the borrower if the borrower furnishes to the lender evidence of insurance sufficient to protect the full amount of the lender's lien. Such evidence shall indicate that the premium has been paid and the certificate of insurance shall name the Licensee as loss payee.
3. A Licensee shall accept properly endorsed pre-existing insurance policies owned by the borrower at the time of the making of a loan.
4. Each Licensee shall maintain in its licensed office a copy of all insurance policies issued. Records for all policies issued by or through the Licensee or an agent of Licensee, shall indicate the name and address of the insurance company and the insured borrower, name of second beneficiary, type of insurance, premium amount, amount of coverage, term of policy, and any property covered by such policy.
5. Each Licensee shall maintain a file in its licensed office containing all pertinent information regarding claims made under any insurance sold with proof of payment made to or on behalf of the borrower or designated beneficiary, or a signed receipt from the borrower or

- beneficiary acknowledging receipt of payment.
6. A copy of all documentation including the initial claim worksheet and all correspondence pertaining to an insurance claim shall be maintained for twenty-four (24) months after the date of the final transaction.
 7. An original copy of the policy or certificate shall be given to the borrower and a copy shall be retained in the borrower's loan file.
 8. A licensee shall maintain documentation of all insurance rates approved by the Mississippi Department of Insurance.
 9. In the event of a loss, the Licensee shall, upon being notified by the borrower of such loss, promptly report such fact to the insurance company and when requested by the borrower, advise and assist the borrower in completing the necessary forms to report to the insurance company or its designated claim agent or representative. The Licensee shall exercise reasonable efforts to insure that such claim is processed without undue delay in accordance with the terms of the policy.
 10. In the event of the payment of a loan in full one or more months prior to the maturity date, whether by cash, new loan renewal, or refinancing, the insurance policy(s) or certificates shall be cancelled and the borrowers shall be entitled to a refund of the unearned portion (in excess of \$2.00) of the premium on any property insurance written through the Licensee. Such refund shall be calculated under the Rule of 78's, unless the policy or certificate calls for a greater refund amount. Calculations shall be based from the date of the loan to the date the loan is paid-off. In calculating a Rule of 78's refund, one (1) day shall constitute a full month earned.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.4 Insurance: Property - Property insurance may be written in connection with any loan on which real or personal property is taken as collateral on the following terms and conditions:

1. Personal property insurance shall be written for an amount not to exceed the lesser of the total sum of payments to be paid by the borrower to the lender according to the schedule of payments or the value of the personal property. The Licensee may rely on borrower's representation of the value of personal property; however, if a motor vehicle is part of the collateral for the loan, its value may be established by a nationally recognized evaluation guide. The borrower shall furnish a list of collateral indicating the value of each item.
2. The original term of insurance must not exceed the contractual term on the loan. If the term and loan amount of insurance is less than the term and amount of the loan, the term and amount of the insurance must be shown on the contract and on the ledger card and/or computer generated copy.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.5 Insurance Claims A Licensee shall maintain the following information and documents for all insurance claims:

1. A Fire Marshal's report or dated published public notification of the fire or loss and a list of collateral covered by insurance with an individual valuation of each item pledged at the time of the loan closing for all claims on property insurance
2. A copy of the death certificate or a dated published public notification of the death for all claims on credit life insurance
3. An original paid check issued by the Licensee to the borrower or beneficiary and/or a copy of the check issued by the insurance company to the borrower or beneficiary indicating proper endorsements or a signed receipt from the borrower or beneficiary for benefits paid by the Licensee and/or insurance company indicating the total amount of the payment or refund
4. A copy of all insurance policies written in connection with a loan and a notification or certificate of cancellation of the policy
5. Proof of refunds of any unearned premiums as of the date of the loss; In the event the insurance does not pay the loan in full, all other insurance policies may remain in effect until the loan is paid.
6. A copy of the borrower's payment history

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.6 Fees

1. Closing Fee_- A licensee may contract for and charge a closing fee as follows: (i) for loans in the amount of Ten Thousand Dollars (\$10,000.00) or less, four percent (4%) of the total payments due on the loan or Twenty-five dollars (\$25.00), whichever is greater; (ii) for loans in an amount greater than Ten Thousand Dollars (\$10,000.00), a maximum charge of Five Hundred Dollars (\$500.00). Such closing fee shall not be part of the finance charge. Miss. Code Ann. §75-17-21(3)
2. Appraisal Fee - Licensees may charge the borrower the actual fee for appraising real property taken as collateral on loans secured by an interest in real property provided the appraiser is an unrelated third party. The appraisal fee shall not be a part of the finance charge and no portion thereof is refundable in the event of a prepayment. If the appraisal fee is paid from proceeds of the loan, such fee shall be a part of the State Amount Financed. However, this fee should not exceed the maximum amount shown on the Notification of Fees Schedule that is submitted annually to the Department of Banking and Consumer Finance by the Licensee. This fee must be shown on the ledger card or on a computer generated copy.
3. Title Opinion - A Licensee may charge a borrower, on loans of One Hundred Dollars (\$100.00) or more, a reasonable fee for the investigation of the title to any property given as security for a loan. This fee must be paid by the Licensee to an attorney and should not exceed the maximum amount shown on the Notification of Fees Schedule that is submitted annually to the Department of Banking and Consumer Finance by the Licensee. This fee must be shown on the ledger card or on a computer generated copy.
4. Notary Public Fee_- A Licensee shall not charge or collect from a borrower any notary fee in connection with a loan.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.7 Prepayment Penalties. In the event of the prepayment of a loan secured by an interest in real estate, the Licensee may charge a prepayment penalty not exceeding the amounts authorized by Miss. Code Ann. §75-17-31. A prepayment penalty may not be applied in the event of the prepayment of a loan by insurance proceeds or as a result of the renewal or the refinancing of a loan by the same Licensee. The prepayment penalty and amount must be shown on the paid-out ledger card or on a computer generated copy. For examination purposes, the Licensee must be able to identify the customers that were charged a prepayment penalty.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.8 Refund of Unearned Finance Charges: Pre-computed Loans Only: When a pre-computed loan is paid in full prior to maturity, whether by cash, renewal, or otherwise, the borrower is entitled to a refund of \$1.00 or more of the unearned finance charges based on the Rule of 78's. The refund shall be calculated on the number of days by which the loan is paid in advance, less twenty (20) days.

1. If the prepayment is from the proceeds of insurance, the unearned finance charge may be calculated as of the date the insurance proceeds are actually received by the Licensee.
2. If there is a charge on the loan for additional days to the first payment (i.e. first payment extension charge) the following must be taken into consideration:
 - a. If such charge was included in the first payment and the payoff is prior to the first payment due date, the first payment extension charge shall be fully refundable; or
 - b. If such charge was included throughout the term of the note, the first payment extension charge is refundable based on the Rule of 78's.

If a Licensee has a pre-computed loan with a term exceeding sixty-one (61) months, the Licensee is required to compute the refund based on a method that is at least as favorable to the consumer as the actuarial method. (15 U.S.C. § 1615 (b))

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.9 Default Charges or Late Charges. A default charge shall not be assessed after the date of loss for any loan paid from the proceeds of insurance coverage. Default charges shall not be deducted from any regular payment for the purpose of creating an additional default charge. Either of the following methods may be used to assess a default charge and such charge must be disclosed on the written contract:

1. **Five Percent (5%) Default Charge:** any installment that is ten (10) days or more in default not to exceed **the lesser of** Five Dollars (\$5.00) **or** five percent (5%) of the portion of the payment in default. Miss. Code Ann. §75-17-15
2. **Four Percent (4%) Default Charge:** any installment that is more than fifteen (15) days in default not to exceed **the greater of** Five Dollars (\$5.00) **or** four percent (4%) of the

portion of the payment in default. This charge shall not exceed Fifty Dollars (\$50.00) unless the amount of the loan exceeds One Hundred Thousand Dollars (\$100,000.00) and the term of the loan exceeds five (5) years. Miss. Code Ann. §75-17-27

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.10 Records

1. Each Licensee shall maintain certain files or records at its licensed location. The required documents and information listed below shall be maintained in separate folders with an appropriate index, filed alphabetically or numerically. Such records may be in the original form, in the form of computer printouts or on electronic media, if readily accessible for viewing on a screen with the capability of being promptly printed upon request. All records shall be maintained for twenty-four (24) months after the date of the final transaction.
2. A separate file for each principal borrower shall be maintained and shall contain all pertinent information and documents including but not limited to deed of trusts, security agreements, financing statements, promissory notes, insurance policies, deferment agreements, releases, cancellations, termination statements and disclosure statements. All documents pertaining to the loan shall contain the loan number.
3. A loan register or a copy of all disclosure statements shall be maintained in order according to date of loan.
4. The following information shall be maintained on a loan ledger or on a computer generated copy:
 - a.name and address of the borrower and each co-borrower
 - b.date of loan and loan number
 - c.total amount of payments
 - d.finance charges pursuant to Miss. Code Ann. §75-17-21
 - e.closing fee pursuant to Miss. Code Ann. §75-17-21(3)
 - f. State Contract Rate
 - g.State Amount Financed
 - h.dollar amount of default charge authorized by Section 9 of these Regulations
 - i. deferral charge
 - j. credit life insurance premium, coverage, and terms
 - k.credit disability insurance premium, coverage, and terms
 - l. other types of insurance premiums, coverage, and terms
 - m. fees paid to public officials
 - n.attorney fees for title search
 - o.appraisal fees
 - p.terms of repayment
 - q.type of collateral
 - r. date of maturity
 - s. whether the loan is new, a renewal, or a remaking of a previous loan, and, if so, the account number of the previous loan
 - t. unpaid balance
 - u.amount and date of receipt of all payments

- v. date and amount of all default charges imposed and date and amount of the payment thereof
 - w. payments from insurance proceeds
 - x. any information regarding litigation, repossession, or foreclosure pertaining to the loan and/or the collateral
 - y. for terminated loans:
 - 1. date of termination
 - 2. whether terminated by payment, renewal or refinancing
 - 3. any insurance claim payments
 - z. for loans terminated by renewal, remaking or refinancing:
 - 1. loan number of renewal, remake or refinancing
 - 2. refunds for unearned finance charge
 - 3. refunds of any unearned insurance premiums
 - aa. real estate prepayment penalty
5. Any errors in records shall be corrected by a correcting entry rather than by erasure or obliteration with appropriate entries evidencing why, when, and by whom such correcting entry was made.
 6. All files and records shall be maintained separately so as to readily identify business transacted under the Small Loan Regulatory Law and Small Loan Privilege Tax Law.
 7. Licensee shall document all overpayments by the borrower and proof of all refunds.
 8. A check register shall be maintained in numerical order and the purpose of each check issued shall be indicated.
 9. Licensee shall maintain a record of the itemization of the amount financed in the borrower's file.
 10. Licensee shall maintain a register of all deferment charges which includes customer name, account number and date of deferment charge.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.11 Loan Payoff Requests. A Licensee shall provide the loan payoff amount within three (3) business days of an oral or written request from a borrower or receipt from a third party of written proof of the borrower's authorization to disclose the loan payoff amount. A business day does not include a Saturday, Sunday or legal holiday. No fee may be charged for providing a payoff amount.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.12 Sale and Financing of Auto Club Memberships (Effective July 1, 2006)

1. Requirements for the Sale and Financing of Auto Club Memberships
 - a. The sale and financing of an auto club membership is strictly voluntary and shall never be made as a condition for the extension of credit or the granting of a loan.
 - b. Licensee may offer the borrower the opportunity to purchase an auto club membership only after the Licensee has fully approved a loan to the borrower.
 - c. Borrower must have a valid driver's license.

- d. Borrower must certify that they own or lease at least one automobile.
- e. Auto club membership applications must be signed by the borrower and a copy of the application must be maintained in the borrower's file.
- f. A copy of the auto club service contract must be given to the borrower and such agreement must contain the name and address of the auto club company, the various services to be provided to the customer by the auto club company and any fees to be charged to the borrower.
- g. Borrower shall have the option of paying the auto club membership dues by using funds other than loan proceeds.
- h. Auto club companies must be licensed with the Mississippi Department of Insurance.
- i. Auto club agents must be licensed with the Mississippi Department of Insurance and proof of such licensing must be maintained at the Licensee's office.

2. Disclosure Statement

A disclosure statement must be given to the borrower at the time of purchase and the statement must be initialed or signed by the borrower. The disclosure statement must include the following information:

“You are entitled to pay the cost of the auto club membership by using funds other than loan proceeds.”

“If you finance the auto club membership fee with your loan, please be advised that you will pay additional interest charges as a result.”

“Do you already have an active auto club membership with this same auto club company, sold to you by this consumer finance company? If so, do you understand that you are purchasing another auto club membership and, therefore, extending the term of your existing membership?”

“You may cancel your auto club membership within thirty (30) days after the date of purchase and receive a full refund if you have not used any of the services provided through the auto club membership.”

The following statement must be in bold type immediately above the borrower's signature:
“NOTICE TO BORROWER: Purchase of this auto club membership is optional and is not required as a condition of this loan. Failure to purchase this auto club membership will not affect the lender's approval of the loan or the receipt of the loan by the borrower.”

3. Cancellations

Members may cancel their auto club membership within thirty (30) days after the date of purchase and receive a full refund of the membership fee if the member has not used any of the services provided through the auto club membership. If canceled after thirty (30) days from the date of purchase, refunds will be pro-rated for the unused months on the membership. Records

Licensee must maintain information on all auto club memberships sold and financed that contains the borrowers name, date, number of months purchased and cumulative number of months paid as of that date.

4. Prohibited Acts

A licensee shall not sell and finance an auto club membership in conjunction with a loan which has an initial term longer than the term of the loan.

Licensee shall not sell and finance additional auto club memberships to the same borrower unless the term on their current policy is extended. Membership terms shall not exceed thirty-six (36) months from the date of the most recent loan. In no event shall the terms of the multiple autos club memberships sold by the Licensee run concurrently.

5. Reporting Requirements

Licensee shall report to the Department the total number of loans made and the total number of those loans made which the borrower chose to purchase an auto club membership. The request for this information will begin on September 30, 2006, and subsequent requests upon notification by the Commissioner. This information must be submitted to the Department within fifteen (15) days of the request. Failure to report this information will subject the Licensee to civil money penalties.

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date July 1, 2006*

Rule 1.13 General

1. Licensees must provide a written response to the Department within thirty (30) days upon receipt of the Report of Examination. Such response must address the corrective action taken on any violations and errors noted in the report. The reports are to be maintained in the licensed office for two (2) years.
2. In the event a licensed office ceases to operate, the license shall be returned to the Department along with information regarding the location of the loan records of the closed office.
3. Licensee shall post and display a sign that measures at least twenty (20) inches by twenty (20) inches in a conspicuous place and in easy view of all persons who enter the place of business. The sign shall display bold, blocked letters, easily readable, with the following information: "This business is licensed and regulated by the Mississippi Department of Banking and Consumer Finance. If you encounter any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write: Mississippi Department of Banking and Consumer Finance, Post Office Drawer 23729, Jackson, MS 39225-3729; phone 1-800-844-2499."

Source: *Miss. Code Ann. § 75-67-129; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Rule 1.14 Violations. The Commissioner shall enforce these Regulations and any willful violation of and/or failure to comply with these Regulations may result in the revocation of the license and/or a civil money penalty not to exceed Five Hundred Dollars (\$500.00) per violation.

Source: *Miss. Code Ann. §75-67-139; Miss. Code Ann. § 75-67-243; Effective date March 30, 2006*

Part 3 Chapter 2: Debt Management Services Act

Rule 2.1 Purpose – Rescission of Prior Regulation. Section 81-22-17 (b), Miss. Code Ann., authorizes the Commissioner to adopt reasonable administrative regulations that are not inconsistent with the law in order to enforce the Mississippi Nonprofit Debt Management Services Act.

Pursuant to the Mississippi Administrative Procedures Law, §25-43-1.101 *et seq.*, Miss. Code Ann. a regulation was adopted on June 1, 2005, governing the debt management services industry. The substance of these regulations was included in Senate Bill #2439 which was signed into law by Governor Barbour during the 2006 Legislative session, and was effective on July 1, 2006. Therefore, the prior regulation governing the Mississippi Nonprofit Debt Management Regulations was rescinded.

Source: *Miss. Code Ann. §81-22-17(b); Effective date July 1, 2010*

Part 3 Chapter 3: Mississippi Check Cashers' Act Law

Rule 3.1 Purpose. These Regulations are promulgated pursuant to Section 75-67-501 *et seq.*, Mississippi Code of 1972, as amended, known as the “Mississippi Check Cashers Act”, to establish Administrative Regulations required by the Department of Banking and Consumer Finance. Section 75-67-515(1) authorizes the Department to adopt reasonable administrative regulations, not inconsistent with the law, in order to enforce the Mississippi Check Cashers Act. These Regulations are not intended to create any private right, remedy, or cause of action in favor of any customer or against any licensee nor are these Regulations intended to apply to any business transactions of a licensee not covered by Mississippi Law. While these Regulations are intended to and do supersede all prior Regulations issued by the Department of Banking and Consumer Finance regarding the check cashing industry, these Regulations are intended only to clarify the existing law. In order to ensure compliance with the provisions set forth in the Mississippi Check Cashers Act, the following regulations have been implemented.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Effective date February 20, 2003*

Rule 3.2 Records. “Records” or “documents” means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, micro photographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original. Records may be in the form of

traditional hard copies, computer printouts or magnetic media if readily accessible for viewing on a screen with the capability of being promptly printed upon request.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Effective date February 20, 2003*

Rule 3.3. Delayed Deposit Transaction

1. Records

- a. Licensee shall maintain all files and records at its licensed office.
- b. Licensee shall maintain a separate file for each customer containing documentation for all delayed deposit transactions.
- c. Licensee shall maintain a daily journal/register containing a record of all delayed deposit transactions in consecutively numbered order. This daily journal/register shall include at least the customer name and transaction date and may be maintained either manually or by computer. In lieu of maintaining a daily journal/register, Licensee may maintain a register with a copy of each agreement in consecutively numbered order. Licensee must be able to account for any voided agreements or lapse in numbering sequence.
- d. The check number must be clearly disclosed on each check cashing agreement.
- e. The date of the transaction and the maturity date must be stated on each check cashing agreement.
- f. A new check must be used for each check cashing agreement. (i.e. the same check may not be reused on subsequent check cashing transactions).

2. Processing Fee

The processing fee must be disclosed in the delayed deposit agreement. Section 75-67- 519(7), Mississippi Code of 1972, as amended, authorizes the Commissioner to establish a maximum processing fee. Therefore, Thirty Dollars (\$30.00) is set as the maximum amount a licensee may charge for a check returned for any reason, including, without limitation, insufficient funds, closed account or stop payment. Such fee is considered a one-time charge; regardless of the number of times the check associated with the written agreement has been processed.

3. Processing Fee Record

Licensee must maintain a daily journal/register of all processing fees charged along with the following information:

- a. A copy of the check
- b. Amount of the processing fee
- c. Customer name
- d. Date of transaction
- e. Check number
- f. Amount of check
- g. Documentation verifying the financial institution's refusal to pay

h. Computation of Annual Percentage Rate and Fee

Pursuant to Section 75-67-519(3), the fee charged in a delayed deposit transaction must be disclosed as a dollar amount and as an annual percentage rate (APR) in the written agreement.

Example of APR Computation for an \$82.00 advance:

Fee ÷ amount financed x 365 (or 360) ÷ number of days = APR

Example of an \$82.00 delayed deposit transaction due in 14 days, when a \$100.00 check is held:

$$\frac{\$18.00}{\$82.00} \times \frac{365}{14} = 572.26\% \text{ APR}$$

Computation of the Maximum Fee:

(18% of the face amount of a check, when a \$100.00 check is held)

Example of \$82.00 advance: 82.00 X .18 = 14.76
 14.76 X .18 = 2.66
 2.66 X .18 = .48
 .48 X .18 = .10
 Total Fee 18.00

5. Rollover Fee

Licensee shall not accept a fee to renew or extend any delayed deposit check (i.e. rollover). Therefore, the agreement may not be renewed; it must be collected in full.

6. Checks Written on Joint Bank Accounts

Each party on a joint bank account may write checks in an amount not to exceed an aggregate total of Four Hundred Dollars (\$400.00) per party. However, a separate delayed deposit agreement must accompany each check.

7. Multiple Checks

Licensee may accept multiple checks on a customer with the aggregate amount not to exceed Four Hundred Dollars (\$400.00). However, a separate delayed deposit agreement must accompany each check.

8. Payment Plan

Licensee may set up a payment plan for customers in default. However, if a customer defaults and Licensee agrees to accept a payment plan and customer later defaults in the payment plan, the Licensee may cash the check but may not receive more than the original amount of the check,

plus the processing fee set forth in Section 3 paragraph (2) hereunder. Licensee must maintain supporting evidence of all payments received.

9. Wage Assignments

Licensee shall not encumber a customer's wages in the form of a wage assignment. Nothing contained herein shall prevent a licensee from garnishing wages pursuant to a court order.

10. Acceptance of Credit Cards as Payment

Licensee may accept a credit card as payment on the due date. The Licensee may not swipe the customer's credit card at the beginning of a transaction thus encumbering the customer's funds and later completing the transaction on the due date.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. 75-67-519(3); Effective date February 20, 2003*

Rule 3.4 Checks Cashed for a Fee and Required Records Licensee shall keep a copy of each check cashed along with the following information:

1. Date of transaction
2. Fee charged expressed as a percentage rate, per Section 75-67-517 MCA
3. Fee charged expressed as a dollar amount
4. Customer signature acknowledging fees charged

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. §75-67-517; Effective date February 20, 2003*

Rule 3.5 Disclosure of Fees and Rates Pursuant to Section 75-67-515(4) Mississippi Code of 1972, as amended, a Licensee shall post the maximum fees allowed to be charged for cashing checks. The sign must disclose fees charged on a delayed deposit transaction and fees charged for cashing checks even if you do not conduct both types of business. In addition to this information, you must also disclose an example of a one hundred dollar (\$100.00) delayed deposit transaction on a seven (7), fourteen (14), and thirty (30) day basis. The sign must be at least 20"x 20" and the print must be large and bold in order to allow customers to easily read the information. Such sign must be displayed in a conspicuous place and in easy view of all persons who enter the place of business. The following is an example of the required sign:

The following is a list of maximum fees allowable for services that may be offered at this check cashing business:

1. Government checks - 3% of the face amount of the check or five dollars (\$5.00), whichever is greater
2. Personal checks - 10% of the face amount of the check or five dollars (\$5.00), whichever is greater
3. All other checks or money orders - 5% of the face amount of the check or five dollars (\$5.00), whichever is greater

4. Delayed deposit check - 18% of the face amount of the check

The following is an example of the maximum fee allowed on a \$100.00 delayed deposit transaction:

<u>Number of Days</u>	<u>Annual Percentage Rate</u>	<u>Total Dollar Amount</u>
7	1144.53%	\$121.95
14	572.26%	\$121.95
30	267.05%	\$121.95

Mississippi law prohibits this Check Casher from accepting a fee to renew or extend any delayed deposit check. Therefore, a delayed deposit check must be deposited or the check face value paid in full before another check may be cashed.

This Check Casher is licensed and regulated by the Mississippi Department of Banking and Consumer Finance. If you have any unresolved problem with a transaction at this location, you are entitled to assistance. Please call or write: Mississippi Department of Banking and Consumer Finance, P.O. Drawer 23729, Jackson, MS 39225-3729; Phone 1-800-844-2499.

Any of the above information that is not currently posted may be posted on a separate sign using the dimensions described above.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. §75-67-515(4); Effective date February 20, 2003*

Rule 3.6 Advertisement. Section 75-67-505(1), Mississippi Code of 1972, as amended, states in part that “A person may not engage in the business as a check casher or otherwise portray himself as a check casher unless the person has a valid license authorizing engagement in the business.” Therefore, the displaying of external signage outside a business, advertisement via print, broadcast or electronic media announcing or referencing a check cashing service constitutes a person’s intent to portray himself as a Check Casher and not incidental to any other service offered and therefore, must obtain a license to participate in a check cashing business.

This section also refers to a person who is principally engaged in the retail sales of goods and services who otherwise would be exempt from licensure, pursuant to Section 75-67-507, but who advertises that a check cashing service is provided at the person’s place of business, must also obtain a license unless the references to the check cashing services are incidental to the principal purpose of the advertisement. Thus, those persons exempt under Section 75-67-507 are not allowed to advertise the sole fact that they perform a check cashing service in any one type of advertisement.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Miss. Code Ann. §75-67-507; Miss. Code Ann. §75-67-505(1); Effective date February 20, 2003*

Rule 3.7 Violations. The Commissioner shall enforce these Regulations. Any violation of and/or failure to comply with these Regulations may result in the assessment of a Civil Money Penalty

not to exceed Five Hundred Dollars (\$500.00) for each violation or revocation of the Licensee's license, or both, in accordance with Mississippi law.

Source: *Miss. Code Ann. §75-67-501; Miss. Code Ann. §75-67-515(1); Effective date February 20, 2003*

Part 3 Chapter 4: Mississippi Title Pledge Act

Rule 4.1 Purpose - Amendment of Prior Rules- These Regulations are promulgated pursuant to Miss. Code Ann. §75-67-405 and 75-67-407 of the Miss. Code Ann. §75-67-243 and the Mississippi Administrative Procedure Act, Section 25-43-1, et seq.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Rule 4.2 Records

1. Each Title Pledge licensee shall maintain all files or records at its licensed office. In addition to the information required by Sections 75-67-405 and 75-67-407 of the Mississippi Code of 1972, Annotated, each title pledge lender shall maintain a consecutively numbered record or log of each title pledge agreement executed, with that number being placed on the corresponding Title Pledge Agreement.
2. The following information must be maintained on a ledger card or computer system that can be printed upon request:
 - a. **Name and address of the pledgor(s)**
 - b. **Date of the title pledge transaction and the title pledge transaction number**
 - c. **Total amount of payments**
 - d. **Title Pledge Service charge**
 - e. **Terms of repayment**
 - f. **Description of collateral, including VIN number**
 - g. **Maturity date**
 - h. **Unpaid balance**
 - i. **Amount and date of receipt of all payments**
 - j. **Distribution of all payments to principal and interest**
3. A file(s) shall be maintained for each pledgor and shall include, the title pledge agreements and all documents pertaining to the title pledge transaction. All documents pertaining to the title pledge transaction shall contain the title pledge number.
4. Licensee shall maintain a check book register or cash journal, in numerical order, indicating the distribution of each title pledge transaction and to whom such proceeds were disbursed.
5. Records may be in the form of traditional hard copies, computer printouts or on magnetic media if readily accessible for viewing on a screen with the capability of being promptly printed upon request. Licensee shall keep all records for a period of no less than two (2) years from the date of the closing of the last transaction.

6. A record indicating the total number of accounts and the dollar value of all title pledge receivables shall be maintained and available on a monthly basis.
7. Any errors in records shall be corrected by a correcting entry rather than by erasure or obliteration with appropriate entries evidencing why, when, and by whom such correcting entry was recorded.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Rule 4.3 Sale of Repossessed Vehicle

1. Licensee must maintain a repossession log or separate record of all repossessed vehicles. Such record must include the customer's name, vehicle information (including make, model and VIN number), date of repossession, date of sale, name of purchaser, amount of sale or payment, and method of payment by purchaser. Licensee shall maintain supporting documentation of each sale by a cash ticket or a financing agreement.
2. Documentation shall be maintained on all repossessed vehicles that are sold indicating the value of each vehicle. Such documentation shall include a written condition report and at least two (2) photographs depicting the condition of the vehicle. In the event a licensee finances a vehicle they have repossessed, the licensee must comply with the rates authorized by the Mississippi Motor Vehicle Sales Finance Law. Such sale shall not be executed on a Title Pledge Agreement.
3. In the event a licensee declares a vehicle to be salvage pursuant to Section 75-67-411 (5), Mississippi Code of 1972, as amended, licensee must obtain a "junk certificate" from the Mississippi Tax Commission pursuant to Mississippi Title Law Regulation 51 (a) (4) which is defined as "an administrative letter issued by the Tax Commission for a vehicle which has been scrapped, dismantled or destroyed and the owner has surrendered the Mississippi Certificate of Title to the Tax Commission in accordance with Section 63-21-39, Mississippi Code of 1972, as amended ." A copy of the required documentation and "junk certificate" shall be maintained in the customers file folder. The value received from the sale of any salvage shall be evidenced by a bill of sale or cash ticket and applied to the customer's account balance.
4. For repossessions that are not declared salvage, licensee shall maintain a record that includes: balance owed plus service charge calculated up to the date of repossession; repossession fee that consists of actual towing and storage charges paid to an unrelated third (3rd) party; charges paid to an unrelated third (3rd) party for repairs to make property operable; the allowed one hundred dollar (\$100.00) sales fee; to whom sold; and the amount of sale. Licensee must maintain a copy of all bills/invoices for any charges paid to a third party in the customers file folder. To verify amount of sale, licensee must obtain two (2) bids on vehicles less than ten (10) years old or a receipt from an auction seller indicating the amount received from the sale. For vehicles that are not sold at an auction and are ten (10) years old and older, licensee must have at least two (2) photographs depicting the condition of the vehicle and any other documentation to support the value of the vehicle.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15,*

2003

Rule 4.4 Sign. Each Licensee shall post and display a sign that measures at least 20 inches by 20 inches, in a conspicuous place and in easy view of all persons who enter such place of business. The sign shall display bold, blocked letters easily readable and shall include the following information:

NOTICE TO BORROWER

Mississippi law states, “A title pledge lender shall not advance funds to a pledgor to pay off an existing title pledge agreement”. It is illegal to renew or pay off an existing title loan you have with this lender with the proceeds of a new title loan from this lender. We encourage you to report any violation to the Mississippi Department of Banking and Consumer Finance. You may be entitled to a refund if this Title Pledge Lender is found to be in violation of the law. If you have any questions or need additional information about this type of transaction or about any other activity or procedure conducted in this office, please call or write:

**Mississippi Department of Banking & Consumer Finance
Post Office Drawer 23729
Jackson, Mississippi 39225-3729
Phone: 1-800-844-2499**

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Rule 4.5 Title Pledge Office. Section 75-67-435, Mississippi Code of 1972, Annotated defines a Title Pledge Office as “the location at which, or premises in which, a title pledge lender regularly conducts business. No other business other than title pledge business shall be conducted at a Title Pledge Office.” Therefore, to meet the requirements of this provision of the law, a Title Pledge Office is one that is further defined as: a location that has a definitive U. S. Postal address and/or E911 address; meets local zoning requirements; has a minimum of 100 square feet, with walls from floor to ceiling separating the operation from any other business(es); has an outside entrance, however you may be located in an area that has a common lobby shared by another business(es); proper signage; and maintain separate books and records. All title pledge business must be conducted in this location.

Upon adoption of this regulation, a current licensee operating a configuration less than these requirements has until June 30, 2001, the end of the current licensing period, to conform or their license will not be renewed. Any new application for license, after adoption of this regulation, shall include documentation attesting to the compliance of these regulations.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Rule 4.6 Other Fees/Charges. Section 75-67-413 (1) states, “A title pledge lender may contract for and receive a title pledge service charge in lieu of interest or other charges for all services,

expenses, cost and losses of every nature not to exceed twenty-five percent (25%) of the principal amount, per month, advanced in the title pledge transaction.” Therefore, a licensee may not charge any additional fees such as collection fees, late fees or any other type of fees.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Rule 4.7 Customer Refunds. In the event a customer has been overcharged, licensee shall make refunds to the customer in the form of cash or check. The customer’s account may not be credited for any refund amount.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Rule 4.8 Violations. The Commissioner shall enforce these Regulations. Any willful violation of and/or failure to comply with these Regulations may result in the assessment of a Civil Penalty not to exceed Five Hundred Dollars (\$500.00) for each violation thereof, the revocation of the Licensee’s license, or both in accordance with Mississippi law.

Source: *Miss. Code Ann. §75-67-405; Miss. Code Ann. §75-67-407; Effective date December 15, 2003*

Title 5: Banking and Consumer Finance

Part 4: Organizational Rules

Part 4 Chapter 1 Organization and Method of Operation

Rule 1.1 Authority. This regulation is adopted as a rule to conform to the requirements of Section 25-43-2.104 of the Mississippi Code of 1972, Annotated as amended, regarding agency organization, method of operation, and where/how the public may obtain information.

Source: *Miss. Code Ann.* §25-43-2.104 (Rev. 2006)

Rule 1.2 Authority. Authority of the Department of Banking and Consumer Finance to examine banking institutions. The Department of Banking and Consumer Finance was created and solely charged with the execution of all laws relating to corporations, carrying on a banking business in the State of Mississippi. The office of the Department of Banking and Consumer Finance shall be in the city of Jackson Mississippi, and the Secretary of State shall provide suitable quarters therefore.

Organizational Structure

1. Commissioner

The management, control and direction of the department shall be vested in the Commissioner of Banking and Consumer Finance, who shall be directly responsible for the proper functioning of the department. The commissioner shall be a banker who possesses not less than ten (10) consecutive years of active banking experience of which five (5) years' experience were performed in a major policy-making function as an executive officer, or shall be a person who possesses fifteen (15) years of active experience as a state or federal financial institutions examiner. The commissioner shall have been active in such major policy-making function or actively employed by the state or federal financial institutions regulatory authority within the previous five (5) years of his appointment. The commissioner shall be appointed by the Governor, with the advice and consent of the Senate, for a term of office of four (4) years, commencing on the day of appointment or on July 1 of the year in which the Governor is inaugurated, whichever comes first. The commissioner shall serve until his successor is appointed and qualified, but in no event shall he serve past the July 1 occurring after the end of the term of the Governor who appointed him, unless he shall be reappointed by the new Governor. If, for any cause, a vacancy occurs in the office of the commissioner, the Governor shall make the appointment for the unexpired term.

The commissioner shall be of good moral character, thoroughly understanding the theory and practice of banking, and must be a qualified elector of the State of Mississippi. The commissioner shall not be an officer, director or employee of any banking corporation during his entire term as commissioner, effective from the time of his appointment.

The commissioner may be removed by the Governor for good cause, but only after notice and a

hearing.

2. Deputy commissioner

The commissioner shall appoint a deputy commissioner, with the approval of the board, who shall perform such duties as may be required of him by the commissioner. If the office of the commissioner is vacant or if the commissioner is absent or unable to act, the deputy commissioner shall be the acting commissioner. The deputy commissioner shall have five (5) years' experience as a bank officer or employee, or three (3) years' experience as a bank president or managing officer of a bank, or five (5) years' experience as a state or federal bank examiner.

Copies of papers in the office of the department may be certified by the deputy commissioner, with the seal of the department affixed thereto, with like effect as though certified by the commissioner. The commissioner shall be responsible for all acts of the deputy commissioner, and may dismiss him at his pleasure, with the reasons therefore to be reported to the board within ten (10) days of the dismissal.

3. Examiners

The commissioner shall employ such assistants, to be known as state banking examiners, as may be necessary for the efficient operation of the department, to aid him in the discharge of the duties and responsibilities imposed upon him by law. The minimum qualifications for such employment shall be possession of a bachelor's degree from a recognized college or university, or three (3) years' experience as a bank examiner, bank officer or employee, small loan company officer or employee, or other consumer finance officer or employee and such other qualifications set out for banking examiners in the plan for the state personnel system. However, notwithstanding any provisions to the contrary, any person who is serving as a state banking examiner in the former Department of Bank Supervision on March 21, 1980, shall be qualified to serve as a state banking examiner in the department. The state bank examiners shall not, directly or indirectly, be connected with any banking business in Mississippi or elsewhere during their respective terms of office, after four (4) months from the time of qualifying as an examiner.

The commissioner may employ such additional employees as may be necessary to carry out those duties and responsibilities imposed upon him by law, who shall possess such qualifications set out for their particular position in the plan for the state personnel system.

No examiner or other employee related by consanguinity or affinity to the commissioner within the third degree computed according to the civil law shall be employed by him.

The examiners and all other persons employed by the commissioner under the provisions of this section shall be compensated as provided in the compensation plan for the state personnel system, unless otherwise provided by law. The compensation for such employees shall be payable monthly out of the funds of the department.

The commissioner shall be responsible for all acts of the examiners and the other employees. Any examiner or other employee may be dismissed only in accordance with the laws, rules and

regulations applicable to the state personnel system.

As a condition of employment with the department, the commissioner shall require all employees and applicants for employment with the department to be fingerprinted to determine their suitability for employment as examiners or assistants as needed. If no disqualifying record is identified at the state level, the Department of Public Safety shall forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history record check. The Department of Banking and Consumer Finance shall pay all of the costs in connection with the criminal history record check procedure. These record checks shall not be used by the Department of Banking and Consumer Finance for any purpose other than to determine suitability for employment with the department.

Source: *Miss. Code Ann.* §81-1-59; § 81-1-61; § 81-1-63; § 81-1-65

Rule 1.3 Departmental responsibility.

1. **Bank Examinations.** It shall be the duty of the commissioner to apportion the work of examining banks among the examiners in such a way that each bank, under the provisions of law, shall be examined at least once during an eighteen-month period and more often, if necessary, in the discretion of the commissioner, at irregular intervals and without prior notice. However, neither the commissioner nor any examiner shall examine one (1) bank twice in succession unless the commissioner, for cause, so determines. In the event the commissioner's office, because of work load or other good sufficient cause, is unable to conduct an examination of a bank as provided for in this section, the commissioner is hereby authorized to accept the examination of any state bank performed by the Federal Deposit Insurance Corporation or the Federal Reserve Bank in lieu of the examination provided for in this section. However, in no case shall the commissioner be authorized to accept any such examination of any state bank performed by either the Federal Deposit Insurance Corporation or the Federal Reserve Bank for any two (2) consecutive eighteen-month periods.
2. **Credit Union Examinations.** Credit unions shall be subject to the supervision of the Department of Banking and Consumer Finance. The Commissioner of Banking and Consumer Finance is empowered with authority to promulgate from time to time rules and regulations concerning the operation of credit unions; provided that such rules and regulations shall be consistent with and in conformity with the laws of the State of Mississippi. Credit unions shall make a report of condition thereto at least annually on blank forms to be supplied by said department. Credit unions shall transmit to the department such call reports within a time limitation established by the commissioner; however, such time limitation cannot exceed that set by the National Credit Union Administration. For any failure or delay in furnishing this report, the credit union shall be subject to an administrative fine, which may be imposed by the commissioner, of Fifty Dollars (\$ 50.00) a day for each day while in such default. Reports shall be verified by both the chief elected official and the treasurer and additional reports may be required by the said department.

3. **Trust Companies.** Commissioner shall have supervision over authorized trust institutions and shall examine.

a. For the purposes of this article, the term "authorized trust institution" means any state trust company, trust office or representative trust office.

b. Every authorized trust institution shall be under the supervision of the commissioner. The commissioner shall execute and enforce through the department and such other agents as are now or may hereafter be created or appointed, all laws which are now or may hereafter be enacted relating to authorized trust institutions. For the more complete and thorough enforcement of the provisions of this chapter, the commissioner may promulgate such rules or regulations not inconsistent with the provisions of the chapter, as may, in its opinion, be necessary to carry out the provisions of the laws relating to authorized trust institutions and as may be further necessary to insure safe and conservative management of an authorized trust institution under its supervision taking into consideration the appropriate interest of the creditors, stockholders, participants and the public in their relations with such authorized trust institutions. All authorized trust institutions doing business under the provisions of this chapter shall conduct their business in a manner consistent with all laws relating to authorized trust institutions, and all rules, regulations, and instructions that may be promulgated or issued by the commissioner.

c. The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether companies or offices are subject to the provisions of this article, may examine authorized trust institutions that have a charter, license or registration under this chapter and companies or offices that are reasonably suspected by the commissioner of conducting business that requires a charter, license or registration under this chapter, including all relevant books, records and papers employed by those companies or offices in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those companies or offices, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a charter, license or registration as required under this chapter.

4. **Consumer Loan Broker Activities.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

5. **Insurance Premium Finance Companies.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.
6. **Sale of Checks Activities.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.
7. **Debt Management Activities.** The commissioner may exercise the following powers and functions:
 - a. *Complaint investigation.* The commissioner may receive and act on complaints, take action to obtain voluntary compliance with this chapter or refer cases to the Attorney General, who shall appear for and represent the commissioner in court.
 - b. *Rules.* The commissioner may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this chapter.
 - c. *Examination of licensees.* To assure compliance with the provisions of this chapter, the department may examine the books and records of any licensee without notice during normal business hours. The commissioner shall charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$ 300.00) nor more than Six Hundred Dollars (\$ 600.00) for each office or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner.
 - d. *Examination of nonlicensees.* The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those

persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter, including, without limitation, the conduct of business without a license as required under this chapter.

8. **Small Loan Companies.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.
9. **Pawn Shops.** The Commissioner of Banking shall develop and provide any necessary forms to carry out the provisions of this article. To assure compliance with the provisions of this article, the commissioner may examine the pawn books and records of any licensee without notice during normal business hours.

Any expenses incurred for such examinations are included in the licensee's application fee; however, the commissioner may charge the licensee any actual expenses incurred while examining the licensee's pawn records or books which are located outside of the State of Mississippi.

10. **Title Pledge Activity.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business that requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this article, including without limitation the conduct of business without a license as required under this article.
11. **Check Cashers.** The commissioner, or his duly authorized representative, for the purpose of discovering violations of this article and for the purpose of determining whether persons are subject to the provisions of this article, may examine persons licensed under this article and persons reasonably suspected by the commissioner of conducting business which requires a license under this article, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of

this article, including without limiting the conduct of business without a license as required under this article.

12. **Mortgage Companies.** The department, its designated officers and employees, or its duly authorized representatives, for the purposes of discovering violations of this chapter and for the purpose of determining whether any person or individual reasonably suspected by the commissioner of conducting business that requires a license under this chapter, may investigate those persons and individuals and examine all relevant books, records and papers employed by those persons or individuals in the transaction of business, and may summon witnesses and examine them under oath concerning matters as to the business of those persons, or other such matters as may be relevant to the discovery of violations of this chapter including, without limitation, the conduct of business without a license as required under this chapter.

Source: *Miss. Code Ann.* §81-1-81; § 81-13-15; § 81-27-7.001; § 81-19-18; § 81-21-10; § 75-15-32; § 81-22-17; § 75-67-244; § 75-67-341; § 75-67-447; § 75-67-523; § 81-18-29

Rule 1.15 Public Access Information. The Department of Banking and Consumer Finance may be contacted to participate in formal and informal proceedings and related rule-making matters by mail, e-mail, or telephone, or in person during regular business hours utilizing the following contact information:

Mississippi Department of Banking and Consumer Finance
Suite 901 A, Woolfolk State Office Building
Post Office Box 23729
Jackson, MS 39201
Phone (601) 359-1031
Website: www.dbcf.ms.gov

Source: *Miss. Code Ann* §§ 25-43-2.104; 25-43-2.105

Part 4 Chapter 2: Rulemaking Oral Proceedings

Rule 2.1 Authority. These rules were promulgated pursuant to Mississippi Code Ann, § 25-43-3.104(2)(d) of the Administrative Procedures Law, and apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Department of Banking and Consumer Finance (DBCF) pursuant to the Administrative Procedures Law.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Rule 2.2 Scheduling oral proceedings. Where an oral proceeding has not previously been held or scheduled, the DBCF will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Rule 2.3 Format of request. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). The request may be in the form of a letter addressed to DBCF or as a pleading filed with a court. Each request must include the full name, telephone number, and mailing address of the requestor(s). All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Rule 2.4 Notice of Oral Proceeding. The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State. The Agency Head or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Rule 2.5. Public Participation Guidelines. Public participation shall be permitted at oral proceedings in accordance with the following:

1. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
2. Persons wishing to make oral presentations at such a proceeding shall notify the DBCF at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the DBCF.
3. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
4. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
5. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, may be submitted at the oral proceeding.
6. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the partisan's time where the orderly conduct of the proceeding so requires.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Rule 2.6 Conduct of Oral Proceeding. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Department for the proposed rule; (iii) call on those individuals who have contacted the Department about speaking on or against the proposed rule; (iv) allow for rebuttal statements following all participants' comments; (v) adjourn the proceeding.

The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Rule 2.7 Submissions and Records. Physical and documentary submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the DBCF, part of the rulemaking record, and are subject to the DBCF's public records request procedure. The DBCF may record oral proceedings by stenographic or electronic means.

Source: *Miss. Code Ann* § 25-43-2.105 (Rev. 2006)

Part 4 Chapter 3: Request for Declaratory Opinions

Rule 3.1 Authority. This regulation to conform with requirements of Section 25-43-2.105 et seq. of the Mississippi Code of 1972, as amended

Source: *Miss. Code Ann* § 25-43-105

Rule 3.2 Requests for Opinions. Any person with a substantial interest in the subject matter may make a request to the DBCF for a declaratory opinion by following the specified procedures. The term 'substantial interest in the subject matter' as used in this chapter means: that a party is directly affected by the DBCF's administration of the laws within the DBCF's primary jurisdiction. The term 'primary jurisdiction of the Agency' as used in this chapter means the DBCF has a constitutional or statutory grant of authority in the subject matter at issue.

Correspondence should be submitted to the following address:

Mississippi Department of Banking and Consumer Finance
Suite 901 A, Woolfolk State Office Building
Post Office Box 23729
Jackson, MS 39201

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.3 Subjects which may be addressed. The DBCF will issue declaratory opinions regarding the application of specified facts to: (1) a statute administered or enforceable by the DBCF, (2) a rule promulgated by the DBCF, or (3) an order issued by the DBCF.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.4 Circumstances in which Declaratory Opinions will not be issued. The DBCF may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

1. The matter is outside the primary jurisdiction of the DBCF;
2. Lack of clarity concerning the question presented;
3. There is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
4. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
5. The facts presented in the request are not sufficient to answer the question presented;
6. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
7. The request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;
8. No controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
9. The question presented by the request concerns the legal validity of a statute, rule or order;
10. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
11. No clear answer is determinable;
12. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
13. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
14. The question is currently the subject of an Attorney General's opinion request; or,
15. The question has been answered by an Attorney General's opinion.

Additionally, a declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.

A declaratory opinion will not be issued if it may adversely affect the interests of the State, the DBCF, or any of their officers or employees in any litigation which is pending or may

reasonably be expected to arise. Where a request for a declaratory opinion involves a question of law, the DBCF may refer the matter to the State Attorney General.

Moreover, a declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the DBCF or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.5 Where to send requests. All requests must be mailed or delivered to the DBCF. The request and its envelope shall clearly state that it is a request for a declaratory opinion. No oral and telephone requests will be accepted for official opinions.

Submit request to the following address:

Mississippi Department of Banking and Consumer Finance
Suite 901 A, Woolfolk State Office Building
Post Office Box 23729
Jackson, MS 39201

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.6 Requestor information. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal. A request must be limited to a single transaction or occurrence.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.7 Request content. Each request must contain the following:

1. A clear identification of the statute or rule at issue
2. The question for the declaratory opinion
3. A clear and concise statement of all facts relevant to the question presented
4. The identify of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number
5. Statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.

The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.8 Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The agency may request that the argument and memorandum of authorities be submitted by any interested party.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.9 Agency Response. Written agency opinions prepared in response to this rule may be issued by the Commissioner, or with her authorization, by the Deputy Commissioner, or by the director of the division responsible for implementation of the statute, rule or order. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the DBCF shall, in writing:

1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
2. decline to issue a declaratory opinion, stating the reasons for its action; or
3. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the DBCF.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.10 Opinion not final for thirty days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of thirty (30) days, the DBCF may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error. Each opinion must state the date when the opinion is final.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.11 Procedure After Request for Declaratory Opinion Received. The DBCF may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.

The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The

requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: ‘Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the DBCF within twenty days of the date of this request.’

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.12 Hearings at the Discretion of the Agency. Provision for Hearing. If the DBCF in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the DBCF may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the DBCF.

The DBCF will allow the requestor to participate in any hearing. The DBCF may allow any other persons or entities to participate in the hearing.

Source: *Miss. Code Ann* § 25-43-2.105

Rule 3.13 Public availability of requests and declaratory opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

Source: *Miss. Code Ann* § 25-43-2.105