

## CHAPTER 53

**AN ACT** concerning certain licensed lending activities, supplementing P.L.1996, c.157 (C.17:11C-1 et seq.), and revising various parts of the statutory law.

**BE IT ENACTED** by the Senate and General Assembly of the State of New Jersey:

C.17:11C-51 Short title.

1. Sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17:11C-89) shall be known and may be cited as the “New Jersey Residential Mortgage Lending Act.”

C.17:11C-52 Findings, declarations relative to certain licensed lending activities.

2. The Legislature finds and declares that the activities of residential mortgage lenders and residential mortgage brokers, previously licensed in New Jersey as mortgage bankers, correspondent mortgage bankers, mortgage brokers, and secondary lenders in the secondary mortgage loan business, and mortgage loan originators, previously registered in this State as mortgage solicitors, and the origination or offering of financing for residential real property, have a direct, valuable and immediate impact upon the State’s consumers, economy, neighborhoods and communities, and the housing and real estate industry. The Legislature also finds and declares that accessibility to mortgage credit is vital to the State’s citizens.

The Legislature further finds and declares that it is essential for the protection of the citizens and the stability of the economy that reasonable standards for licensing and regulation of the business practices of residential mortgage lenders, brokers, and mortgage loan originators, formerly established under the “New Jersey Licensed Lenders Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), be modernized, particularly in response to new licensing and business practice standards set forth under the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.); and that the obligations of these licensees to consumers in connection with originating or making residential mortgage loans are of such importance as to warrant updating the State’s regulation of the mortgage lending process.

Thus, the Legislature finds and declares that the intent of this act, the “New Jersey Residential Mortgage Lending Act,” is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry operates without unfair, deceptive, and fraudulent practices by establishing, in coordination with the provisions of the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” and the Nationwide Mortgage Licensing System and Registry, a revised system of licensing, supervision and enforcement, and by providing the Department of Banking and Insurance and its commissioner broad administrative authority to oversee the operation of the mortgage lending industry in this State.

C.17:11C-53 Definitions relative to certain licensed lending activities.

3. As used in this act:

“Borrower” means any individual applying for a loan from a licensee licensed under this act, whether or not the loan is granted, and any individual who has actually obtained a loan.

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

“Clerical or support duties” means and includes: (1) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential

mortgage loan; or (2) communicating with a borrower to obtain the information necessary for the processing or underwriting of a residential mortgage loan, to the extent that the communication does not include offering or negotiating loan rates or terms, or counseling borrowers about loan rates or terms. However, the term “clerical or support duties” does not include making representations to the public, through advertising or other means of communicating or providing information, such as through the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, indicating that a person can or will perform any of the activities of a licensee under this act or of a person exempt from licensure pursuant to section 5 of this act.

"Closed-end loan" with respect to a secondary mortgage loan means a mortgage loan pursuant to which the business licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time, except that: (1) the amount of the final installment payment may be substantially greater than the previous installments if the term of the loan is at least 36 months, or under 36 months if the remaining term of the first residential mortgage loan is under 36 months; or (2) the amount of the installment payments may vary as a result of the change in the interest rate as permitted by this act.

“Commissioner” means the Commissioner of Banking and Insurance.

"Controlling interest" means ownership, control or interest of 25% or more of the business licensee or applicant.

“Correspondent mortgage lender” means a residential mortgage lender who: (1) in the regular course of business, does not hold any mortgage loans in its portfolio, or service mortgage loans, for more than 90 days; and (2) has shown to the department’s satisfaction an ability to fund mortgage loans through warehouse agreements, table funding agreements or otherwise.

"Department" means the Department of Banking and Insurance.

"Depository institution" means “depository institution” as defined in section 3 of the “Federal Deposit Insurance Act,” Pub.L.81-797 (12 U.S.C. s.1813), and also means any credit union.

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

“Immediate family member” means a spouse, domestic partner as defined in section 3 of P.L.2003, c.246 (C.26:8A-3), partner in a civil union couple as defined in section 2 of P.L.2006, c.103 (C.37:1-29), parent, stepparent, grandparent, sibling, stepsibling, child, stepchild, and grandchild, as related by blood or by law.

“Individual” means a natural person.

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

"Licensee" means a legal entity or natural person who is licensed under this act, or who should be so licensed.

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

“Mortgage loan originator” means any individual, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any individual who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of

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

(1) who is a qualified individual licensee for a residential mortgage lender or residential mortgage broker;

(2) engaged solely as a loan processor or underwriter, except as provided in section 4 of this act; or

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

“Nationwide Mortgage Licensing System and Registry” means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized for licensing and registering residential mortgage lenders and residential mortgage brokers as business licensees in accordance with this act, and residential mortgage lenders and brokers as qualified individual licensees and mortgage loan originators as required pursuant to the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

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

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

(1) The lender may permit the borrower to obtain advances of money from the lender from time to time or the lender may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

(3) Interest is computed on the unpaid principal balance or balances of the account from time to time; and

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

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

“Primary market” means the market wherein residential mortgage loans are originated between a residential mortgage lender and a borrower, whether or not through a residential mortgage broker or other conduit, and shall not include the sale or acquisition of a residential mortgage loan after the mortgage loan is closed.

“Qualified individual licensee” means an individual licensed as a residential mortgage lender or residential mortgage broker, who is required to be licensed under this act as a condition for a person to be issued or hold a license as a business licensee, whereby the individual: (1) meets, at a minimum, the licensing criteria applicable to a mortgage loan originator; and (2) is an officer, director, partner, owner, or principal of the business licensee.

“Registered mortgage loan originator” means any individual who:

(1) is a mortgage loan originator and an employee of:

(a) a depository institution;

(b) a subsidiary that is (i) owned and controlled by a depository institution and (ii) regulated by a federal banking agency; or

(c) an institution regulated by the Farm Credit Administration established by section 5.7 of the "Farm Credit Act of 1971," Pub.L.92-181 (12 U.S.C. s.2241), or its successor; and

(2) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

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

"Residential mortgage lender" means any person, not exempt under section 5 of this act and licensed pursuant to the provisions of this act, and any person who should be licensed pursuant to the provisions of this act, who for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly takes a residential mortgage loan application, or offers, negotiates, originates, or acquires residential mortgage loans in the primary market. The term "residential mortgage lender" also means: (1) with respect to a business licensee, a correspondent mortgage lender, unless the provisions of this act clearly indicate otherwise; and (2) with respect to an individual licensee, an individual who is a qualified individual licensee for a residential mortgage lender.

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

"Residential real estate" means any real property located in this State, upon which is constructed or intended to be constructed a dwelling as defined in section 103(v) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(v)).

"Secondary mortgage loan" means a loan made to an individual, association, joint venture, partnership, limited partnership association, limited liability company, trust, or any other group of individuals, however organized, except a corporation, which is secured in whole or in part by a lien upon any interest in real property, including but not limited to shares of stock in a cooperative corporation, created by a security agreement, including a mortgage, indenture, or any other similar instrument or document, which real property is subject to one or more prior mortgage liens and on which there is erected a structure containing a one, two, three, or four family dwelling, as defined in section 103(v) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(v)), a portion of which structure may be used for nonresidential purposes, except that the following loans shall not be subject to the provisions of this act: (1) a loan which is to be repaid in 90 days or less; (2) a loan which is taken as security for a home repair contract executed in accordance with the provisions of the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); or (3) a loan which is the result of the private sale of a dwelling, if title to the dwelling is in the name of the seller and the seller has resided in that dwelling for at least one year, if the buyer is purchasing that dwelling for his own residence and, if the buyer, as part of the purchase price, executes a secondary mortgage in favor of the seller.

"Unique identifier" means a number or other identifier for a mortgage loan originator or a qualified individual licensee as a residential mortgage lender or residential mortgage broker,

assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

C.17:11C-54 Licensing requirements.

4. Except as provided under section 5 of this act, beginning no later than July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), the licensing requirements under this act shall be as follows:

a. For residential mortgage lenders and residential mortgage brokers, as business licensees:

(1) No person shall act as a residential mortgage lender or broker without first obtaining a license under this act, except that a person licensed as a residential mortgage lender may act as a broker, if proper disclosure is made. The department shall issue licenses which specify whether a business licensee is licensed as a residential mortgage lender or broker.

(2) No person shall be issued or hold a license as a residential mortgage lender or residential mortgage broker unless one officer, director, partner, owner or principal is a qualified individual licensee of that same type sought or held. The commissioner may, by regulation, require a licensed residential mortgage lender or broker to employ additional qualified individual licensees to properly supervise the business licensee in its branch offices. If a qualified individual licensee allows his license to lapse or for some other reason is no longer affiliated with the business licensee, the business licensee shall notify the commissioner within 10 days, and shall appoint another qualified individual licensee within 90 days or a longer period as permitted by the commissioner.

(3) No person licensed as a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender under the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall continue to engage in any activities for which a license was previously issued, and henceforth act as a residential mortgage lender or residential mortgage broker without first obtaining a license under this act.

b. For residential mortgage lenders and residential mortgage brokers, as qualified individual licensees:

(1) No individual shall act as a qualified individual licensee for a residential mortgage lender or residential mortgage broker without first obtaining a license under this act. A qualified individual licensee licensed as a residential mortgage lender or broker may act as a mortgage loan originator.

(2) No individual licensee for a mortgage banker, correspondent mortgage banker, mortgage broker, or secondary lender under the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall continue to engage in any activities for which a license was previously issued, and henceforth act as a qualified individual licensee without first obtaining a license under this act.

c. For mortgage loan originators:

(1) (a) No individual shall act as a mortgage loan originator without first obtaining a license under this act.

(b) No individual, except as provided in paragraph (2) of this subsection, shall be issued or hold a license as a mortgage loan originator unless employed as an originator by one, and not more than one, business licensee, and is subject to the direct supervision and control of that licensee.

(2) No loan processor or underwriter who is an independent contractor shall act as a loan processor or underwriter without first obtaining a mortgage loan originator license under this act.

(3) No individual registered as a mortgage solicitor under the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall continue to engage in any activities for which a registration was previously issued, and henceforth act as a mortgage loan originator without first obtaining a license under this act.

C.17:11C-55 Inapplicability of act.

5. The requirements of this act shall not apply to:

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

b. A registered mortgage loan originator that is registered under the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

c. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a residential mortgage lender, residential mortgage broker, or mortgage loan originator.

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

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

f. The State of New Jersey or a municipality, or any agency or instrumentality thereof, which, in accordance with a housing element that has received substantive certification from the Council on Affordable Housing pursuant to the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), or in fulfillment of a regional contribution agreement with a municipality that has received a certification, employs or proposes to employ municipally generated funds, funds obtained through any State or federal subsidy, or funds acquired by the municipality under a regional contribution agreement, to finance the provision of affordable housing by extending loans or advances, the repayment of which is secured by a lien, subordinate to any prior lien, upon the property that is to be rehabilitated.

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

(1) with or on behalf of an immediate family member; or

(2) secured by a dwelling that served as the individual's residence.

C.17:11C-56 Conditions for issuance of licenses for residential mortgage lenders, brokers.

6. Beginning no later than July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), the commissioner shall begin issuing licenses for business licensees as residential mortgage lenders or residential mortgage brokers under this act if the following conditions are met:

a. A completed application for a new license or for a renewal of a license, submitted to the commissioner on the form, in the manner, and with appropriate evidence in support of the application, as required by this act and as may be prescribed by the commissioner.

b. The submission to the commissioner of the name, address, fingerprints and written consent for a criminal history record background check to be performed on any officer, director, partner or owner of a controlling interest of the person seeking licensure. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility for the person, based upon any findings related to an officer, director, partner or owner. The applicant shall bear the cost for the criminal history record background check, including all costs of administering and processing the check. The Division of State Police shall promptly notify the commissioner in the event an officer, director, partner or owner of the person, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed, whether the person is a prospective new licensee, or subsequently, a current license holder.

c. A finding by the commissioner that the financial responsibility, experience, character, and general fitness of the person seeking licensure demonstrates that as a business licensee, the person will operate honestly, fairly, and efficiently within the purposes of this act.

d. A demonstration of an affiliated qualified individual licensee for the applicant, as required by paragraph (2) of subsection a. of section 4 of this act.

e. A demonstration of coverage by a surety bond as required by section 13 of this act.

f. A demonstration of the tangible net worth requirements as required by section 14 of this act.

g. The payment of any required fees under this act, as established by the commissioner by regulation and payable to the commissioner or, by arrangement of the commissioner, to the Nationwide Mortgage Licensing System and Registry on behalf of the commissioner, or as set forth by the nationwide system and registry and payable to that nationwide system and registry.

C.17:11C-57 Issuance of licenses for mortgage loan originators, residential mortgage lenders, brokers.

7. Beginning no later than July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), the commissioner shall begin issuing licenses for individual licensees under this act, utilizing the Nationwide Mortgage Licensing System and Registry, or other entity designated by that nationwide system and registry, as required or

permitted by the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” and as otherwise deemed appropriate by the commissioner to carry out the provisions of this act, if the following conditions are met:

a. For mortgage loan originators:

(1) A completed application for a new license or for a renewal of a license, submitted to the commissioner on the form, in the manner, and with appropriate evidence in support of the application, as required by this act and as may be prescribed by the commissioner.

(2) A background check in connection with an application, based upon information provided to and received from the Division of State Police, and provided to and received from or through the Nationwide Mortgage Licensing System and Registry, which does not contain any disqualifying information as set forth in this paragraph. The background check shall include a State criminal history record background check based upon an exchange of fingerprint data with the State Bureau of Identification in the Division of State Police, for which the division shall promptly notify the commissioner if the subject of the original criminal history record background check is arrested for a crime or offense in this State after the date the background check was performed, and a check of both criminal and non-criminal information as requested from and distributed to the Federal Bureau of Investigation and any other governmental agency through the Nationwide Mortgage Licensing System and Registry as follows:

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

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

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

(b) personal history and experience, collected in a form prescribed by the Nationwide Mortgage Licensing System and Registry, and with the permission of the applicant, in order for that nationwide system and registry and the commissioner to obtain:

(i) an independent credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act, Pub.L.91-508 (15 U.S.C.s.1681a(p)), for use in making a determination of character and fitness pursuant to paragraph (3) of this subsection; and

(ii) information related to any administrative, civil or criminal findings by any governmental jurisdiction, to determine whether the individual had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent, formal vacation of a revocation shall not be considered disqualifying information.

(3) A determination of character and fitness, based upon the information related to personal history and experience obtained pursuant to subparagraph (b) of paragraph (2) of this subsection and other available sources, whereby the applicant has demonstrated financial responsibility, character, and general fitness as to command the confidence of the community and to warrant a determination that as a mortgage loan originator the applicant will operate honestly, fairly, and efficiently within the purposes of this act. For purposes of this



paragraph, an applicant has demonstrated not to be financially responsible if the applicant has shown a disregard in the management of the applicant's own financial condition, which may include, but is not limited to:

(a) current outstanding judgments, except judgments solely as a result of medical expenses;

(b) current outstanding tax liens or other government liens and filings;

(c) foreclosures during the three-year period preceding the filing of the application; or

(d) a pattern of seriously delinquent accounts during the three-year period preceding the filing of the application.

(4) A demonstration of employment by one, and not more than one, business licensee as required by paragraph (1) of subsection c. of section 4 of this act.

(5) The completion of any pre-licensing education requirements as set forth in section 9 of this act.

(6) The successful passage of a qualified written test based upon the testing requirements as set forth in section 10 of this act.

(7) The completion of any continuing education requirements, if applicable, as set forth in section 11 of this act.

(8) A registration with the Nationwide Mortgage Licensing System and Registry as required by section 12 of this act.

(9) A demonstration of coverage by a surety bond as required by section 13 of this act.

(10) The payment of any required fees under this act, as established by the commissioner by regulation and payable to the commissioner or, by arrangement of the commissioner, to the Nationwide Mortgage Licensing System and Registry on behalf of the commissioner, or as set forth by the nationwide system and registry and payable to that nationwide system and registry.

b. For residential mortgage lenders and residential mortgage brokers, as qualified individual licensees:

(1) A completed application for a new license or for a renewal of a license as a qualified licensed individual for a residential mortgage lender or broker, submitted to the commissioner on the form, in the manner, and with appropriate evidence in support of the application, whereby the applicant follows the licensing procedure and meets the licensing criteria applicable to a mortgage loan originator, as set forth in subsection a. of this section, except that the applicant shall not request or be issued a separate license as a mortgage loan originator under that subsection.

(2) A determination with respect to any stricter or additional licensing requirements that the commissioner may, by regulation, establish.

(3) The payment of any required fees under this act, as established by the commissioner by regulation and payable to the commissioner or, by arrangement of the commissioner, to the Nationwide Mortgage Licensing System and Registry on behalf of the commissioner, or as set forth by the nationwide system and registry and payable to that nationwide system and registry.

#### C.17:11C-58 Fees for license applications.

8. a. An applicant for a new license or for a renewal of a license to be a residential mortgage lender or residential mortgage broker, as a business licensee:

(1) Shall pay to the commissioner at the time of the application a nonrefundable application fee, as established by the commissioner through regulation, not to exceed \$2,800.

The nonrefundable application fee is required for each residential mortgage lender or broker license issued, including for each branch office license of a business licensee.

(2) Shall additionally pay to the Nationwide Mortgage Licensing System and Registry any required fees as set forth by that nationwide system and registry, or any commissioner's fees, which by arrangement of the commissioner, are payable to the nationwide system and registry on behalf of the commissioner.

b. An applicant for a new license or for a renewal of a license to be a residential mortgage lender or residential mortgage broker, as a qualified individual licensee:

(1) Shall pay to the commissioner at the time of the application a nonrefundable application fee, as established by the commissioner through regulation, not to exceed \$500.

(2) Shall additionally pay to the Nationwide Mortgage Licensing System and Registry any required fees as set forth by that nationwide system and registry, or any commissioner's fees, which by arrangement of the commissioner, are payable to the nationwide system and registry on behalf of the commissioner.

c. An applicant for a new license or for a renewal of a license to be a mortgage loan originator:

(1) Shall pay to the commissioner at the time of the application a nonrefundable application fee, as established by the commissioner through regulation, not to exceed \$500. A mortgage loan originator, other than a loan processor or underwriter who is an independent contractor and subject to licensure pursuant to paragraph (2) of subsection c. of section 4 of this act, who changes the employment affiliation on his license, which affiliation is required as a condition of licensure pursuant to paragraph (1) of subsection c. of section 4 of this act, to a different business licensee, shall be required to submit any documentation required by regulation and pay another nonrefundable application fee.

(2) Shall additionally pay to the Nationwide Mortgage Licensing System and Registry any required fees as set forth by that nationwide system and registry, or any commissioner's fees, which by arrangement of the commissioner, are payable to the nationwide system and registry on behalf of the commissioner.

C.17:11C-59 Required educational courses.

9. a. An applicant for a new license as a mortgage loan originator or a qualified individual licensee shall complete, as a pre-licensing requirement, at least 20 hours of education from an educational course provided by an educational course provider, reviewed and approved by the Nationwide Mortgage Licensing System and Registry, based upon reasonable standards established by that nationwide system and registry.

(1) Pursuant to the reasonable standards established by the nationwide system and registry, an approved educational course provider may include the employer or affiliated business licensee of the applicant, or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the applicant's employer, affiliated business licensee, or affiliated entity.

(2) Pursuant to the reasonable standards established by the nationwide system and registry, an approved educational course may be offered at any location and by any means, including live classroom instruction, prepared group or individual coursework, or the Internet.

b. The approved educational course shall include at a minimum, but not be limited to:

(1) 3 hours of instruction on federal statutes and regulations;

(2) 3 hours of instruction on ethics, including instruction on fraud, consumer protection, and fair licensing issues; and

(3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

c. Any pre-licensing educational requirements of another state, reviewed and approved by the Nationwide Mortgage Licensing System and Registry, and completed by an applicant for licensure in that state pursuant to the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), shall be accepted by the commissioner from the applicant as credit towards completion of the reviewed and approved pre-licensing educational requirements of this section for licensure in this State.

C.17:11C-60 Written test required for licensure.

10. a. (1) An applicant for a new license as a mortgage loan originator or a qualified individual licensee shall pass, as a pre-licensing requirement, a qualified written test, developed by the Nationwide Mortgage Licensing System and Registry, and administered by a test provider approved by the nationwide system and registry, based upon reasonable standards established by that nationwide system and registry. Pursuant to the reasonable standards established by the nationwide system and registry, a qualified written test may be administered at any location, including the location of the employer or affiliated business licensee of the applicant, or any subsidiary or affiliate of the applicant's employer or affiliated business licensee, or any entity with which the applicant holds an exclusive arrangement to engage in the business of a residential mortgage lender, residential mortgage broker, or mortgage loan originator.

(2) In addition to an applicant for a new license, an applicant for a license reinstatement after failing to maintain a valid license for a period of five years or longer shall be required to pass a qualified written test as set forth in this section as a requirement for the license reinstatement.

b. The qualified written test shall adequately measure the applicant's knowledge and comprehension in appropriate subject areas, which shall include at a minimum, but not be limited to:

- (1) federal and State statutes and regulations pertaining to mortgage origination;
- (2) other federal and State statutes and regulations, including those pertaining to fraud, consumer protection, fair lending issues, and the nontraditional mortgage marketplace; and
- (3) ethics.

c. An applicant shall only be considered to have passed the qualified written test if the applicant achieves a test score of not less than 75 percent correct answers to the test questions.

d. An applicant may take the qualified written test up to three consecutive times in order to successfully pass and qualify for licensure. The applicant shall not take a subsequent, consecutive test until at least 30 calendar days next following the applicant's preceding test date. If the applicant fails to pass the qualified written test after three consecutive attempts, the applicant shall not be permitted to retake the test for a period of at least six months from the applicant's last preceding test date.

C.17:11C-61 Educational requirements for license renewal.

11. a. An applicant for a renewal of a license as a mortgage loan originator or a qualified individual licensee, shall complete, as a requirement for the license renewal, at least 12 hours of education from one or more continuing educational courses provided by a continuing educational course provider, reviewed and approved by the Nationwide Mortgage Licensing

System and Registry, based upon reasonable standards established by that nationwide system and registry.

(1) Pursuant to the reasonable standards established by the nationwide system and registry, an approved continuing educational course provider may include the employer or affiliated business licensee of the individual licensee, or an entity which is affiliated with the individual licensee by an agency contract, or any subsidiary or affiliate of the individual licensee's employer, affiliated business licensee, or affiliated entity.

(2) Pursuant to the reasonable standards established by the nationwide system and registry, an approved continuing educational course may be offered at any location and by any means, including live classroom instruction, prepared group or individual coursework, or the Internet.

b. The approved continuing educational course shall include at a minimum, but not be limited to:

(1) 3 hours of instruction on federal statutes and regulations;

(2) 2 hours of instruction on ethics, including instruction on fraud, consumer protection, and fair licensing issues; and

(3) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

c. (1) Except as set forth by the commissioner in regulations consistent with this act and the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), a licensed mortgage loan originator, or a licensed residential mortgage lender or residential mortgage broker as a qualified individual licensee, may only receive credit for an approved continuing educational course:

(a) in the calendar year in which the licensee takes the course; and

(b) that is not the same approved course already taken in that calendar year or the immediately preceding calendar year.

(2) A licensed mortgage loan originator, residential mortgage lender or broker, who is an approved instructor of an approved continuing educational course, may receive credit towards the individual licensee's own continuing educational requirements set forth in this section at the rate of two hours of credit for every one hour of the approved continuing educational course taught.

(3) If a licensed mortgage loan originator, residential mortgage lender or broker subsequently becomes unlicensed, the individual licensee shall complete the continuing educational requirements set forth in this section for the last calendar year in which the individual was licensed as a requirement for a license reinstatement.

d. Any continuing educational requirements of another state, reviewed and approved by the Nationwide Mortgage Licensing System and Registry, and completed by an applicant for a license renewal in that state pursuant to the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), shall be accepted by the commissioner from an applicant as credit towards completion of the reviewed and approved continuing educational requirements of this section for a license renewal in this State.

C.17:11C-62 Registration, assignment of unique identifier.

12. a. An applicant for an initial license or for a renewal of a license as a mortgage loan originator or a qualified individual licensee shall, as a licensing requirement, be registered

and assigned a unique identifier through the Nationwide Mortgage Licensing System and Registry.

b. (1) In order to ensure compliance by an applicant with this registration requirement, the commissioner shall utilize, as required or permitted by the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.) and as otherwise deemed appropriate by the commissioner, the Nationwide Mortgage Licensing System and Registry.

(2) The commissioner is authorized, through regulation, to coordinate the registration of an applicant through the nationwide system and registry with the State licensing of the applicant under this act, on any matters deemed necessary by the commissioner for participation in that nationwide system and registry, including but not limited to:

(a) background checks, including a criminal history record background check, a check of administrative and civil records, and a credit history check as set forth in section 7 of this act, and concerning any other information deemed necessary by the nationwide system and registry;

(b) setting or resetting of license renewal dates, and requirements for amending or surrendering a license;

(c) reporting requirements as set forth pursuant to section 35 of this act; and

(d) payment of any required fees, as established by the commissioner and payable to the commissioner or to the nationwide system and registry on behalf of the commissioner, and as set forth by the nationwide system and registry and payable to that nationwide system and registry.

(3) The commissioner shall, in order to participate in the nationwide system and registry, regularly report violations of this act by an applicant or licensee, as well as information concerning enforcement actions on those violations, along with any other relevant information, to the nationwide system and registry, in a manner and frequency established by that nationwide system and registry.

(4) The commissioner shall, in order to participate in the nationwide system and registry, establish by regulation a process by which an applicant or current licensee may request access to the applicant’s or licensee’s information or material provided to, received from, or collected by the nationwide system and registry, and a process by which that applicant or licensee may correct, amend or delete information or material disputed as incorrect or incomplete.

(5) Except as provided under section 1512 of the federal “Secure and Fair Enforcement for Mortgage Licensing Act of 2008,” Pub.L.110-289 (12 U.S.C. s.5111), any requirement under federal or State law, including P.L.1963, c.73 (C.47:1A-1 et seq.), regarding the privacy or confidentiality of any information or material provided to, received from, or collected by the nationwide system and registry, and any privilege arising under federal or State law, including any rules of court, with respect to the information or material, shall continue to apply after the information or material has been provided to, received from, or collected by the nationwide system and registry. The privacy, confidentiality, or privilege shall also continue to apply with respect to the sharing of the information or material, pursuant to procedures set forth by the nationwide system and registry, with any federal banking agency or other federal agency with mortgage industry oversight authority, or any state agency with mortgage industry oversight authority. This paragraph shall not apply to any information or material relating to the employment history of, and publicly adjudicated disciplinary or enforcement actions against, an applicant or licensee that is included in the

nationwide system and registry for access by the public, based upon reasonable standards established by the nationwide system and registry.

(a) In order to ensure the application of privacy, confidentiality, and privilege protections to information and material as set forth in this paragraph, the commissioner may enter into any necessary arrangement with the nationwide system and registry, other federal or state agency, the Conference of State Bank Supervisors or its successor organization, or other organization representing a federal or state agency, regarding information and material the commissioner shares, and information and materials shared with the commissioner.

(b) The information and material subject to privacy, confidentiality, or privilege protections as set forth in this paragraph, notwithstanding any provisions of P.L.1963, c.73 (C.47:1A-1 et seq.) or any other State law concerning open records to the contrary, shall not be subject to:

(i) disclosure under any federal or State law governing the disclosure to the public of information or material held by an officer or agency of the federal government or any state; or

(ii) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, except with respect to any privacy, confidentiality, or privilege held by the nationwide system and registry connected to an applicant's or licensee's information or material that the applicant or licensee gives permission to waive, in whole or in part.

C.17:11C-63 Business licensee required to obtain blanket bond.

13. A business licensee, prior to doing business as a residential mortgage lender or residential mortgage broker, shall obtain a blanket bond in an amount and form prescribed by regulations of the commissioner, but not less than \$25,000. The bond shall be obtained from a surety company authorized by law to do business in this State. The business licensee shall procure the blanket bond to cover its qualified individual licensees, and all mortgage loan originators, other employees, and agents in an amount as prescribed by regulation of the commissioner. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of the business licensee, or its qualifying individual licensees, mortgage loan originators, other employees, or agents. No bond shall comply with the requirements of this section unless the bond contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is filed in the department at least 30 days before the day upon which cancellation shall take effect.

C.17:11C-64 Minimum net worth required for applicant for business license.

14. a. (1) Each applicant for a business license as a residential mortgage lender shall demonstrate that it has tangible net worth of at least \$250,000, except that an applicant for a business license as a correspondent mortgage lender shall demonstrate that it has a tangible net worth of at least \$150,000. Each applicant for a business license as a residential mortgage broker shall demonstrate that it has tangible net worth of at least \$50,000.

(2) Each licensed residential mortgage lender that is a business licensee shall maintain at all times tangible net worth of at least \$250,000, except that a correspondent mortgage lender that is a business licensee shall maintain at all times tangible net worth of at least \$150,000. Each licensed residential mortgage broker that is a business licensee shall maintain at all times tangible net worth of at least \$50,000.

(3) The commissioner may by regulation:

(a) define the term "tangible net worth";

(b) establish standards for determining compliance with the tangible net worth requirements of this section; and

(c) determine any remedial action, as authorized pursuant to section 20 of this act, including suspension of a license, for failure to comply with these tangible net worth requirements.

b. The commissioner may, by regulation, require that a business licensee demonstrate to the satisfaction of the commissioner that it has adequate means to fund loans through lines of credit, or otherwise.

C.17:11C-65 Maintenance of branch offices by business licensee.

15. a. A residential mortgage lender or residential mortgage broker that is a business licensee may maintain a branch office or offices. The business licensee shall obtain a license for each branch office in this State and each branch office outside this State from which the licensee has direct contact with New Jersey consumers regarding origination or brokering.

b. The commissioner shall issue a branch office license for a residential mortgage lender or broker if:

(1) The business licensee has submitted a completed branch office application form, which includes any information required by the commissioner concerning the branch office, and an application fee pursuant to section 8 of this act;

(2) The application for the branch office demonstrates that the office is in a suitable location; and

(3) The application contains a certification that the office is covered by the business licensee's surety bond, required of that licensee pursuant to section 13 of this act.

C.17:11C-66 Construction of act relative to maintenance of office in-State.

16. a. Nothing in this act shall be construed to require a business licensee that is licensed as a residential mortgage lender or residential mortgage broker to maintain an office in this State so long as it is qualified to do business here and has a registered agent for service of process.

b. Whenever the business licensee changes the address of its principal office or a branch office serving New Jersey consumers, it shall file, as part of its notice of address change required pursuant to paragraph (5) of subsection a. of section 17 of this act, any documents required of it by regulation.

C.17:11C-67 Regulations relative to license.

17. a. (1) The license for a residential mortgage lender or residential mortgage broker, including a qualified individual licensee, shall state the name of the business licensee and the licensee's place or places of business, as applicable, and shall contain any other information as the commissioner may require pursuant to regulation. A license shall not be issued in a name containing any words including "insured," "bonded," "guaranteed," "secured" and the like. Notwithstanding the provisions of section 18 of P.L.1948, c.67 (C.17:9A-18) or any other law to the contrary, a licensed residential mortgage lender or broker may use the terms "mortgage lender" or "mortgage broker," respectively, as part of the licensee's name; a licensed residential mortgage lender may also use the term "mortgage banker."

(2) The license of the business licensee shall be posted conspicuously in the place or places of business of that licensee, and the license of any qualified individual licensee shall be maintained by that licensee and available for public inspection at the licensee's place or places of business.

(3) A licensee or any other person shall not photocopy or otherwise reproduce the license except for legitimate business purposes.

(4) Licenses issued to a business licensee pursuant to this act shall not be transferable or assignable, other than as provided by section 19 of this act.

(5) No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner.

b. (1) The license for a mortgage loan originator shall state the name of the originator's employing business licensee and the licensee's place or places of business, as applicable, and shall contain any other information as the commissioner may see fit to require.

(2) The license shall be maintained by the licensee and available for public inspection at the licensee's place or places of business.

(3) A licensee or any other person shall not photocopy or otherwise reproduce the license except for legitimate business purposes.

(4) No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner.

C.17:11C-68 Expiration, continuance, reinstatement, surrender of license.

18. a. Each residential mortgage lender, residential mortgage broker, and mortgage loan originator license issued pursuant to this act shall expire in accordance with the following schedule:

(1) for any license issued on or before July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), the license shall expire on December 31, 2010; and

(2) for any license issued on or after January 1, 2011, the license shall expire annually on December 31 of the same year of issue.

However, the commissioner may modify this schedule pursuant to regulation or order, based upon any later dates approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107), providing a temporary deadline extension with respect to complying with the licensing requirements for states established pursuant to the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

b. (1) Consistent with the provisions of subsection a. of this section, the license of any person failing to satisfy the standards for license renewal set forth in sections 6 through 15 of this act shall expire. However, the commissioner may adopt regulations concerning procedures for a person with an expired license to obtain a reinstatement of that license, which in the case of a formerly licensed individual shall be consistent with any expired license reinstatement standards established by the Nationwide Mortgage Licensing System and Registry.

(2) The commissioner may by regulation provide for the license of a residential mortgage lender or residential mortgage broker, if a qualified individual licensee, to continue in existence in an inactive status for a specified period of time.

c. A licensee may surrender any license, consistent with paragraph (2) of subsection b. of section 12 of this act concerning the coordination of license surrender with the Nationwide Mortgage Licensing System and Registry, by delivering to the commissioner written notice



that the license is surrendered, along with the license, but the surrender shall not affect the licensee's civil or criminal liability for any act committed prior to the surrender.

C.17:11C-69 Approval for sale, transfer of controlling interest.

19. Any sale or transfer of a controlling interest in a residential mortgage lender or residential mortgage broker applicant's or licensee's business shall be approved by the commissioner prior to the transfer or sale, after the applicant or business licensee has provided an application which contains a written notice of the proposed sale or transfer to the commissioner. The application shall list each officer, director, partner or owner to receive a controlling interest as a result of the transfer or sale, and each shall be subject to a criminal history record background check as set forth in subsection b. of section 6 of this act as a condition for the commissioner's approval of the transfer or sale. The commissioner shall approve the transfer or sale unless the commissioner determines, following an opportunity for a hearing, that sufficient grounds exist to deny, revoke or suspend the residential mortgage lender's or broker's license. The sale or transfer shall be deemed approved if the commissioner does not deny a completed application within 90 days after its receipt.

C.17:11C-70 Authority of commissioner relative to issuing licenses.

20. a. The commissioner's authority with respect to issuing licenses shall include the following:

(1) The commissioner may access, receive and use any information or material required of an applicant or licensee pursuant to sections 6 through 15 of this act, or any other information or material deemed relevant, to determine whether to issue or renew a license, or revoke, suspend, or refuse to renew a license.

(2) The commissioner may refuse to issue, and may revoke, suspend, or refuse to renew, a residential mortgage lender or residential mortgage broker license, including the license of a qualified individual licensee or a branch office license, or a mortgage loan originator license, or impose a penalty pursuant to this act, if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any person, applicant for or holder of the license has:

(a) Violated any of the provisions of this act or any order, rule or regulation made or issued pursuant to this act;

(b) Failed at any time to meet the requirements for licensure set forth in sections 6 through 15 of this act, as applicable, or withheld information or made a material misstatement in the application for the license;

(c) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, including but not limited to the disqualifying criminal activities stated in paragraph (2) of subsection a. of section 7 of this act, if applicable, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, deceit, or failure to maintain books, accounts, records and other documents as required by section 21 of this act;

(d) Failed to comply with any reporting requirements set forth pursuant to section 35 of this act;

(e) Become insolvent;

(f) Demonstrated unworthiness, incompetence, bad faith or dishonesty in the transaction of business as a licensee; or

(g) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

(3) A license of a business licensee may be suspended, revoked, or not renewed if any officer, director, partner, or owner of the licensee has committed any act which would be cause for suspending, revoking or not renewing a license if issued to that person as an individual.

(4) If the license issued to a residential mortgage lender or residential mortgage broker as a qualified individual licensee is revoked or suspended, the affiliated license issued to the business licensee shall also be revoked or suspended by the commissioner, unless within the time fixed by the commissioner, in the case of a partnership, the connection therewith of the offending qualified individual licensee whose license has been revoked or suspended shall be severed and that individual's interest in the partnership and share in its activities brought to an end, or in the case of an association, corporation, or other legal entity, the offending qualified individual licensee whose license has been revoked or suspended shall be discharged and shall have no further participation in the legal entity's activities. In the case of an offending qualified individual licensee who is an officer or director of the corporation or other legal entity, that individual shall be required to fully divest himself of all stock, bonds or other corporate holdings.

b. The commissioner's authority with respect to oversight of licensees, and enforcement of the activities regulated under this act, shall include the following:

(1) The commissioner may access and examine books, accounts, records and other documents maintained by a licensee pursuant to section 21 of this act.

(2) The commissioner may conduct investigations or examinations, which may include the subpoena of witnesses and documents, pursuant to section 34 of this act.

(3) Whenever it appears to the commissioner that any person has engaged, is engaged, or is about to engage in any practice or transaction prohibited by this act, the commissioner may issue, in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), a cease and desist order if the commissioner determines it necessary. In addition to any other remedy available, the commissioner may also bring a summary action in a court of competent jurisdiction against a person, and any other person concerned or in any way participating in or about to participate in a practice or transaction in violation of this act, to enjoin the person from continuing the practice or transaction engaged in, or from engaging in the practice or transaction, or doing any act in furtherance towards engaging in the practice or transaction.

(4) The commissioner may impose a civil penalty not exceeding \$25,000 on any person for a violation of this act. Each violation of this act, including any order, rule or regulation made or issued pursuant to this act, shall constitute a separate offense. Additionally, each violation of this act which constitutes a knowing violation shall be considered a crime of the third degree.

(5) The commissioner may order that any person who has been found to have knowingly violated any provision of this act, or of the rules and regulations issued pursuant hereto, and has thereby caused financial harm to consumers, be barred from acting as a residential mortgage lender, residential mortgage broker, or mortgage loan originator, or a stockholder, an officer, director, partner or other owner, or an employee of a licensee, or acting in any other capacity pursuant to this act. Violations of this final order shall be considered a crime of the third degree.

(6) The commissioner may order a person found to be in violation of this act to make restitution to any person aggrieved by the violation.

(7) The commissioner may order any other remedial action with respect to a violation of this act as the commissioner deems necessary.

c. The commissioner, in order to fulfill the activities encompassed by the commissioner's authority set forth in this section, may:

(1) Retain attorneys, accountants, or other professionals or specialists as examiners, auditors, or investigators to conduct, or assist with, any licensing activity, examination, or investigation;

(2) Utilize any public or privately available analytical system, method, or software;

(3) Utilize any examination or investigative report prepared by any federal banking agency or other federal agency, or any state agency including another department, division, bureau, or office of this State; and

(4) Enter into any necessary arrangement with a federal or state agency, the Conference of State Bank Supervisors or its successor organization, or other organization representing any federal or state agency, in order to reduce the commissioner's regulatory burden by sharing resources, including sharing information and materials through the Nationwide Mortgage Licensing System and Registry in accordance with subsection b. of section 12 of this act, and following standardized or uniform methods or procedures.

C.17:11C-71 Identification of place of business, storing of books, accounts, records; accessibility.

21. a. Every residential mortgage lender, residential mortgage broker, and mortgage loan originator shall identify the place of business where those books, accounts, records and other documents of the business conducted under the license, as may be prescribed by the commissioner, are maintained, to enable the commissioner to determine whether the business of the licensee is being conducted in accordance with the provisions of this act and the orders, rules and regulations issued hereunder.

b. Upon appropriate notice to the commissioner and if a change in location of records is made, the commissioner shall be notified in writing of the change within five business days of the change.

c. (1) Every licensee shall preserve all books, accounts, records and other documents pertaining to its business, and keep them available for examination by the commissioner, for at least three years from the date of original entry, or a longer time as prescribed by the commissioner by regulation.

(2) During any examination by the commissioner:

(a) The commissioner may control access to any books, accounts, records or other documents by either taking possession of the documents, or selecting a designee to be exclusively in charge of the documents in the location where the documents are maintained. During this period of controlled access, no person, other than the licensee as provided in subparagraph (b) of this paragraph, shall, or attempt to, alter, remove, abstract, mutilate, destroy, or secrete any of the documents, except with the written consent of the commissioner or pursuant to court order from a court of competent jurisdiction.

(b) Unless the commissioner has reasonable grounds to believe any books, accounts, records or other documents have been, or are at risk of being, knowingly withheld, altered, removed, abstracted, mutilated, destroyed, or secreted for the purpose of concealing a violation of this act, the documents shall be accessible as necessary for the licensee to continue to conduct business under the license.

d. A licensee may, upon approval of the commissioner, keep records at a location, identified by the licensee, outside this State, provided that the licensee shall make the records

available in this State upon request of the commissioner, or, at its option have the records examined at its out-of-State location, for which it shall pay the reasonable expenses of the commissioner for the examination.

C.17:11C-72 Provision of unique identifier required.

22. a. Every residential mortgage lender or residential mortgage broker as qualified individual licensees, and every mortgage loan originator licensee shall provide, in a conspicuous manner, the unique identifier assigned to the licensee through the Nationwide Mortgage Licensing System and Registry, on all residential mortgage loan application forms, solicitations, and advertisements, whether in print, broadcast, or electronically transmitted, and on any other document established by regulation of the commissioner. Every residential mortgage lender or broker as a business licensee shall ensure the provision of the unique identifier by its qualified individual licensees and mortgage loan originators as required by this section.

b. No residential mortgage lender, residential mortgage broker, or mortgage loan originator, whether a business or individual licensee, shall transact business provided for under this act using any name other than that named in the licensee's license, and if applicable, using any unique identifier other than the individual licensee's unique identifier assigned through the Nationwide Mortgage Licensing System.

C.17:11C-73 Insurance requirements for borrowers.

23. a. A borrower shall not be required to purchase credit life or accident and health insurance or credit involuntary unemployment insurance in connection with any mortgage loan. If the borrower or borrowers consent thereto in writing, a residential mortgage lender or residential mortgage broker may obtain or provide:

(1) Insurance on the life and on the health or disability, or both, of one borrower, and on the lives, health or disability of two borrowers pursuant to the provisions of N.J.S.17B:29-1 et seq.; and

(2) Credit involuntary unemployment insurance in accordance with forms and rates filed and approved by the commissioner pursuant to applicable regulations.

b. If a licensee obtains or provides any credit insurance for a borrower or borrowers pursuant to subsection a. of this section, a licensee may deduct from the principal of the loan and retain an amount equal to the premium lawfully charged by the insurance company. The premium may be charged monthly in the case of an open-end, secondary mortgage loan. The amount so deducted and retained shall not be considered a prohibited charge or amount of any examination, service, brokerage, commission, expense, fee or bonus or other thing or otherwise.

c. If a borrower or borrowers obtain the credit insurance from or through a licensee, the licensee shall show the amount of the charge for the insurance and cause to be delivered to the borrower or borrowers a copy of the policy, certificate or other evidence of that insurance when the loan is made. Nothing in this act shall prohibit the licensee from collecting the premium or identifiable charge for insurance permitted by this section and from receiving and retaining any dividend, or any other gain or advantage resulting from that insurance.

d. A licensee may require a borrower to demonstrate that the property securing any mortgage loan is insured against damage or loss due to fire and other perils, including those of extended coverage, for a term not to exceed the term of the loan and in an amount not to exceed the amount of the loan, together with the amount needed to satisfy all prior liens on that property.

The licensee shall provide the borrower with the following written statement, to be printed in at least 10-point bold type:

**NOTICE TO THE BORROWER**

**YOU MAY BE REQUIRED TO PURCHASE PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE LOAN.**

**IF PROPERTY INSURANCE IS REQUIRED, YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.**

C.17:11C-74 Permitted fees.

24. a. Notwithstanding the provisions of any other law, a residential mortgage lender, incidental to the origination, processing and closing of any mortgage loan transaction, shall have the right to charge only the following fees: (1) credit report fee; (2) appraisal fee; (3) application fee; (4) commitment fee; (5) warehouse fee; (6) fees necessary to reimburse the residential mortgage lender for charges imposed by third parties; and (7) discount points.

b. Notwithstanding the provisions of any other law, a residential mortgage broker, incidental to the brokering of any mortgage loan transaction, shall have the right to charge only the following fees: (1) application fee; and (2) discount points.

c. No residential mortgage lender or residential mortgage broker may charge any fee either not expressly authorized by this section or authorized by the commissioner by regulation.

C.17:11C-75 Prohibited practices, violations.

25. The following practices shall be prohibited and a violation of this act with respect to any mortgage loan:

a. No person shall use the word "mortgage" or similar word in any advertising, sign, letterhead, business card, or like matter which tends to represent that the person solicits, makes, brokers, or negotiates mortgage loans unless licensed to act as a residential mortgage lender, residential mortgage broker, or mortgage loan originator under this act, or is exempt from licensure pursuant to section 5 of this act.

b. No person shall obtain or attempt to obtain a license by fraud or misrepresentation in order to act as a licensee under this act.

c. No person shall assist, or aid or abet a licensee with respect to any licensed activities regulated by this act, unless properly licensed under this act, or exempt from licensure pursuant to section 5 of this act.

d. No residential mortgage lender, residential mortgage broker, or mortgage loan originator, whether a business or individual licensee, shall make, advertise, print, display, publish, distribute, electronically transmit, telecast or broadcast, or cause or permit to be made, advertised, printed, displayed, published, distributed, electronically transmitted, televised or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

e. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall engage in any unfair or deceptive practice toward any person, or directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers, lenders, or any other person, including any action to misrepresent, circumvent, or conceal the nature of any information or material particular of any transaction, or to obtain the real property that is, or intended to be, the security for the loan.

f. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall advertise, solicit, or make, broker, or negotiate a mortgage loan for a specific

interest rate, points, or other financing terms unless those terms are actually available at the time of advertising, making, brokering, or negotiating the loan.

g. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall make any statement or representation that the licensee will provide "immediate approval" of any mortgage loan application or "immediate closing" of a loan, or will afford unqualified access to credit.

h. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall fail to make any disclosures concerning a mortgage loan as required by federal and State law, including any order, rule or regulation made or issued pursuant to that law.

i. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a mortgage loan, including to any appraiser of the real property that is, or intended to be, the security for the loan for the purposes of influencing the appraiser's judgment with respect to the value of the property.

j. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall, in connection with or incidental to the making of any mortgage loan, require or permit a party to the transaction to sign the loan agreement, promissory note, bond or other mortgage instrument if it contains any blank space to be filled in after it has been signed, except a blank space relating to recording.

k. With respect to any commission, bonus or fee:

(1) No person shall pay or receive any commission, bonus, or fee to or from any person not licensed under this act, or not exempt from licensure pursuant to section 5 of this act, in connection with soliciting, making, brokering, or negotiating any mortgage loan for a borrower.

(2) A residential mortgage lender, residential mortgage broker, or mortgage loan originator shall not solicit, make, broker, or negotiate a contract with a borrower that provides in substance that the licensee may earn a commission, bonus, or fee through "best efforts" to obtain a mortgage loan, even though no loan is actually consummated for the borrower.

l. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall charge or exact directly or indirectly from a borrower or any other person any commission, bonus, fee, or charge not authorized by this act.

m. No residential mortgage lender or residential mortgage broker shall fail to disburse funds in accordance with the licensee's agreements, unless otherwise ordered by the commissioner or a court of competent jurisdiction.

n. No residential mortgage lender or residential mortgage broker shall fail to place in escrow, immediately upon receipt, any money, fund, deposit, check, or draft entrusted to the licensee by any person, in a manner approved by the commissioner, or to deposit the funds in a trust or escrow account maintained by the licensee with a depository institution, wherein the funds shall be kept until the disbursement thereof is properly authorized.

o. If a residential mortgage lender or residential mortgage broker provides loan proceeds to a closing agent for the purpose of closing and settling a mortgage transaction, the licensee shall not fail: (1) to present a certified check, cashier's check, teller's check or bank check for the proceeds of the mortgage loan; (2) to arrange an electronic fund transfer for the proceeds of the loan; or (3) to provide for payment by cash to the closing agent at a reasonable time and place prior to the time of the mortgage closing transaction. The closing agent shall

deposit the loan proceeds in a trust or escrow account, which shall not be commingled with the agent's own funds, and shall disburse the loan proceeds upon the closing or settlement in accordance with the settlement documents. Nothing contained in this subsection shall require the licensee to utilize a closing agent, or prevent the licensee from directly disbursing loan proceeds from the account of the licensee to the borrower and other persons entitled to receive disbursements from the settlement if a closing agent is not used. Nothing contained in this subsection shall prevent the licensee from assessing a reasonable charge as set forth by regulation of the commissioner to reflect the additional cost to the licensee for the issuance of a certified, cashier's, teller's or bank check or for arranging an electronic fund transfer. The reasonable charge shall be fully disclosed at application, or at or prior to the issuance of the loan commitment. In this subsection, a "bank check" means a negotiable instrument drawn by a federal or state chartered bank, savings bank or savings and loan association on itself or on its account in another federal or state chartered bank, savings bank or savings and loan association doing business in this State; and a "teller's check" means a draft drawn by a bank on another bank, or payable at or through a bank.

p. No residential mortgage lender, residential mortgage broker, or mortgage loan originator shall fail without good cause to truthfully account or deliver to any person any personal property, money, fund, deposit, check, draft, mortgage, document or thing of value, which is not the licensee's property, or which the licensee is not in law or equity entitled to retain under the circumstances, at the time which has been agreed upon, or is required by law, or, in the absence of a fixed time, upon demand of the person entitled to the accounting or delivery.

C.17:11C-76 Closed-end loan permitted, certain circumstances, interest rates.

26. a. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, a residential mortgage lender may make a closed-end loan as a secondary mortgage loan, and may charge, contract for, and receive thereon, interest at an annual percentage rate agreed to by the licensee and the borrower.

b. The promissory note evidencing the closed-end loan may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the licensee. If the note provides for a variation in the interest rate, that fact shall be clearly described in plain language, in at least eight-point bold face type on the face of the note. If the note provides for a final payment which is substantially greater than the previous installments, that fact, together with a statement that the licensee is under no obligation to refinance the loan, unless the licensee unconditionally obligates itself to do so, shall be clearly disclosed in plain language, in at least eight-point bold face type on the face of the note. No rate increase or decrease shall take effect during the first six months of the term of the loan. Thereafter, no rate increase or decrease shall take effect unless at least 30 days prior to the effective date of that increase or decrease, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the increase or decrease, and unless at least six months have elapsed without any increase in the rate.

c. Upon written request from the borrower, the licensee shall give to the borrower, without charge, within five days from the date of receipt of that request, a written statement of the borrower's account, which shall show the dates and amounts of all installment payments on the closed-end loan credited to the borrower's account, the dates, amounts and explanation of all other charges or credits to the account and the unpaid balance thereof. The

licensee shall not be required to furnish more than two statements pursuant to this subsection in any 12-month period.

C.17:11C-77 Open-end loan permitted, certain circumstances, interest rates.

27. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, and subject to all applicable provisions of this act, a licensed residential mortgage lender shall have authority to make an open-end, secondary mortgage loan upon the same terms and conditions permitted to banks, savings banks, and savings and loan associations pursuant to State and federal statutes and regulations promulgated thereunder, and may charge, contract for, and receive thereon, interest at an annual percentage rate agreed to by the licensee and the borrower, provided however, that with respect to fees and other charges permitted in connection with the open-end loan, the licensee shall be subject to the provisions of this act.

C.17:11C-78 Requirements for instrument evidencing a secondary mortgage loan.

28. An instrument evidencing a secondary mortgage loan shall:

a. Be in the form of a promissory note for a closed-end loan, and in the form of a loan agreement for an open-end loan, and shall be identifiable by the use of the words "Secondary Mortgage Loan" printed prominently, in 14-point bold type or larger, centered and at the top of the promissory note or loan agreement.

b. Provide for the payment, in full, of the total amount of the secondary mortgage loan in substantially equal payment periods, measured in terms of weeks or months, and, except as otherwise permitted, substantially equal installment payment amounts, except that the initial payment period may be deferred for 60 days, and, provided further, when appropriate for the purpose of facilitating payment in accordance with the borrower's intermittent income, a promissory note or loan agreement may provide an installment schedule which reduces or omits payments over any period of time during which the borrower's income is reduced or suspended, and the final installment may be \$1 more or less than the amount of all other installment payments.

c. Contain the following notice printed prominently, in the identical form indicated below, in 10-point bold type or larger, directly above the space provided for the signature of the borrower.

**"NOTICE TO BORROWER**

Read this promissory note or loan agreement before you sign.

Do not sign this promissory note or loan agreement if it contains blank spaces.

The promissory note or loan agreement is secured by a secondary mortgage on your real property."

d. Be completed in full before it is signed by the borrower. In the event that it is unnecessary to fill in a blank space provided for in any instrument, the figure -0-, a dash, line or the word "none" shall be inserted in such blank space.

C.17:11C-79 Prohibited wording for secondary mortgage loan.

29. No writing of any kind executed in connection with a secondary mortgage loan shall contain:

a. A power of attorney to confess judgment.

b. An assignment of or order for the payment of any salary, wages, commissions or any other compensation for services, or any part thereof, earned or to be earned.

c. An agreement to pay any amount other than the unpaid balance of the promissory note or loan agreement or any other charge authorized by this act.



d. A provision relieving the residential mortgage lender or residential mortgage broker from liability for any claim, or from any legal remedy, which the borrower may have against the licensee under the terms of the promissory note or loan agreement.

e. A provision whereby the borrower waives any right of action against the licensee, a subsequent holder or any person acting on the licensee's or holder's behalf for any illegal act committed in the collection of payments under the promissory note or loan agreement.

f. An acceleration clause under which the unpaid balance of the promissory note or loan agreement not yet matured or any part thereof may be declared due and payable because the licensee or subsequent holder deems himself to be insecure.

C.17:11C-80 Prohibited actions relative to secondary mortgage loan; exceptions.

30. a. A licensee acting as a residential mortgage lender shall not contract for, charge, receive or collect directly or indirectly, any of the following in connection with a secondary mortgage loan: a broker's or finder's fee; commission; expense; fine; penalty; premium; or any other thing of value other than the charges authorized by this act; except the expenses incurred on actual sale of the real property in foreclosure proceedings or upon the entry of judgment, which are otherwise authorized by law; except that:

(1) The licensee may charge and receive no more than three discount points computed as a percentage of the principal amount of the secondary mortgage loan and may add these discount points to the principal balance of the loan, which discount points shall be fully earned when the loan is made. The annual percentage rate charged to the borrower, including the discount points, if any, shall be subject to N.J.S.2C:21-19. As used in this paragraph, "discount point" means one percent of the principal amount of the loan, and "principal amount of the loan" means the total amount of credit extended, including all loan closing fees, expenses or costs that are financed, but excluding the discount points; and

(2) The licensee may require a borrower to pay a reasonable legal fee at the time of the execution of the secondary mortgage loan, provided that any legal fee shall represent a charge actually incurred in connection with the secondary mortgage loan and shall not be paid to any person other than an attorney authorized to practice law in this State; provided further that the legal fee shall be evidenced by a statement issued to the licensee from the attorney.

b. The licensee shall have authority to collect fees for title examination, abstract of title, survey, title insurance, credit reports, appraisals, and recording fees when those fees are actually paid by the licensee to a third party for those services or purposes, and to include those fees in the amount of the loan principal.

c. The licensee shall also have the authority to charge and collect a returned check fee in an amount not to exceed \$20 which the licensee may charge the borrower if a check of the borrower for a secondary mortgage loan is returned to the licensee uncollected due to insufficient funds in the borrower's account. The licensee shall also have the authority to charge and collect a late charge in any amount as may be provided in the promissory note or loan agreement, but no late charge shall exceed 5% of the amount of payment in default. Not more than one late charge shall be assessed on any one payment in arrears.

d. The licensee shall not make any other charge or accept an advance deposit prior to the time a secondary mortgage loan is closed, except that the licensee may charge:

(1) An application fee for the secondary mortgage loan at closing; and

(2) On an open-end loan, an annual fee of \$50 or 1% of the line of credit, whichever is less.

e. A promissory note or loan agreement by the licensee may provide for the payment of attorney fees in the event it becomes necessary to refer the promissory note or loan agreement to an attorney for collection; provided, however, that any attorney fees provision shall be void and unenforceable unless:

(1) The promissory note or loan agreement is referred to an attorney authorized to practice law in this State;

(2) The attorney to whom the promissory note or loan agreement is referred is not an officer, director, partner, owner, or employee, whether salaried or commissioned, of the licensee; and

(3) Suit is actually filed by the attorney to whom the promissory note or loan agreement is referred and subsequently decided in favor of the licensee, in which event the attorney fees shall not exceed 15% of the first \$500, 10% of the next \$500, and 5% of any excess amount due and owing under the promissory note or loan agreement, and provided further that at least 15 days prior to the commencement of the suit, the licensee or his attorney shall send to the borrower, by certified or registered mail, return receipt requested, at the borrower's last known address, a statement of the licensee's intention to sue, which statement shall also specify the amount of principal, interest and any other charge due and owing to the licensee.

#### C.17:11C-81 Regulations relative to collection of interest.

31. a. If a residential mortgage lender charges or collects interest, costs or other charges on a secondary mortgage loan in excess of those permitted by this act, the licensee may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. In addition, a licensee who knowingly and willfully violates any provision of this act shall also forfeit to the borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law.

b. The licensee shall have no liability on a secondary mortgage loan for an unintentional error if within 90 days after discovering the error the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs or other charges which aggregate in excess of the charges permitted under this act for secondary mortgage loans. The discovery of an unintentional error within the meaning of this section shall include an entry of a judgment by a court of competent jurisdiction, holding that a rule or regulation with which the licensee acted in conformity was invalid or in violation of this act, and the licensee shall have no liability for that unintentional error if the licensee takes the actions required upon discovery of the error pursuant to this section, within the time stated therein following entry of the judgment.

#### C.17:11C-82 Required actions relative to secondary mortgage loans.

32. A residential mortgage lender shall, in connection with a secondary mortgage loan:

a. Give to the borrower, without charge, a copy of every instrument, document or other writing the borrower signs, and written evidence of any insurance obtained from the licensee pursuant to section 23 of this act.

b. Give to the borrower, without charge, at the time the loan is made, if a closed-end loan, and at the time of the first advance, if an open-end loan, a closing statement which itemizes the individual amounts disbursed to or on behalf of the borrower, including, but not limited to, the premium for insurance, if any, the total amount of funds so disbursed, the amount of the interest charge, total amount of the loan, the amount, number and due date of

the installment payments and the interest charge expressed as an annual percentage rate, as applicable.

c. In the event a borrower's application for the secondary mortgage loan is denied, notify the borrower, in writing, of that denial. The name of the denied borrower or a list of denied borrowers shall not be referred by the licensee, in any manner whatsoever, to any other lender, retail seller of personal property or services, or to any other person, whether in this State or any other state.

d. If the secondary mortgage loan is not consummated, return all documents executed by or belonging to the borrower.

e. Whenever payment is made in cash on an account of the secondary mortgage loan, give to the borrower, without charge, at the time that payment is actually received, a written receipt which shall show the name and address of the licensee, the name and address of the borrower, account number or other identification mark or symbol, date and amount paid.

f. When the loan, if a closed-end loan, is paid in full, or when the loan, if an open-end loan, is paid in full and the borrower has notified the licensee in writing to discontinue his account with the licensee:

(1) Refund or credit to the borrower, in accordance with regulations promulgated by the commissioner, any unearned portion of the premium for any insurance, if a premium for the insurance was disbursed on behalf of the borrower at the time the secondary mortgage loan was originally made.

(2) Stamp or write on the face of the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness "Paid in Full" or "Canceled," the date paid and the name and address of the licensee and, within 45 days, return the promissory note or loan agreement to the borrower.

(3) Release any lien on real property and cancel the same of record pursuant to P.L.1975, c.137 (C.46:18-11.2 et seq.), and, at the time the promissory note or loan agreement evidencing the borrower's secondary mortgage loan indebtedness is returned, deliver to the borrower any good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to vest the borrower with complete evidence of title, insofar as the applicable secondary mortgage loan is concerned, to the real property, except that the licensee may require the borrower to pay any charge imposed upon the licensee by a county recording officer to effect the cancellation or release.

#### C.17:11C-83 Additional prohibited practices, violations.

33. In addition to the prohibited practices set forth pursuant to section 25 of this act for any mortgage loan, the following shall be prohibited and a violation of this act with respect to any secondary mortgage loan:

a. No residential mortgage lender shall, consistent with section 17 of this act, engage in any business regulated by this act under any other name or at any other location except that designated in the licensee's license. For the purpose of this subsection, the transaction of business includes, but is not limited to, the signing of any instrument, document or any other form by the borrower, except that a borrower's application for a secondary mortgage loan need not be signed in the office of the licensee and the loan need not be closed at the office of the licensee, so long as it is closed in New Jersey at the office of an attorney admitted to practice in this State, or a licensed title company or producer.

b. No residential mortgage lender or residential mortgage broker shall request that a borrower incorporate in connection with a secondary mortgage loan, or aid or abet a scheme to incorporate a borrower.

c. No residential mortgage lender shall make a secondary mortgage loan which has been referred by a retail seller, who, in connection with that referral, has required the borrower to purchase personal property or services, or has indicated that the purchase is necessary as a condition precedent for the loan.

d. No residential mortgage lender or residential mortgage broker shall require or accept from a borrower any collateral or security for a secondary mortgage loan other than a mortgage, indenture or any other similar instrument or document which creates a lien upon any real property or an interest in real property including, but not limited to, shares of stock in a cooperative corporation.

#### C.17:11C-84 Investigation by commissioner.

34. a. The commissioner may investigate or examine any residential mortgage lender, residential mortgage broker, mortgage loan originator, or other person as the commissioner deems necessary to determine compliance with this act and the orders, rules and regulations issued hereunder. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any licensee, maintained pursuant to section 21 of this act, or other person. Each licensee shall be subject to an examination by the commissioner, not more than once in any 9-month period, unless the commissioner has reason to believe that the licensee is not complying with the provisions of this act or any rule or regulation promulgated hereunder, or is not transacting business in accordance with law, in which case the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, accounts, records and other documents and materials relative to an examination or investigation. Examinations conducted under the provisions of this act shall be confidential; notwithstanding this confidentiality, the examinations shall be subject to: (1) reporting and sharing procedures established by the Nationwide Mortgage Licensing System and Registry pursuant to subsection b. of section 12 of this act; and (2) public disclosure as required in the administration, enforcement and prosecution of violations under this act or pursuant to court order. The cost of any investigation or examination shall be borne by the licensee.

b. The commissioner or the commissioner's designee shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, accounts, records and other evidence before him in any matter over which he has jurisdiction pursuant to this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give testimony or to produce evidence as required thereby, the commissioner may apply ex parte to any court having jurisdiction over that person for an order compelling the appearance of the witness before the commissioner to give testimony or to produce evidence as required thereby, or both.

#### C.17:11C-85 Reporting requirements.

35. a. (1) Every residential mortgage lender and residential mortgage broker shall annually file a report with the commissioner, which shall set forth any information as the commissioner shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be under oath and in a form and within the time specified by the commissioner by regulation.

(2) Every residential mortgage lender and broker shall additionally submit to the Nationwide Mortgage Licensing System and Registry a mortgage call report of condition, in the form and manner, and with any information, at any time as may be required by that nationwide system and registry, and any other report to, or through, the nationwide system

and registry pursuant to an arrangement for reporting and sharing information as set forth in subsection b. of section 12 of this act.

b. Any negligently made false statement or knowing omission of material fact in connection with any report or supporting information filed with the commissioner, the nationwide mortgage licensing system and registry, or through that nationwide mortgage licensing system and registry with any federal or state agency, shall be deemed a violation of this act.

c. A licensee that fails to make and file its annual report with the commissioner, or any report with or through the nationwide system and registry, in the form and within the time provided in this section, shall be subject to a penalty payable to the commissioner of not more than \$100 for each day's failure concerning the annual report, and any penalty for a failure concerning a report to be filed with or through the nationwide system and registry, payable to the nationwide system and registry, and the commissioner, as authorized pursuant to section 20 of this act, may revoke or suspend the licensee's authority to do business in this State. The penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a summons.

C.17:11C-86 Agreements unenforceable, void.

36. Any agreement to waive any provision of this act shall be unenforceable and void.

C.17:11C-87 Applicability to mortgage loans.

37. The provisions of this act shall apply to any mortgage loan:

a. Advertised, caused to be advertised, solicited, negotiated, offered, or otherwise transacted within this State, in whole or in part, whether by the ultimate residential mortgage lender or any other person;

b. Made or executed within this State; or

c. Which is secured by residential real estate located in this State, notwithstanding the place of execution.

C.17:11C-88 Noncompliance, effect on validity, enforcement of mortgage loans.

38. The failure of any person to comply with the provisions of this act shall not affect the validity or enforceability of any mortgage loan, and no person acquiring a mortgage loan shall be required to ascertain if a residential mortgage lender has made the loan in compliance with the provisions of this act.

C.17:11C-89 Rules, regulations.

39. The commissioner may issue and promulgate rules and regulations, in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), necessary to effectuate the provisions of this act.

40. Section 1 of P.L.1996, c.157 (C.17:11C-1) is amended to read as follows:

C.17:11C-1 Short title amended.

1. Sections 1 through 49 of this act, previously known and cited as the "New Jersey Licensed Lenders Act," shall be known and may be cited as the "New Jersey Consumer Finance Licensing Act," on or after the effective date of P.L.2009, c.53 (C.17:11C-51 et al.).

41. Section 2 of P.L.1996, c.157 (C.17:11C-2) is amended to read as follows:

C.17:11C-2 Definitions regarding licensed lenders.

2. As used in this act:

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

"Borrower" means any individual applying for a consumer loan from a lender licensed under this act, whether or not the loan is granted, and any individual who has actually obtained such a loan.

"Closed-end loan" means a consumer loan which meets the requirements of section 35 of P.L.1996, c.157 (C.17:11C-35) and pursuant to which the licensee advances a specified amount of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer lender" means a person licensed, or a person who should be licensed, under P.L.1996, c.157 (C.17:11C-1 et al.) to engage in the consumer loan business.

"Consumer loan" means a loan of \$50,000 or less made by a consumer lender, payable in one or more installments, pursuant to the terms of P.L.1996, c.157 (C.17:11C-1 et al.), and not a residential mortgage loan as defined by section 3 of P.L.2009, c.53 (C.17:11C-53).

"Consumer loan business" means the business of making loans of money, credit, goods or things in action, which are to be used primarily for personal, family or household purposes, in the amount or value of \$50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this act and without first obtaining a license from the commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$50,000 or less, or in the business of negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$50,000 or less, or in the business of buying, discounting or endorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business.

"Controlling interest" means ownership, control or interest of 25% or more of the licensee or applicant.

"Department" means the Department of Banking and Insurance.

"Depository institution" means a state or federally chartered bank, savings bank, savings and loan association, building and loan association or credit union, irrespective of whether the entity accepts deposits.

"Individual" means a natural person.

"Licensee" means a person who is licensed under this act, or who should be so licensed.

"Open-end loan" means a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

(1) The lender may permit the borrower to obtain advances of money from the lender from time to time or the lender may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

(3) Interest is computed on the unpaid principal balance or balances of the account from time to time; and

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

"Person" means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

"Sales finance company" shall have the meaning ascribed to that term in section 1 of P.L.1960, c.40 (C.17:16C-1).

42. Section 3 of P.L.1996, c.157 (C.17:11C-3) is amended to read as follows:

C.17:11C-3 License required for consumer lender, sales finance company.

3. a. No person shall engage in business as a consumer lender or sales finance company without first obtaining a license or licenses under this act.

b. The department shall issue licenses under this act which specify whether a licensee may act as a consumer lender or a sales finance company. A licensee may not engage in a licensed activity under this act or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), unless the license issued by the department specifies that the licensee may engage in that licensed activity.

c. (Deleted by amendment, P.L.2009, c.53)

d. (Deleted by amendment, P.L.2009, c.53)

43. Section 7 of P.L.1996, c.157 (C.17:11C-7) is amended to read as follows:

C.17:11C-7 Conditions for issuance of license.

7. The commissioner shall issue a license under this act if the following conditions are met:

a. An application for a new license or for a renewal of a license shall be submitted to the commissioner on the forms and in the manner, and accompanied by such evidence in support of the application, as required by this act and as may be prescribed by the commissioner, and shall be accompanied by the required fees.

b. (Deleted by amendment, P.L.2009, c.53)

c. If the commissioner finds that the financial responsibility, experience, character, and general fitness of the applicant for a new license or for a renewal of a license demonstrate that the business will be operated honestly, fairly, and efficiently within the purposes of this act, and if all other licensing requirements of this act and regulations promulgated by the commissioner are met, the commissioner shall issue the license of the type sought by the applicant.

d. A person already holding a license under this act, or a business license as a residential mortgage lender or residential mortgage broker under the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), may apply to the commissioner to act as a consumer lender or as a sales finance company pursuant to the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), by filing with the commissioner an abbreviated application containing the information which the commissioner deems necessary when considering whether to license that person for that specific type of license along with an application fee for the amount set forth in subsection e. of section 8 of P.L.1996, c.157 (C.17:11C-8).

e. Any person filing for licensure shall submit to the commissioner the name, address, fingerprints and written consent for a criminal history record background check to be performed on any officer, director, partner or owner of a controlling interest of that person. The commissioner is authorized to exchange fingerprint data with and receive criminal history record information from the State Bureau of Identification in the Division of State Police and the Federal Bureau of Investigation consistent with applicable State and federal laws, rules and regulations, for the purposes of facilitating determinations concerning licensure eligibility for the person, based upon any findings related to an officer, director, partner or owner. The applicant shall bear the cost for the criminal history record background check. The Division of State Police shall promptly notify the commissioner in the event an officer, director, partner or owner of the person, who was the subject of a criminal history record background check pursuant to this section, is arrested for a crime or offense in this State after the date the background check was performed, whether the person is a prospective new licensee, or subsequently, a current license holder.

44. Section 8 of P.L.1996, c.157 (C.17:11C-8) is amended to read as follows:

C.17:11C-8 Application, fee.

8. a. (Deleted by amendment, P.L.2009, c.53)
- b. (Deleted by amendment, P.L.2007, c.81).
- c. (Deleted by amendment, P.L.2009, c.53)
- d. An applicant for a new license or for a renewal of a license to be a consumer lender or a sales finance company shall pay to the commissioner at the time of the application a nonrefundable application fee not to exceed the amounts specified in this subsection. The nonrefundable application fee is also required for each branch office license of a consumer lender or sales finance company. The nonrefundable application fee shall be:
  - (1) For an application for one license, an application fee not to exceed \$700;
  - (2) For an application for two licenses, an application fee not to exceed \$1,000.
  - (3) (Deleted by amendment, P.L.2009, c.53)
  - (4) (Deleted by amendment, P.L.2009, c.53)
- e. A licensee that seeks to add an additional license to an existing license held, which activity is regulated under the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.) or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall pay an application fee not to exceed \$300 per activity.
- f. Fee amounts shall be prescribed by the commissioner by regulation.

45. Section 9 of P.L.1996, c.157 (C.17:11C-9) is amended to read as follows:

C.17:11C-9 Maintenance of branch offices by licensee.

9. a. A consumer lender or sales finance company may maintain a branch office or offices. The licensee shall obtain a license for each branch office from which the licensee has direct contact with New Jersey consumers regarding any consumer loan business or sales finance company business regulated under the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.) or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), as appropriate.
- b. The commissioner shall issue a branch office license if:



(1) The licensee has submitted a completed branch office application form, which includes any information required by the commissioner concerning the branch office, and an application fee pursuant to the schedule provided in subsection d. of section 8 of P.L.1996, c.157 (C.17:11C-8); and

(2) The application for the branch office demonstrates that the office is in a suitable location.

(3) (Deleted by amendment, P.L.2009, c.53)

c. (Deleted by amendment, P.L.2007, c.81).

46. Section 10 of P.L.1996, c.157 (C.17:11C-10) is amended to read as follows:

C.17:11C-10 Information on license; posting, disposition of license.

10. a. The consumer lender or sales finance company license shall state the name of the licensee and the licensee's place of business or businesses, as applicable, and shall contain any other information as the commissioner may see fit to require. No licensee shall transact business regulated by the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.) or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.) under any name other than that named in the license.

b. The license shall be posted conspicuously in the place or places of business of the licensee.

c. A licensee or any other person shall not photocopy or otherwise reproduce the license except for legitimate business purposes.

d. Licenses issued pursuant to this act or, previously, the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall not be transferable or assignable, other than as provided by section 12 of this act.

e. No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner.

47. Section 11 of P.L.1996, c.157 (C.17:11C-11) is amended to read as follows:

C.17:11C-11 Issuance, surrender, expiration of license.

11. a. (1) Each consumer lender or sales finance company license issued pursuant to this act shall expire at the end of the license period of not less than two years as set by the commissioner by regulation.

(2) A licensee may surrender any license by delivering to the commissioner written notice that the license is surrendered, along with the license, and complying with any regulation set forth by the commissioner concerning the license surrender, but the surrender shall not affect the licensee's civil or criminal liability for an act committed prior to the surrender.

b. (Deleted by amendment, P.L.2007, c.81).

c. (Deleted by amendment, P.L.2009, c.53)

d. Each mortgage banker, correspondent mortgage banker, mortgage broker, and secondary lender license, and each mortgage solicitor registration issued pursuant to the provisions of the "New Jersey Licensed Lenders Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), prior to the effective date of its reform and re-titling as the "New Jersey Consumer Finance Licensing Act" pursuant to P.L.2009, c.53 (C.17:11C-51 et al.), shall expire in accordance with the following schedule:

(1) For any license or registration issued before the effective date of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), the license or registration shall expire on June 30, 2009.

(2) For any license or registration issued on or after July 1, 2009:

(a) the license or registration shall expire on July 31, 2010, or a later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s. 5107); and

(b) this date may be further modified by the commissioner pursuant to regulation or order, based upon any later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.1507), providing a temporary deadline extension with respect to complying with the licensing requirements for states established pursuant to the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.).

(3) Thereafter, the person licensed or registered shall only continue to engage in any activities for which the license or registration was previously issued if licensed under the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

48. Section 12 of P.L.1996, c.157 (C.17:11C-12) is amended to read as follows:

C.17:11C-12 Approval of transfer, sale.

12. Any sale or transfer of a controlling interest in a consumer lender or sales finance company licensee's or applicant's business shall be approved by the commissioner prior to the transfer or sale, after the licensee or applicant has provided an application which contains a written notice of the proposed sale or transfer to the commissioner. The application shall list each officer, director, partner or owner to receive a controlling interest as a result of the transfer or sale, and each shall be subject to a criminal history record background check as set forth in subsection e. of section 7 of P.L.1996, c.157 (C.17:11C-7) as a condition for the commissioner's approval of the transfer or sale. The commissioner shall approve the transfer or sale unless the commissioner determines, following an opportunity for a hearing, that sufficient grounds exist to deny, revoke or suspend the license. The sale or transfer shall be deemed approved if the commissioner does not deny a completed application within 90 days after its receipt.

49. Section 17 of P.L.1996, c.157 (C.17:11C-17) is amended to read as follows:

C.17:11C-17 Change of address notice.

17. a. Nothing in this act or in the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), shall be construed to require a consumer lender or a sales finance company to maintain an office in this State so long as it is qualified to do business here and has a registered agent for service of process.

b. (Deleted by amendment, P.L.2009, c.53)

c. Whenever the licensee changes the address of its principal office or a branch office serving New Jersey consumers, it shall file, as part of its notice of address change required

pursuant to subsection e. of section 10 of P.L.1996, c.157 (C.17:11C-10), any documents required of it by regulation.

50. Section 18 of P.L.1996, c.157 (C.17:11C-18) is amended to read as follows:

C.17:11C-18 Commissioner's authority relative to issuance, revocation, oversight of licenses, enforcement.

18. The commissioner's authority with respect to issuing consumer lender and sales finance company licenses, and with respect to oversight of licensees and enforcement of the activities regulated under the "New Jersey Consumer Finance Licensing Act" shall include the following:

a. The commissioner may refuse to issue and may revoke, suspend or refuse to renew a license, or impose a penalty pursuant to this act, if the commissioner finds, after notice and an opportunity for a hearing in accordance with the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.) and any rules adopted thereunder, that any person, applicant for or holder of the license has:

(1) Violated any of the provisions of this act or any order, rule or regulation made or issued pursuant to this act;

(2) Failed at any time to meet the requirements for licensure, or withheld information or made a material misstatement in the application for the license;

(3) Been convicted of an offense involving breach of trust, moral turpitude or fraudulent or dishonest dealing, or had a final judgment entered against the person in a civil or administrative action upon grounds of fraud, misrepresentation, or deceit, or failure to maintain books, accounts, records and other documents as required by section 19 of P.L.1996, c.157 (C.17:11C-19);

(4) Become insolvent, or failed to attain or maintain the required net worth;

(5) Demonstrated unworthiness, incompetence, bad faith or dishonesty in the transaction of business as a licensee; or

(6) Engaged in any other conduct which would be deemed by the commissioner to be the cause for denial, revocation, suspension, or refusal of the license or license renewal.

b. A license may be suspended, revoked, or not renewed by the commissioner if any officer, director, partner, or owner of the licensee has committed any act which would be cause for suspending, revoking or not renewing a license if issued to that person as an individual.

c. If the license is suspended or revoked pursuant to subsection b. of this section, the license shall remain suspended or revoked, unless within the time fixed by the commissioner, in the case of a partnership, the connection therewith of the offending individual shall be severed and that individual's interest in the partnership and share in its activities brought to an end, or in the case of an association, corporation, or other legal entity, the offending individual shall be discharged and shall have no further participation in the legal entity's activities. In the case of an offending individual who is an officer or director of the corporation or other legal entity, that individual shall be required to fully divest himself of all stock, bonds or other corporate holdings.

d. (Deleted by amendment, P.L.2009, c.53)

e. (Deleted by amendment, P.L.2009, c.53)

f. The commissioner may access and examine books, accounts, records and other documents maintained by a consumer lender or sales finance company licensee pursuant to section 19 of P.L.1996, c.157 (C.17:11C-19).

g. The commissioner may conduct investigations, which may include the subpoena of witnesses and documents, pursuant to section 42 of P.L.1996, c.157 (C.17:11C-42).

h. Whenever it appears to the commissioner that any person has engaged, is engaging, or is about to engage, in any practice or transaction prohibited by the “New Jersey Consumer Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), the commissioner may, in addition to any other remedy available, bring a summary action in a court of competent jurisdiction against the person, and any other person concerned or in any way participating in or about to participate in a practice or transaction in violation of the “New Jersey Consumer Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), to enjoin the person from continuing the practice or transaction engaged, or from engaging in the practice or transaction, or doing any act in furtherance of engaging in the practice or transaction.

i. The commissioner may impose a civil penalty not exceeding \$25,000 on any person for a violation of the “New Jersey Consumer Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.). Each violation of the act, including any order, rule or regulation made or issued pursuant to the act, shall constitute a separate offense. Additionally, each violation which constitutes a knowing violation shall be considered a crime of the third degree.

j. The commissioner may order that any person who has been found to have knowingly violated any provision of the “New Jersey Consumer Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), or of the rules and regulations issued pursuant thereto, and has thereby caused financial harm to consumers, be barred for a term not exceeding 10 years from acting as a consumer lender or sales finance company, or a stockholder, or an officer, director, partner or other owner, or an employee of a consumer lender or sales finance company licensee, or acting in any other capacity pursuant to the “New Jersey Consumer Finance Licensing Act,” sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.). Violations of this final order shall be considered a crime of the third degree.

51. Section 19 of P.L.1996, c.157 (C.17:11C-19) is amended to read as follows:

C.17:11C-19 Maintenance of books, accounts, records, documents.

19. a. Every consumer lender or sales finance company licensee shall identify the place of business where those books, accounts, records and other documents of the business conducted under the license, as may be prescribed by the commissioner, are maintained, to enable the commissioner to determine whether the business of the licensee is being conducted in accordance with the provisions of this act and the orders, rules and regulations issued hereunder.

b. Upon appropriate notice to the commissioner and if a change in location of records is made, the commissioner shall be notified in writing of the change within five business days of the change.

c. Every licensee shall preserve all books, accounts, records and other documents pertaining to its business, and keep them available for examination by the commissioner, for at least three years from the date of original entry, or a longer time as prescribed by the commissioner by regulation.

d. A licensee may, upon approval of the commissioner, keep records at a location, identified by the licensee, outside this State, provided that the licensee shall make the records available in this State upon request of the commissioner.

52. Section 21 of P.L.1996, c.157 (C.17:11C-21) is amended to read as follows:

C.17:11C-21 Purchase of insurance by borrowers.

21. a. A borrower shall not be required to purchase credit life or accident and health insurance or credit involuntary unemployment insurance in connection with a consumer loan. If the borrower or borrowers consent thereto in writing, a licensee may obtain or provide:

(1) Insurance on the life and on the health or disability, or both, of one borrower, and on the lives, health or disability of two borrowers pursuant to the provisions of N.J.S.17B:29-1 et seq.; and

(2) Credit involuntary unemployment insurance in accordance with forms and rates filed and approved by the commissioner pursuant to applicable regulations.

b. If a licensee obtains or provides any credit insurance for a borrower or borrowers pursuant to subsection a. of this section, the licensee may deduct from the principal of a loan and retain an amount equal to the premium lawfully charged by the insurance company. The premium may be charged monthly in the case of an open-end consumer loan. The amount so deducted and retained shall not be considered a prohibited charge or amount of any examination, service, brokerage, commission, expense, fee or bonus or other thing or otherwise.

c. If a borrower or borrowers obtain the credit insurance from or through a licensee, the licensee shall show the amount of the charge for the insurance and cause to be delivered to the borrower or borrowers a copy of the policy, certificate or other evidence of that insurance when the loan is made. Nothing in this act shall prohibit the licensee from collecting the premium or identifiable charge for insurance permitted by this section and from receiving and retaining any dividend, or any other gain or advantage resulting from that insurance.

d. (Deleted by amendment, P.L.2009, c.53)

e. Incident to a consumer loan, a licensee may make available, insurance covering direct or indirect damage or loss, by fire or other perils, including those of extended coverage, to the personal property of the borrower all or part of which is security for the loan. The insurance shall be for an amount and term not to exceed the total amount of payments and term of the loan.

The licensee shall provide the borrower with the following written statement, to be printed in at least 10-point bold type:

**NOTICE TO THE BORROWER**

**YOU ARE NOT REQUIRED TO PURCHASE PERSONAL PROPERTY INSURANCE AS A CONDITION OF RECEIVING THE CONSUMER LOAN. IF YOU DESIRE PERSONAL PROPERTY INSURANCE YOU MAY SECURE INSURANCE FROM A COMPANY OR AGENT OF YOUR OWN CHOOSING.**

53. Section 32 of P.L.1996, c.157 (C.17:11C-32) is amended to read as follows:

C.17:11C-32 Consumer loans permitted by consumer lender, terms.

32. a. Notwithstanding the provisions of R.S.31:1-1 or any other law to the contrary, every consumer lender authorized to engage in the consumer loan business may loan any sum of money not exceeding \$50,000, repayable in an installment or installments, and may charge, contract for, and receive thereon, interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A closed-end consumer loan contract may provide for a variation in the interest rate in which adjustments to the interest rate shall correspond directly to the movement of an interest rate index which is readily available to and verifiable by the borrower and is beyond the control of the lender. No increase during the entire loan term shall result in an interest rate of more than 6% per annum over the rate applicable initially, nor shall the rate be raised more than 3% per annum during any 12-month period. The lender shall not be obligated to decrease the interest rate more than 6% over the term of the loan, nor more than 3% per annum during any 12-month period. If a rate increase is applied to the loan, the lender shall also be obligated to adopt and implement uniform standards for decreasing the rate. If the contract provides for the possibility of an increase or decrease or both in the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the contract. No rate increase shall take effect unless (1) at least 90 days prior to the effective date of the first such increase, or 30 days prior to the effective date of any subsequent increase, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes such increase, and (2) unless at least 365 days have elapsed without any increase in the rate. Where the loan contract so provides for an increase or decrease in the rate of interest, the installments may vary in amount, notwithstanding any other law to the contrary, except that if the rate increases, the borrower may request, and the lender shall provide for, either an increase in the amount of the installment payment or an extension of the term of the loan, or some combination of an increase in the amount of the installment payment and extension of the term.

c. An open-end loan agreement may provide that the lender may at any time, or from time to time, change the terms of the agreement, including the terms governing the periodic interest rate, calculation of interest or the method of computing the required amount of periodic installment payments, provided however, that:

(1) the periodic interest rate shall not be changed more than once in each billing cycle;

(2) any change in the periodic interest rate shall correspond to the movement of a market interest rate index specified in the agreement which is readily verifiable by the borrower and beyond the control of the lender;

(3) a change in any term of the agreement, including the periodic interest rate, may be permitted to apply to any then-outstanding unpaid indebtedness in the borrower's account, including any indebtedness which shall have arisen from advances obtained prior to the effective date of the change, so long as that fact is clearly and conspicuously disclosed in the agreement;

(4) if the agreement provides for the possibility of a change in any term of the agreement, including the rate, that fact shall be clearly described in plain language, in at least 8-point bold face type on the face of the written notice; and

(5) no change in any term of the agreement or of the index specified in the agreement shall be effective unless: (a) at least 30 days prior to the effective date of the change, a written notice has been mailed or delivered to the borrower that clearly and conspicuously describes the change and the indebtedness to which it applies, and states that the incurrence by the borrower or another person authorized by him of any further indebtedness under the law to which the agreement relates on or after the effective date of the change specified in the notice shall constitute acceptance of the change; and (b) either the borrower agrees in writing to the change or the borrower or another person authorized by him incurs further indebtedness on or after the effective date of the change stated in that notice, which indebtedness may include outstanding balances. Any borrower who fails to use the borrower's account or so to indicate agreement to the change shall be permitted to pay the

outstanding unpaid indebtedness in the borrower's account in accordance with the terms governing the open-end consumer loan agreement without giving effect to the change.

d. The consumer lender shall notify each affected borrower in a consumer loan agreement of any change in the manner set forth in the closed-end and open-end agreement governing the plan and in compliance with the requirements of the federal "Truth in Lending Act," Pub.L.90-321 (15 U.S.C. s.1601 et seq.), and regulations promulgated thereunder, as in effect from time to time, if applicable.

e. The interest and periodic payments for consumer loans at these rates shall be computed from the standard tables based on the actuarial or annuity method which conforms to the so-called "United States Rule of Partial Payments," which provides that interest shall be calculated whenever a payment is made and the payment shall be first applied to the payment of interest and if it exceeds the interest due, the balance is to be applied to diminish principal. If the payment is insufficient to pay the entire amount of interest, the balance of interest due shall not be added to principal, so as to produce interest thereon.

f. No interest on a consumer loan shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances. For the purpose of computing interest, all installment payments shall be applied on the date of receipt, and interest shall be charged for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

g. No consumer lender shall induce or permit any person nor any husband and wife, jointly or severally, to become obligated, directly or contingently or both, under more than one contract of a consumer loan at the same time for the purpose of obtaining a higher rate of interest than would otherwise be permitted by this section. This prohibition shall not apply to any loan made pursuant to any other law of this State.

54. Section 33 of P.L.1996, c.157 (C.17:11C-33) is amended to read as follows:

C.17:11C-33 Additional charges prohibited on consumer loan; violations.

33. a. In addition to the interest herein provided for on a consumer loan, no further or other charge, or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise shall be directly or indirectly charged, contracted for, or received, except for any amount actually paid by a licensee to a public official for the recording of a security interest in connection with security given for the loan and: (1) amounts for insurance obtained or provided by the licensee in accordance with the provisions of this act; (2) on actual sale of the security in foreclosure proceedings or upon the entry of judgment; (3) a returned check fee in an amount not to exceed \$20, which the licensee may charge the borrower if a check of the borrower is returned to the licensee uncollected due to insufficient funds in the borrower's account; and (4) an annual fee on open-end accounts which may not exceed an amount equal to one percent of the line of credit or \$50, whichever is less.

b. A consumer lender who violates or participates in the violation of any provision of section 3, 19, 21, 34, 35 or 36, or subsection a. of section 10, or subsection a., b., or c. of section 32, or subsection a. of this section, or subsection e., f., g., or h. of section 41 of this act, shall be guilty of a crime of the fourth degree. A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges unless the act was the result of a good faith error, including a good faith error made as a result of a licensee's acting

in conformity with a rule or regulation of the commissioner which is later held to be invalid or in violation of any provision of this act by a judgment of a court of competent jurisdiction, and the licensee notifies the borrower of the error within 90 days after discovering it and makes adjustments in the account necessary to assure that the borrower will not be required to pay any interest, costs, or other charges which aggregate in excess of the charges permitted under this act. If any interest, consideration or charges in excess of those permitted are charged, contracted for or received, except as the result of a good faith error, the consumer lender may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. In addition, a consumer lender who knowingly and willfully violates any provision of this act shall also forfeit to the borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law.

c. A consumer lender shall have no liability on a consumer loan for an unintentional error if within 90 days after discovering an error the licensee notifies the borrower of the error and makes adjustments in the account as necessary to assure that the borrower will not be required to pay any interest, costs or other charges which aggregate in excess of the charges permitted under this act for consumer loans. The discovery of an unintentional error within the meaning of this section shall include an entry of a judgment by a court of competent jurisdiction, holding that a rule or regulation with which the consumer lender acted in conformity was invalid or in violation of this act, and a consumer lender shall have no liability for such unintentional error if the consumer lender takes the actions required by this section upon discovery of such an error, within the time stated therein following entry of such a judgment.

55. Section 34 of P.L.1996, c.157 (C.17:11C-34) is amended to read as follows:

C.17:11C-34 Requirements for consumer lender relative to closed-end loan.

34. Every consumer lender, incident to a closed-end consumer loan, shall:

a. Deliver to the borrower at the time a loan is made a statement in the English language showing in clear and distinct terms the amount and date of the loan and its maturity, the nature of the security, if any, for the loan, the name and address of the borrower and of the licensee, the payment schedule, the amount of interest charges, and the annual percentage rate of interest;

b. Give to any borrower who makes a payment in cash a plain and complete receipt for all payments made on account of the loan at the time payments are made, specifying the amount applied to interest and the amount, if any, applied to principal, and stating the unpaid balance, if any of the loan;

c. Permit payment to be made in advance in any amount on any contract of a loan at any time, but the licensee may apply the payment first to all interest in full at the agreed rate up to the date of payment;

d. Upon repayment of the loan in full, mark indelibly every obligation and security signed by the borrower, or a copy thereof, with the word "paid" or "canceled," and release, or give the borrower evidence to release any mortgage, or security interest which no longer secures an obligation to the licensee, restore any pledge, cancel and return any note or a copy thereof, and cancel and return any assignment or a copy thereof given to the licensee by the borrower.

No consumer lender shall take any confession of judgment incident to a closed-end consumer loan. No consumer lender shall, incident to a closed-end consumer loan take any



note, promise to pay, or security that does not accurately disclose the amount of the loan, the date of the loan, the payment schedule, the amount of interest charges, and the annual percentage rate of interest, nor any instrument in which blanks are left to be filled in after the loan is made.

56. Section 36 of P.L.1996, c.157 (C.17:11C-36) is amended to read as follows:

C.17:11C-36 Open-end consumer loans; conditions, terms.

36. a. A licensee authorized to engage in the consumer loan business may make open-end consumer loans and may contract for, and receive thereon, interest at an annual percentage rate or rates agreed to by the licensee and the borrower.

b. A consumer lender shall not compound interest on an open-end consumer loan by adding any unpaid interest authorized by this act to the principal balance of the borrower's account but the unpaid principal balance may include other charges permitted by this act.

c. Interest on an open-end consumer loan shall be computed in each billing cycle by one of the following methods:

(1) By converting each yearly rate to a daily rate and multiplying that daily rate by the applicable portion of the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing each yearly rate by 365; or

(2) By multiplying one-twelfth of each yearly rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(3) By converting each yearly rate to a daily rate and multiplying that daily rate by the applicable portion of the average daily unpaid principal balance of the account in the billing cycle, in which case each daily rate is determined by dividing each yearly rate by 365, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

d. For all of the above methods of computation, the billing cycle shall be monthly and the unpaid principal balance on any day shall be determined by adding to any balance unpaid as of the beginning of that day all advances and other permissible amounts charged to the borrower and deducting all payments and other credits made or received that day.

e. In an open-end consumer loan, the borrower may at any time pay all or any part of the unpaid balance in his account; or, if the account is not in default, the borrower may pay the unpaid principal balance in monthly installments, subject to the following minimum payment requirements. Minimum monthly payments shall be in an amount which would result in the full repayment of the initial loan advance, exclusive of any interest, within the maximum term set forth for other loans of the same amount in section 35 of this act, except that the minimum payment for any initial advance not exceeding \$2,500 shall be in an amount which would result in full repayment of the initial loan advance within the maximum term of 48 months and 15 days. This minimum payment shall continue at that amount until such time as an additional advance to the borrower is made, other than for permitted charges, at which time the minimum monthly payment shall be determined and shall be in that amount which would result in the full repayment of the unpaid principal balance of the loan, after the advance and including the advance, within the maximum term set forth for the other loans of the same amount, except that if the principal balance of the loan, after the advance and including the advance, does not exceed \$2,500, the minimum payment shall be in that amount which would result in full repayment of the principal balance of the loan within the

maximum term of 48 months and 15 days. Minimum payments after each subsequent advance shall be determined in the same manner. No minimum payment shall exceed the amount required to pay the balance in full, including unpaid interest and charges to date.

f. In addition to interest, a licensee may contract for and receive on an open-end consumer loan the charges permitted under this act for other consumer loans, subject to all the conditions and restrictions on those charges, with the following variations:

(1) If credit life, disability or involuntary unemployment insurance is provided pursuant to section 21 of P.L.1996, c.157 (C.17:11C-21) and if the insured dies or becomes disabled or involuntarily unemployed when there is an outstanding open-end loan indebtedness, the insurance shall be sufficient to pay the total balance of the loan due on the date of the borrower's death in the case of credit life insurance, all minimum payments which become due on the loan during the covered period of disability in the case of credit disability insurance or all covered minimum payments which become due on the loan during the covered period of involuntary unemployment in the case of involuntary unemployment insurance. The additional charge for credit life insurance, credit disability insurance or credit involuntary unemployment insurance shall be calculated in each billing cycle by applying the current monthly premium rate for that insurance, as determined by the commissioner, to the unpaid balances in the borrower's account, using any of the methods specified in subsection c. of this section for the calculation of interest;

(2) No credit life, disability or involuntary unemployment insurance written in connection with an open-end loan shall be canceled by the licensee because of delinquency of the borrower in the making of the required minimum payments on the loan unless one or more of the payments is past due for a period of 90 days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

g. A consumer lender may take a security interest in personal property to secure an open-end consumer loan. Any security may be retained until the open-end account is terminated, except that if the security interest covers consumer goods, then within one month, or within 10 days following written demand by the borrower, after there is no outstanding balance in the account and no commitment by the licensee to make advances, the licensee shall release the security interest. If a security interest is taken, the open-end consumer loan agreement shall state the nature and extent of that security interest.

h. No licensee in connection with an open-end consumer loan shall take any confession of judgment or power of attorney, or take any instrument in which blanks are left to be filled in after the loan is made.

57. Section 37 of P.L.1996, c.157 (C.17:11C-37) is amended to read as follows:

C.17:11C-37 Prohibited charges for large consumer loans.

37. No licensee authorized to engage in the consumer loan business shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the licensee would be permitted by law to charge if he were not a licensee under this act upon the loan, use, or sale of credit, of the amount or value of more than \$50,000. The foregoing prohibition shall also apply to any licensee who permits any person, as borrower or as endorser, guarantor, or surety for any borrower, or otherwise, to owe directly or contingently or both under one or more loan contracts to the licensee at any time the sum of more than \$50,000 for principal.

58. Section 41 of P.L.1996, c.157 (C.17:11C-41) is amended to read as follows:

C.17:11C-41 Consumer lenders, prohibited practices.

41. The following practices shall be prohibited and a violation of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.):

a. No consumer lender shall make any loan upon security of any assignment of or order for the payment of any salary, wages, commissions or other compensation for services earned, or to be earned, nor shall any such assignment or order be taken by a licensee at any time in connection with any consumer loan, or for the enforcement or repayment thereof, and any such assignment or order hereafter so taken or given to secure any loan made by any licensee under this act shall be void and of no effect.

b. No consumer lender shall take a lien upon real estate as security for any consumer loan, except a lien created by law upon the recording of a judgment.

c. No licensee shall conduct the consumer loan business within any office, room, or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner.

d. Every multiple installment consumer loan contract, other than an open-end consumer loan contract or a variable rate closed-end consumer loan contract under subsection b. of section 32 of this act, shall provide for repayment of principal and interest combined in installments which shall be payable at approximately equal periodic intervals of time and which shall be so arranged that no installment is substantially greater in amount than any preceding installment, except that the repayment schedule may reduce or omit installments when necessary because of the seasonal nature of the borrower's income.

e. No person, except as authorized by this act, shall directly or indirectly charge, contract for, or receive any interest, discount, or consideration greater than the lender would be permitted by law to charge if he were not a licensee hereunder upon the loan, use, or forbearance of money, goods, or things in action, or upon the loan, use, or sale of credit of the amount of \$50,000 or less. This prohibition shall apply to any person who, by any device, subterfuge, or pretense, shall charge, contract for, or receive greater interest, consideration, or charges than is authorized by this act for the loan, use, or forbearance of money, goods, or things in action or for the loan, use, or sale of credit.

f. No consumer loans of the amount or value of \$50,000 or less for which a greater rate of interest, consideration, or charge than is permitted by this act has been charged, contracted for, or received, whenever made, shall be enforced in this State and any person in any way participating therein in this State shall be subject to the provisions of this act. The foregoing shall not apply to loans legally made in any state which then has in effect a regulatory small loan law similar in principle to this act, but an action to enforce any loan made in any state to a person then residing in this State may be maintained in this State only if the amount of interest, discount, consideration or other charge for that loan, demanded to be paid in the action, does not exceed that permitted to a licensee authorized to engage in the consumer loan business by this act for a loan of the same amount repayable in the same manner.

g. No consumer lender shall make, advertise, print, display, publish, distribute, electronically transmit, telecast or broadcast, in any manner, any statement or representation which is false, misleading or deceptive.

h. No consumer lender shall make any statement or representation that the licensee will provide "immediate closing" of a loan or will afford unqualified access to credit.

59. Section 42 of P.L.1996, c.157 (C.17:11C-42) is amended to read as follows:

## C.17:11C-42 Investigations, examinations of licensees.

42. a. The commissioner may make such investigations and examinations of any licensee or other person as the commissioner deems necessary to determine compliance with this act and the orders, rules and regulations issued hereunder. For these purposes, the commissioner may examine the books, accounts, records and other documents or matters of any licensee, maintained pursuant to section 19 of P.L.1996, c.157 (C.17:11C-19), or other person. Each licensee shall be subject to an examination by the commissioner, not more than once in any 18-month period, unless the commissioner has reason to believe that the licensee is not complying with the provisions of this act or any rule or regulation promulgated thereunder, or is not transacting business in accordance with law, at which time the commissioner may conduct an examination at any time. The commissioner shall have the power to compel by subpoena the production of all relevant books, accounts, records and other documents and materials relative to an examination or investigation. Examinations conducted under the provisions of this act shall be confidential except as required in the administration, enforcement and prosecution of violations under this act or pursuant to court order.

b. The commissioner or the commissioner's designee shall have power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, accounts, records and other evidence before him in any matter over which he has jurisdiction pursuant to this act, and to administer oaths and affirmations to any person.

c. If any person shall refuse to obey a subpoena, or to give testimony or to produce evidence as required thereby, the commissioner may apply ex parte to any court having jurisdiction over that person for an order compelling the appearance of the witness before the commissioner to give testimony or to produce evidence as required thereby, or both.

60. Section 43 of P.L.1996, c.157 (C.17:11C-43) is amended to read as follows:

## C.17:11C-43 Annual report by licensees; violations, penalties.

43. A consumer lender or sales finance company licensee shall annually file a report with the commissioner which shall set forth such information as the commissioner shall require concerning the business conducted as a licensee during the preceding calendar year. The report shall be under oath and in a form and within the time specified by the commissioner by regulation.

A licensee that fails to make and file its annual report in the form and within the time provided in this section shall be subject to a penalty of not more than \$100 for each day's failure, and the commissioner, as authorized pursuant to section 18 of P.L.1996, c.157 (C.17:11C-18) may revoke or suspend its authority to do business in this State. The penalty may be collected in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). A warrant may issue in lieu of a summons.

61. Section 1 of P.L.1995, c.2 (C.17:10C-1) is amended to read as follows:

## C.17:10C-1 Residential Mortgage and Consumer Finance Advisory Board.

1. There is created in the Department of Banking and Insurance a Residential Mortgage and Consumer Finance Advisory Board. The board shall consist of the Commissioner of Banking and Insurance or his designee, who shall be ex officio the chair of the board, and seven members to be appointed by the Governor, with the advice and consent of the Senate, for a term of three years. Each member shall hold office for the term of appointment and

until his successor is appointed and qualified. A member is eligible to be reappointed to the board. A member appointed to fill a vacancy occurring in the membership of the board for any reason other than the expiration of the term shall have a term of appointment for the unexpired term only. All vacancies shall be filled in the same manner as the original appointment. Any appointed member of the board may be removed from office by the Governor, for cause, after a hearing and may be suspended by the Governor pending the completion of the hearing. Appointed members of the board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties as members. Action may be taken and motions and resolutions may be adopted by the board at a board meeting by an affirmative vote of not less than four members. Of the seven appointed members, two shall have had, at the time of appointment, not less than five years of practical experience as a licensed residential mortgage lender located in the State of New Jersey; one shall have had, at the time of appointment, not less than five years of practical experience as a licensed residential mortgage broker located in the State of New Jersey; one shall be a representative from the licensed residential mortgage lending industry in the State of New Jersey who is not a salaried officer, director, partner, owner, principal, or employee of any licensed residential mortgage lender or broker; two shall have had, at the time of appointment, not less than five years of practical experience as lenders licensed for providing loans other than residential mortgage loans; and one shall be a public member who is not a salaried officer, director, partner, owner, principal, or employee of any licensed lender or broker. At no time shall there be more than one representative on the board from any one residential mortgage lender or broker.

Notwithstanding any provisions of this section to the contrary, the members of the board appointed by the Governor and serving on the effective date of P.L.2009, c.53 (C.17:11C-51 et al.) shall continue to serve until the expiration of their respective terms, but a member of the board appointed or reappointed by the Governor after the effective date of P.L.2009, c.53 (C.17:11C-51 et al.) shall qualify for membership pursuant to this section.

62. Section 2 of P.L.1995, c.2 (C.17:10C-2) is amended to read as follows:

C.17:10C-2 Board duties.

2. The board shall act as a resource to the commissioner by developing and recommending to the commissioner ideas, programs and tools to assist:

- a. in the development of educational requirements for licensees;
- b. licensed residential mortgage lenders, residential mortgage brokers, and mortgage loan originators in meeting the mortgage lending needs of consumers;
- c. other consumer finance licensees in meeting the lending needs of consumers; and
- d. consumers in understanding and using:

(1) residential mortgage lending information and choosing from available mortgage lending opportunities through licensed residential mortgage lenders, residential mortgage brokers, and mortgage loan originators in this State; and

(2) consumer lending information and choosing from available consumer lenders.

63. Section 2 of P.L.2005, c.199 (C.17:1C-34) is amended to read as follows:

C.17:1C-34 Definitions relative to funding mechanisms for Division of Banking.

2. For the purposes of this act:

"Assessment" means the assessment imposed pursuant to section 3 of this act for the special functions of the division as provided in that section.

"Commissioner" means the Commissioner of Banking and Insurance.

"Department" means the Department of Banking and Insurance.

"Depository institution" means any entity holding a state charter for a bank, savings bank, savings and loan association or credit union, irrespective of whether the entity accepts deposits.

"Division" means the Division of Banking in the Department of Banking and Insurance.

"Other financial entity" means a person who is licensed or registered pursuant to: the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.); the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), other than a financial entity with respect to the payment of required fees to the Nationwide Mortgage Licensing System and Registry as set forth by that nationwide system and registry; "The Check Cashers Regulatory Act of 1993," P.L.1993, c.383 (C.17:15A-30 et seq.); the "New Jersey Money Transmitters Act," P.L.1998, c.14 (C.17:15C-1 et seq.); the "Insurance Premium Finance Company Act," P.L.1968, c.221 (C.17:16D-1 et seq.); the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.); the "Door-to-Door Retail Installment Sales Act of 1968," P.L.1968, c.223 (C.17:16C-61.1 et seq.); the "Home Repair Financing Act," P.L.1960, c.41 (C.17:16C-62 et seq.); the "Door-to-Door Home Repair Sales Act of 1968," P.L.1968, c.224 (C.17:16C-95 et seq.); P.L.1979, c.16 (C.17:16G-1 et seq.); or the "pawnbroking law," R.S.45:22-1 et seq.

"Nationwide Mortgage Licensing System and Registry" means the mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, or their successors, and utilized in this State pursuant to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

"Regulated entity" means a depository institution, other financial entity or person chartered, licensed or registered by the Division of Banking or who should be chartered, licensed or registered.

64. Section 13 of P.L.2005, c.199 (C.17:1C-45) is amended to read as follows:

C.17:1C-45 Exemption from fees, charges; exceptions.

13. a. Notwithstanding any law or regulation to the contrary, a regulated entity paying the amounts assessed to it in statements of the assessment made pursuant to section 3 of this act shall be exempt from all fees or charges imposed by the division pursuant to any other provision of law or regulation, except for:

- (1) charter fees;
- (2) application fees for licenses;
- (3) (Deleted by amendment, P.L.2009, c.53)
- (4) fees for entry by a foreign depository institution whether from another state of the United States or from another country into New Jersey for branch, trust or other activities;
- (5) fees charged under the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-41 et seq.);
- (6) fees charged any entity not chartered, licensed or registered by this State, including but not limited to activities conducted by foreign banks pursuant to section 316 of P.L.1948,

c.67 (C.17:9A-316) or foreign associations pursuant to section 214 of P.L.1963, c.144 (C.17:12B-214); and

(7) fees charged qualified corporations authorized pursuant to section 213 of P.L.1948, c.67 (C.17:9A-213) to perform either registrar and transfer agent activities or activities permitted for qualified educational institutions.

b. Nothing in this section shall exempt a regulated entity from paying any fine or penalty imposed by the commissioner for a violation of a statute or regulation.

c. Except as provided in paragraph (1) of subsection d. of section 7 of the "New Jersey Home Ownership Security Act of 2002," P.L.2003, c.64 (C.46:10B-28), all fees, charges, fines and penalties as described in subsections a. and b. of this subsection shall be remitted to the State Treasurer for deposit into the General Fund, and those fees, charges, fines and penalties shall not be part of the assessment funding mechanism or considered in the calculation pursuant to section 15 of this act.

65. Section 14 of P.L.2005, c.199 (C.17:1C-46) is amended to read as follows:

C.17:1C-46 Rules, regulations; contents.

14. a. The State Treasurer and the commissioner may adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act.

b. Any regulation promulgated by the commissioner shall describe the factors to be considered in computing the assessment. In the case of depository institutions, the assessment shall consider the following factors as appropriate: assets, deposits or shares, trust funds under management and the supervisory rating of the institution. In the case of licensees or registrants, the assessment shall consider the following factors as appropriate: loan volume, volume of money transmitted, number of transactions, volume of checks cashed, number of licensee branches, number of license types held under the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.) or the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), and the supervisory rating of the entity. In computing the assessment for depository institutions, licensees or registrants, the commissioner may consider those additional factors the commissioner deems appropriate.

c. The general purpose of the computations to determine the assessment shall be to distribute the financial burden proportionally among the depository institutions and other financial entities it charters, licenses and registers consistent with the division's regulatory activities.

d. The commissioner shall provide for the orderly and fair transition to assessments on existing charters, licensees and registrants by promulgating rules and regulations and by establishing administrative procedures that are reasonable, necessary and consistent with this act.

e. The commissioner shall consider the impact of the assessment on check cashers licensed pursuant to P.L.1993, c.383 (C.17:15A-30 et seq.), and may take any appropriate action pursuant to the commissioner's authority to limit fees as provided in section 14 of P.L.1993, c.383 (C.17:15A-43).

66. Section 15 of P.L.2005, c.199 (C.17:1C-47) is amended to read as follows:

C.17:1C-47 Total amount assessable.

15. a. The total amount assessable to regulated entities in any fiscal year for the assessment established by this act shall not exceed the lesser of:

(1) the total amount of expenses incurred by the State in connection with the administration of the special functions of the division pursuant to section 3 of this act during the preceding fiscal year as ascertained by the Director of the Division of Budget and Accounting in the Department of the Treasury, on or before August 15 in each year, and certified to the commissioner by category; or

(2) .0001084 times the sum of (a) the average total assets for State-chartered banks, savings banks, and savings and loan associations for the preceding five calendar years' data, excluding the two most recent calendar years plus (b) the average total loan volume for residential mortgage loans closed by licensed residential mortgage lenders or residential mortgage brokers pursuant to the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.) for the preceding five calendar years' data, excluding the two most recent calendar years.

b. In calculating the assessments:

(1) Banks, savings banks and savings and loan associations shall be given prorated credit for unused portions of assessment periods; and

(2) Licensees shall be given prorated credit for unused portions of licensing periods.

c. The department shall not issue an examination bill for an examination that has not been completed by the date that the regulated entity becomes subject to the assessment pursuant to the provisions of this act. For the purposes of this act, the completion of the examination shall not include the time to process and review the examination report.

67. Section 3 of P.L.2007, c.258 (C.17:11D-3) is amended to read as follows:

C.17:11D-3 Refund anticipation loans, compliance, disclosures required.

3. a. Any tax preparer offering, facilitating, or making refund anticipation loans shall comply with the provisions of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), N.J.S.2C:21-19, and R.S.31:1-1 et seq. The interest rate for any loan shall include any rate, fee, charge, consideration, or other thing of value received or retained by, or credited to, the lender, directly or indirectly, for the loan or forbearance.

b. At the time a tax preparer offers or facilitates a refund anticipation loan to the client, the tax preparer shall provide, and verbally explain, to the client the following statement, to be printed in at least 14-point type:

NOTICE TO BORROWER

THIS IS A LOAN. THE ANNUAL PERCENTAGE RATE (APR), BASED ON THE ESTIMATED PAYMENT PERIOD IS (fill in estimated APR). YOUR TAX REFUND WILL BE USED TO REPAY THE LOAN. AS A RESULT, THE AMOUNT OF YOUR REFUND WILL BE REDUCED BY (fill in the dollar amount) FOR FEES, INTEREST AND OTHER CHARGES.

AS AN ALTERNATIVE TO THIS LOAN, YOU CAN RECEIVE YOUR FULL REFUND IN APPROXIMATELY TWO WEEKS IF YOU FILE YOUR RETURN ELECTRONICALLY AND THE INTERNAL REVENUE SERVICE WILL SEND YOUR FULL REFUND TO YOUR BANK ACCOUNT.

c. If, under the terms of the refund anticipation loan, the client is subject to additional interest when a refund is delayed, the following statement shall also be included in the notice:



IF YOU CHOOSE TO TAKE THIS LOAN AND YOUR REFUND IS DELAYED, YOU MAY HAVE TO PAY ADDITIONAL INTEREST.

d. A tax preparer may use an alternative disclosure in lieu of the disclosure set forth in subsections b. and c. provided that:

(1) the information provided to the taxpayer in the alternative disclosure includes information substantially equivalent in scope and content to the specific language set forth in subsections b. and c.;

(2) the alternative disclosure includes a chart listing examples of the refund anticipation loan fees and Annual Percentage Rates, calculated using the guidelines established under the federal Truth in Lending Act, title I of Pub.L.90-321 (15 U.S.C.s.1601 et seq.), for loans of at least three different representative loan amounts; and

(3) the alternative disclosure includes a chart listing the estimated timelines for the delivery of funds to the taxpayer under various delivery methods, including Internal Revenue Service mailed check, Internal Revenue Service direct deposit into a taxpayer's preexisting bank account, and through a refund anticipation loan.

68. Section 7 of P.L.2003, c.64 (C.46:10B-28) is amended to read as follows:

C.46:10B-28 Enforcement by department.

7. a. The department shall conduct examinations and investigations and issue subpoenas and orders to enforce the provisions of this act with respect to a person licensed or subject to the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.).

b. The department shall examine any instrument, document, account, book, record, or file of a person originating or brokering a high-cost home loan under this act. The department shall recover the cost of examinations from the person. A person originating or brokering high-cost home loans shall maintain its records in a manner that will facilitate the department in determining whether the person is complying with the provisions of this act and the regulations promulgated thereunder. The department shall require the submission of reports by persons originating or brokering high-cost home loans which shall set forth such information as the department shall require by regulation.

c. In the event that a person fails to comply with a subpoena for documents or testimony issued by the department, the department may request an order from a court of competent jurisdiction requiring the person to produce the requested information.

d. If the department determines that a person has violated the provisions of this act, the department may do any combination of the following that it deems appropriate:

(1) Impose a civil penalty of up to \$10,000 for each offense, 40% of which penalty shall be dedicated for and used by the department for consumer education through nonprofit organizations which can establish to the satisfaction of the department that they have sufficient experience in credit counseling and financial education. In determining the penalty to be assessed, the commissioner shall consider the following criteria: whether the violation was willful; whether the violation was part of a pattern and practice; the amount of the loan; the points and fees charged; the financial condition of the violator; and other relevant factors. The department may require the person to pay investigative costs, if any.

(2) Suspend, revoke, or refuse to renew any license issued by the department.

(3) Prohibit or permanently remove an individual responsible for a violation of this act from working in his present capacity or in any other capacity related to activities regulated by the department.

(4) Order a person to cease and desist any violation of this act and to make restitution for actual damages to borrowers.

(5) Pending completion of an investigation or any formal proceeding instituted pursuant to this act, if the commissioner finds that the interests of the public require immediate action to prevent undue harm to borrowers, the commissioner may enter an appropriate temporary order to be effective immediately and until entry of a final order. The temporary emergent order may include: a temporary suspension of the creditor's authority to make high-cost home loans under this act; a temporary cease and desist order; a temporary prohibition against a creditor transacting high-cost home loan business in this State, or such other order relating to high-cost home loans as the commissioner may deem necessary to prevent undue harm to borrowers pending completion of an investigation or formal proceeding. Orders issued pursuant to this section shall be subject to an application to vacate upon two days' notice, and a preliminary hearing on the temporary emergent order shall be held, in any event, within five days after it is issued, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

(6) Impose such other conditions as the department deems appropriate.

e. Any person aggrieved by a decision of the department and who has a direct interest in the decision may appeal the decision of the department to the commissioner. The appeal shall be conducted in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

f. The department may maintain an action for an injunction or other process against any person to restrain and prevent the person from engaging in any activity violating this act.

g. A decision of the commissioner shall be a final order of the department and shall be enforceable in a court of competent jurisdiction. The department shall publish the final adjudication issued in accordance with this section, subject to redaction or modification to preserve confidentiality.

h. The provisions of this section shall not limit the authority of the Attorney General or the Public Advocate, as established pursuant to P.L.2005, c.155 (C.52:27EE-1 et al.), from instituting or maintaining any action within the scope of their respective authority with respect to the practices prohibited under this act.

69. Section 3 of P.L.2008, c.86 (C.46:10B-38) is amended to read as follows:

C.46:10B-38 Definitions relative to certain residential mortgages.

3. As used in this act:

"Creditor" means a State chartered bank, savings bank, savings and loan association or credit union, any person required to be licensed under the provisions of the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.), and any entity acting on behalf of the creditor named in the debt obligation including, but not limited to, servicers.

"Eligible borrower" means a borrower who is obligated to repay a loan secured by an introductory rate mortgage.

"Eligible foreclosed borrower" means a borrower who is obligated to repay a loan secured by an introductory rate mortgage and who receives a notice of intention to foreclose that mortgage pursuant to the "Fair Foreclosure Act," P.L.1995, c.244 (C.2A:50-53 et al.), except that an "eligible foreclosed borrower" shall not include an eligible borrower who has previously exercised the right to obtain a three-year period of extension pursuant to section 5 of this act.

"Full repayment" means the full repayment of the amounts due under the introductory rate mortgage, including, without limitation, upon the maturity date, a refinancing, or a sale of or other transfer of title to the property.

"Fully indexed rate" means the sum of the current value of the index used for the adjustable rate mortgage and the margin disclosed in the loan agreement.

"Introductory rate mortgage" means a consumer credit transaction in which the loan is secured by a mortgage on real estate in this State upon which there is located a one to four family dwelling which is occupied by the borrower as the borrower's principal residence, and which provides for: (1) an introductory payment rate option that is set at least 3 percent below the fully indexed rate at the time the loan was originated and payments may adjust by more than 3 percent at the reset date regardless of whether the variable rate index has increased; or (2) an interest rate that may adjust by more than 2 percent at the end of the initial fixed rate period of the loan and which, notwithstanding the payment rate in effect, had an interest rate at origination of more than 200 basis points over the Freddie Mac 30-year conventional interest rate and which provides for an introductory rate that is set below the fully indexed rate at the time the loan was originated and may adjust at the reset date regardless of whether the variable rate index has increased. "Introductory rate mortgage" shall not include: (1) a loan that provides for a fixed rate of interest for the first five years or longer; or (2) a loan that provides for an introductory rate that is set below the fully indexed rate at the time the loan was originated only as a result of the borrower's payment of bona fide discount points.

70. Section 8 of P.L.1997, c.204 (C.2A:49A-32) is amended to read as follows:

C.2A:49A-32 Construction of act relative to consumer loans.

8. Nothing in this act shall be construed to require the enforcement of any foreign judgment which is based on a consumer loan containing any provision prohibited by the provisions of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.).

71. Section 2 of P.L.1968, c.282 (C.2A:168A-2) is amended to read as follows:

C.2A:168A-2 Application for license, certificate; grounds for refusal; written statement.

2. Notwithstanding the contrary provisions of any law or rule or regulation issued pursuant to law, no State, county or municipal department, board, officer or agency, hereinafter referred to as "licensing authority" authorized to pass upon the qualifications of any applicant for a license or certificate of authority or qualification to engage in the practice of a profession or business or for admission to an examination to qualify for such a license or certificate may disqualify or discriminate against an applicant for a license or certificate or an application for admission to a qualifying examination on the grounds that the applicant has been convicted of a crime, or adjudged a disorderly person, except that a licensing authority may disqualify or discriminate against an applicant for a license or certificate if N.J.S.2C:51-2 or any disqualifying criminal activity set forth in subsection a. of section 7 of P.L.2009, c.53 (C.17:11C-57) is applicable, or if a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business for which the license or certificate is sought. In determining that a conviction for a crime relates adversely to the occupation, trade, vocation, profession or business, the licensing authority shall explain in writing how the following factors, or any other factors, relate to the license or certificate sought:

- a. The nature and duties of the occupation, trade, vocation, profession or business, a license or certificate for which the person is applying;
- b. Nature and seriousness of the crime;
- c. Circumstances under which the crime occurred;
- d. Date of the crime;
- e. Age of the person when the crime was committed;
- f. Whether the crime was an isolated or repeated incident;
- g. Social conditions which may have contributed to the crime;
- h. Any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of persons who have or have had the applicant under their supervision.

72. Section 1 of P.L.2007, c.327 (C.2A:168A-7) is amended to read as follows:

C.2A:168A-7 Issuance of certificate suspending certain restrictions for employment, licensure.

1. a. Notwithstanding any law to the contrary, a certificate may be issued in accordance with the provisions of this act that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.

b. A certificate issued pursuant to this act shall have the effect of relieving disabilities, forfeitures or bars, except those established or required by federal law, to:

(1) public employment, as defined in this section;

(2) qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law, or as a mortgage loan originator, or residential mortgage lender or residential mortgage broker as a qualified individual licensee, pursuant to the "New Jersey Residential Mortgage Lending Act," sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 et seq.); or

(3) admission to an examination to qualify for that license or certification, except for the bar examination, a qualified written test for a mortgage loan originator, or residential mortgage lender or broker as a qualified individual licensee, or an examination for a law enforcement, homeland security, or emergency management position.

A certificate issued pursuant to this act may be limited to one or more enumerated disabilities, forfeitures or bars, or may relieve the subject of all disabilities, forfeitures or bars that may be affected by the act.

c. For purposes of this act:

(1) "Public employment" shall mean employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.

(2) "Qualified offender" refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under this act shall not be considered in

determining whether a person has one criminal conviction. In the case of a person seeking relief at the time of sentencing, qualified offender means a person who will have one conviction, as set forth in this paragraph, upon sentencing and issuance of the judgment of conviction.

(3) "Supervising authority" shall mean the court in the case of a person who was subject to probation or who was not required to serve a period of supervision, or the State Parole Board in the case of a person who was under parole supervision.

Repealer.

73. The following sections are repealed:

Sections 4, 5, 13 through 15, 20, 22 through 31, 45 through 48, and 54 of P.L.1996, c.157 (C.17:11C-4, 5, 13 through 15, 20, 22 through 31, 45 through 48, and 50).

74. Sections 1 through 39, and 47 shall take effect immediately, and the remaining sections shall take effect on July 31, 2010, or the later date approved by the Secretary of the United States Department of Housing and Urban Development pursuant to the provisions of section 1508 of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," Pub.L.110-289 (12 U.S.C. s.5107); but the Commissioner of Banking and Insurance may take any anticipatory administrative action in advance thereof as shall be necessary, or as otherwise authorized under the provisions of the federal "Secure and Fair Enforcement for Mortgage Licensing Act of 2008," title V of Pub.L.110-289 (12 U.S.C. s.5101 et seq.), for the implementation of this act.

Approved May 4, 2009.