

CHAPTER 108
(CORRECTED COPY)

AN ACT concerning certain licensed mortgage lending activities and amending various parts of the statutory law.

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

1. Section 3 of P.L.2009, c.53 (C.17:11C-53) is amended to read as follows:

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

3. As used in this act:

“Approved conditional status” means the status of the license of an individual who has satisfied all conditions for licensure as a mortgage loan originator or qualified individual licensee except a satisfactory demonstration of his or her financial responsibility but who is making a good faith effort to achieve the level of financial responsibility required for such licensure.

“Approved inactive status” means the status of the license of an individual applicant who has satisfied all conditions for licensure except sponsorship by a licensed business entity or the status of a licensed individual who is no longer so sponsored.

“Bona fide not for profit entity” means an organization that:

- a. maintains tax exempt status under section 501(c)(3) of the Internal Revenue Code of 1986, 26 U.S.C. s.501(c)(3);
- b. promotes low to moderate income housing or provides homeownership education, or similar services;
- c. conducts its activities in a manner that serves public or charitable purposes;
- d. receives funding and revenue and charges fees in a manner that does not incentivize the organization or its employees to act other than in the best interests of its clients;
- e. compensates employees in a manner that does not incentivize employees to act other than in the best interests of its clients;
- f. provides to or identifies for the borrower residential mortgage loans with terms that are favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs; and
- g. meets such other standards as may be prescribed by the commissioner through rulemaking.

"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.

“Branch manager” means an employee of a licensed business entity with management responsibilities over a branch and who is identified as such with the Nationwide Mortgage Licensing System and Registry.

"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 the person assigned to perform clerical or support duties 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.

"Exempt company" means a person other than a bona fide not for profit entity that is not subject to licensure as a residential mortgage lender or a residential mortgage broker under P.L.2009, c.53 (C.17:11C-51 et seq.) that is registered pursuant to subsection d. of section 4 of P.L.2009, c.53 (C.17:11C-54), and that employs, or will employ one or more licensed mortgage loan originators.

"Expungement" means, with respect to a record of criminal conviction entered in this State, an order issued pursuant to N.J.S. 2C:52-1 et seq. With respect to criminal convictions entered in another state, that other state's definition of expungement or the functional equivalent of expungement will apply.

"Federal banking agency" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, 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.

"Insurer" means an entity authorized to transact the business of insurance in this State pursuant to subtitle 3 of Title 17 of the Revised Statutes or subtitle 3 of Title 17B of the New Jersey Statutes.

"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.

"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:

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

b. engaged solely as a loan processor or underwriter, except as provided in section 4 of this act;

c. 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)); or

d. (1) employed by a federal, state, or local government agency or a housing finance agency and who acts as a mortgage loan originator only pursuant to his or her official duties as an employee of the federal, state, or local government agency, or of a housing finance agency. The agency itself is not considered a mortgage loan originator under the provisions of P.L.2009, c.53 (C.17:11C-51 et seq.).

(2) For the purposes of subsection d. of this section:

(a) "Employee" means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and whose compensation for federal income tax purposes is reported or required to be reported on a W-2 form issued by the controlling person;

(b) "Housing finance agency" means any organization that is:

(i) Chartered by a state to help meet the affordable housing needs of the residents of the state;

(ii) Supervised, directly or indirectly, by the state government;

(iii) Subject to audit and review by the state in which it operates; and

(iv) Whose activities make it eligible to be a member of the National Council of State Housing Agencies.

"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.

"Out-of-State mortgage loan originator" means an individual who maintains a unique identifier through the Nationwide Mortgage Licensing System and Registry and currently holds a valid mortgage loan originator license issued pursuant to the law of any state or other jurisdiction within the United States.

"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 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 and was validly registered as a mortgage loan originator with a depository institution employer for at least the one-year period prior to applying for licensure under the "New Jersey Residential Mortgage Lending Act," P.L.2009, c.53 (C.17:11C-51 et seq.).

"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.

"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, with respect to a

business licensee, a correspondent mortgage lender, unless the provisions of this act clearly indicate otherwise.

"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(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)), 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(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)).

"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(w) of the Truth in Lending Act, Pub.L.90-321 (15 U.S.C. s.1602(w)), a portion of which structure may be used for nonresidential purposes.

"Sponsor" means a business licensee that employs a qualified individual licensee, a mortgage loan originator, or an applicant for a transitional mortgage loan originator license.

"State" means any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Mariana Islands unless the context clearly indicates otherwise.

"Transitional mortgage loan originator license" or "transitional license" means a license, issued to an out-of-State mortgage loan originator or registered mortgage loan originator that provides temporary authority to engage in the business of mortgage loan origination in this State pending the completion by the transitionally licensed individual of the requirements for licensure as a New Jersey mortgage loan originator as set forth in section 7 of P.L.2009, c.53 (C.17:11C-57). A transitional mortgage loan originator license shall be valid for a term of no longer than 120 days.

"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.

2. Section 4 of P.L.2009, c.53 (C.17:11C-54) is amended to read as follows:

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. 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 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 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 or transitional license under this act.

(b) No individual, except as provided in paragraph (2) of this subsection, shall be issued or hold a license or transitional 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, employed by an exempt company, or who is under a written agreement with and sponsored in the Nationwide Mortgage Licensing System by one, and not more than one, person exempt from licensing requirements and registered with the department under subsection a. of section 5 of P.L.2009, c.53 (C.17:11C-55), and is subject to the direct supervision and control of that exempt person.

(2) No individual shall act as a loan processor or underwriter who is an independent contractor or employed by an independent contractor without first obtaining a mortgage loan originator license under this act, except as provided in subsection d. of this section.

(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.

d. For exempt companies:

(1) No person shall qualify for registration as an exempt company unless the person is in the business of mortgage loan origination solely by virtue of its performance of loan processing or underwriting functions. The commissioner shall have the authority to adopt rules in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) specifying additional criteria on the basis of which a person in the business of mortgage loan origination solely by virtue of its performance of loan processing or underwriting functions may qualify for registration as an exempt company.

(2) An exempt company shall register with the commissioner and with the Nationwide Mortgage Licensing System and Registry. An applicant for registration or for renewal of registration as an exempt company shall:

(a) Submit a completed application to the commissioner on the form, in the manner, and with the appropriate evidence in support of the application as may be prescribed by the commissioner;

(b) Pay to the commissioner at the time of application a nonrefundable application fee not to exceed \$500 as established by the commissioner by regulation;

(c) Pay to the Nationwide Mortgage Licensing System and Registry any fees required by that system and registry, or any fees which, by arrangement of the commissioner, are payable to the Nationwide Mortgage Licensing System and Registry on behalf of the commissioner; and

(d) Obtain a blanket bond in an amount and form prescribed by 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 exempt company shall procure the bond to cover its mortgage loan origination related activities. The bond shall run to the State for the benefit of any person injured by the wrongful act, default, fraud or misrepresentation of any person covered by the bond. No bond shall comply with the requirements of this subparagraph 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.

(3) A registered exempt company shall:

(a) Respond in a timely manner to any request of the commissioner for the production of and access to books, records, accounts, documents or other information relative to its operations;

(b) Submit to the Nationwide Mortgage Licensing System and Registry a mortgage call report of conditions, in the form and manner, and with such information, at any time as may be required by the 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;

(c) Provide written notice to the commissioner within 10 days of the occurrence of any event that would cause the exempt company to no longer qualify for registration as such under the terms of this subsection d. and so notify in writing all licensed mortgage loan originators employed or retained by the exempt company; and

(d) Employ at least one individual who is licensed as a mortgage loan originator who shall not engage in the origination of mortgage loans under P.L.2018, c.108 and shall be

assigned supervision and instruction duties with respect to individuals employed as loan processors or loan underwriters as defined in section 3 of P.L.2009, c.53 (C.17:11C-53).

3. Section 5 of P.L.2009, c.53 (C.17:11C-55) is amended to read as follows:

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

The requirements of this act shall not apply to:

a. Depository institutions; but subsidiaries and service corporations of these institutions shall not be exempt. A depository institution may register with the department for the purpose of sponsoring individuals, licensed as mortgage loan originators subject to subparagraph (b) of paragraph (1) of subsection c. of section 4 of P.L.2009, c.53 (C.17:11C-54), provided that such registered entity obtains and maintains bond coverage for mortgage loan originators consistent with section 13 of P.L.2009, c.53 (C.17:11C-63). A depository institution registered with the department in accordance with this subsection a. shall otherwise remain exempt from the licensing requirements of P.L.2009, c.53 (C.17:11C-51 et seq.).

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 serves as the individual's residence.

h. Any person who, during a calendar year takes three or fewer residential mortgage loan applications or offers or negotiates the terms of three or fewer residential mortgage

loans or makes three or fewer residential mortgage loans related to manufactured housing structures which are:

- (1) titled by the New Jersey Motor Vehicle Commission;
- (2) located in a mobile home park as defined in subsection e. of section 3 of P.L.1983, c.400 (C.54:4-1.4); and
- (3) exempt from taxation as real property pursuant to subsection b. of section 4 of P.L.1983, c.400 (C.54:4-1.5).

i. A bona fide not for profit entity and any individuals directly employed by that entity, so long as the entity maintains its tax exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 and otherwise meets the definition of "bona fide not for profit entity" in section 3 of P.L.2009, c.53 (C.17:11C-53), as periodically determined by the department in accordance with rules established by the commissioner.

4. Section 6 of P.L.2009, c.53 (C.17:11C-56) is amended to read as follows:

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. The commissioner may require any officer, director, partner, owner, or principal of an entity seeking licensure as a business licensee to authorize the Nationwide Mortgage Licensing System and Registry to obtain a credit report on such individual and at their cost.

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.
- h. A person whose application is deemed abandoned shall be required to submit a new application in order to obtain licensure as a business licensee. The commissioner may adopt rules addressing notices of abandonment and the subsequent submission of new applications.

5. Section 7 of P.L.2009 c.53 (C.17:11C-57) is amended to read as follows:

C.17:11C-57 Issuance of licenses for mortgage loan originators, individual licensees, 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 and transitional 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 or expunged 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 or expunged 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 the purposes of this paragraph, a determination by the National Mortgage Licensing System and Registry that the applicant cheated or attempted to cheat on an examination required for licensure or for continued licensure under P.L.2009, c.53 (C.17:11C-51 et seq.) shall be evidence that the applicant lacks the requisite character and fitness for licensure. 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 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. For individuals, the following provisions shall also apply:

(1) An applicant for a mortgage loan originator license who has met all the requirements for licensure except the demonstration of employment referenced in paragraph (4) of subsection a. of this section shall be considered to be in approved inactive status and designated as such in the Nationwide Mortgage Licensing System and Registry and may remain in that status for as long as the applicant renews the approved inactive status annually and meets the continuing education requirements as required by section 11 of P.L.2009, c.53 (C.17:11C-61).

(2) An applicant for licensure as an individual licensee who has unresolved credit issues but who demonstrates to the satisfaction of the commissioner a good faith effort to achieve the level of financial responsibility required by paragraph (3) of subsection a. of section 7 of P.L.2009, c.53 (C.17:11C-57) may be deemed in approved conditional status and be designated as such in the Nationwide Mortgage Licensing System and Registry. The applicant may remain in approved conditional status so long as the applicant continues to demonstrate substantial progress toward the achievement of financial responsibility, renews the applicant's mortgage loan originator license or qualified individual license annually, and meets the continuing education requirements established by section 11 of P.L.2009, c.53 (C.17:11C-61). Upon demonstration to the satisfaction of the commissioner that the applicant has achieved financial responsibility, and predicated on the applicant continuing to fulfill all other applicable requirements for such status, the license status of the individual shall be revised to approved. While the applicant's license is in approved conditional status, an individual may engage in activity as a mortgage loan originator or a qualified individual licensee in accordance with the provisions of P.L.2009, c.53 (C.17:11C-51 et seq.) and all applicable rules.

(3) For applicants as individual licensees, an offense that was the subject of an order granting the individual admission to the New Jersey Pre-trial Intervention Program pursuant to the provisions of N.J.S. 2C:43-12 through 22, and such offense having been dismissed with prejudice in accordance with subsection d. of N.J.S. 2C:43-13, or the applicant having

been admitted to a functionally equivalent program of another state or of the United States whereby an offense was dismissed or a felony conviction was avoided or eliminated from the record upon the applicant having successfully completed the program as established by the submission of confirming documentation, shall not be considered disqualifying information for purposes of subsection a. of this section.

(4) The commissioner may deem abandoned an application for licensure as a mortgage loan originator, transitional mortgage loan originator, or a qualified individual licensee if the application fails to meet all of the requirements of a complete application within 90 days of the date on which the application was initially submitted. A person whose application is deemed abandoned shall be required to submit a new application in order to pursue licensure as a mortgage loan originator, transitional mortgage loan originator, or a qualified individual licensee. The commissioner may adopt rules addressing notices of abandonment and the subsequent submission of new applications.

6. Section 8 of P.L.2009, c.53 (C.17:11C-58) is amended to read as follows:

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 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 or transitional 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, who changes the employment affiliation on his license to a different business licensee, shall be required to submit any documentation required by regulation and comply with all requirements applicable to such changes of employment as prescribed by rule.

(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.

7. Section 10 of P.L.2009, c.53 (C.17:11C-60) is amended to read as follows:

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.

e. A determination by the National Mortgage Licensing System and Registry that an applicant has engaged in or attempted to engage in cheating while taking a qualified written test shall constitute evidence that the applicant lacks the character and fitness necessary to qualify for licensure pursuant to section 7 of P.L.2009, c.53 (C.17:11C-57) and may be grounds for action on an existing license pursuant to section 20 of P.L.2009, c.53 (C.17:11C-70).

8. Section 11 of P.L.2009, c.53 (C.17:11C-61) is amended to read as follows:

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 lending issues;

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

(4) 2 hours of instruction related to New Jersey laws and regulations on residential mortgage lending.

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 or qualified individual licensee, 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 or qualified individual licensee 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.

e. A determination by the National Mortgage Licensing System and Registry that an applicant has engaged in or attempted to engage in cheating while taking a continuing education course shall constitute evidence that the applicant lacks the character and fitness

necessary for licensure pursuant to section 7 of P.L.2009, c.53 (C.17:11C-57) and may be grounds for action on an existing license pursuant to section 20 of P.L.2009, c.53 (C.17:11C-70).

9. Section 12 of P.L.2009, c.53 (C.17:11C-62) is amended to read as follows:

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, transitional 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.

10. Section 15 of P.L.2009, c.53 (C.17:11C-65) is amended to read as follows:

C.17:11C-65 Maintenance of branch offices; manager.

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. Each branch office shall be under the supervision of a branch manager. A branch manager shall supervise only one branch office at any given time except as may be permitted by the commissioner in accordance with applicable rules. In order to act in the capacity as a branch manager, an individual shall either possess a mortgage loan originator license or, if

unlicensed, the qualified individual licensee of the business licensee shall certify that when acting in the capacity of a branch manager the unlicensed individual shall not engage in any activity that would require licensure as a mortgage loan originator.

11. Section 17 of P.L.2009, c.53 (C.17:11C-67) is amended to read as follows:

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

17. a. (1) The license for a residential mortgage lender or residential mortgage broker, and the license of 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 business licensee and available for public inspection at the business 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 or as required or permitted by the commissioner by regulation.

(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 business licensee shall change its name or the address of the business licensee's place or places of business without notice to the commissioner in accordance with regulations as prescribed by the commissioner.

b. (1) The license for a mortgage loan originator shall state the name of the originator's licensed or registered employer and shall contain such other information as the commissioner deems necessary.

(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 or as required or permitted by the commissioner by regulation.

(4) No licensee shall change the name or address of the licensee's place or places of business without notice to the commissioner, in accordance with regulations as prescribed by the commissioner.

12. Section 20 of P.L.2009, c.53 (C.17:11C-70) is amended to read as follows:

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 a license if an applicant fails to meet the requirements for licensure set forth in sections 6 through 15 of P.L.2009, c.53 (C.17:11C-56 through 17:11C-65), as applicable.

(3) The commissioner 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 transitional 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 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.

(4) 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.

(5) 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.

13. Section 24 of P.L.2009, c.53 (C.17:11C-74) is amended to read as follows:
C.17:11C-74 Permitted fees; definitions.

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) application fee; (2) origination fee; (3) lock-in fee; (4) commitment fee; (5) warehouse fee; (6) discount points; and (7) fees necessary to reimburse the residential mortgage lender for charges imposed by third parties which shall include: (i) an appraisal fee; (ii) a credit report fee; and (iii) such other third party charges as the commissioner may expressly permit to lenders by rule in accordance with a procedure established by rule.

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; (2) broker fee; and (3) fees necessary to reimburse the residential mortgage broker or lender for charges imposed by third parties, which shall include: (i) an appraisal fee; (ii) a credit report fee; and (iii) such other third party charges as the commissioner may expressly permit to brokers by rule or in accordance with a procedure established by rule.

c. For purposes of this section, the following terms shall have the meanings and permitted uses set forth below:

(1) "Application fee" means a fee imposed by a lender or a broker for taking or processing a loan application, which fee shall not be based upon a percentage of the principal amount of the loan or the amount financed. An application fee may be charged only once with respect to the same mortgage loan application and, where a loan is brokered, may be charged by a residential mortgage lender or a residential mortgage broker, but not by both.

(2) "Appraisal fee" means a fee charged to a borrower by a lender or broker to recover the direct cost of the fee charged by a duly credentialed real estate appraiser for an appraisal in connection with a mortgage loan application. An appraisal fee may be charged to a borrower by a residential mortgage lender or by a residential mortgage broker, but not by both in connection with the same mortgage loan application. A lender or broker may charge a borrower an appraisal fee for a second appraisal provided that requiring a second appraisal is in accordance with duly promulgated rules.

(3) "Broker fee" means a fee that may be charged to a borrower only by a broker and that shall be payable only at closing, which fee may be based on a percentage of the principal amount of the loan or a fraction thereof.

(4) "Commitment fee" means a fee, exclusive of third-party fees, imposed by a residential mortgage lender as consideration for binding the lender to make a loan in accordance with the terms and conditions of its written commitment and payable on or after the borrower's acceptance of the commitment. The amount of the commitment fee shall be reasonably related to its purpose and may be based upon a percentage of the principal amount of the loan. A commitment fee may not be charged or collected unless the borrower receives a written commitment from the lender by midnight of the third business day prior to the day upon which the mortgage loan closing occurs and the borrower has accepted such commitment.

(5) "Credit report fee" means a fee charged to a borrower by a lender or broker in connection with a mortgage loan application to recover the direct cost of the fee charged by a credit reporting agency for obtaining a credit report. A credit report fee may be charged to a borrower by a residential mortgage lender or by a residential mortgage broker, but not by both in connection with the same mortgage loan application. A lender or broker may charge a borrower a credit report fee for a second credit report provided that requiring a second credit report is in accordance with duly promulgated rules.

(6) “Discount point” means a fee charged by a lender based on a percentage of the principal amount of the loan and payable only at the closing of the mortgage loan, which fee operates to reduce the interest rate of the mortgage loan.

(7) “Lock-in agreement” means a written agreement between a lender and a borrower whereby the lender guarantees until a specified date or for a specified period of time the availability of a specified rate of interest or specified formula by which the rate of interest will be determined and, if applicable, the specific number of discount points required to obtain such rate or formula, provided the loan is approved and closed by the specified date. No lender may charge a lock-in fee for a lock-in agreement executed after midnight of the third business day prior to the day upon which the mortgage loan closing occurs.

(8) “Lock-in fee” means a fee that a lender may charge to a borrower for a lock-in agreement, which fee may be payable at closing, but shall in no event be payable prior to the commencement of the lock-in period.

(9) “Origination fee” means a fee that a lender may charge to a borrower for originating a loan and that is based on a percentage of the principal amount of the loan and is payable only at the closing of the mortgage loan. An origination fee may also be referred to as a “point.”

(10) “Warehouse fee” means a fee charged by a lender not to exceed the cost associated with holding the particular mortgage loan pending its assignment to a permanent investor, and payable at closing. The fee shall be based on the actual holding period and warehouse rate and the initial coupon rate on the mortgage loan. No profit shall accrue to a lender from collection of a warehouse fee.

d. A residential mortgage lender or residential mortgage broker may use a term for a fee that is different from a term enumerated in this section or in duly promulgated rules implementing the provisions of this section, provided that the lender or broker can document to the department that such fee fits the definition and description of a fee permitted by this section or permitted in accordance with duly promulgated rules implementing the provisions of this section, provided that such fee functions accordingly, and provided that the lender or broker has disclosed such fee in writing to the borrower in conformity with applicable State and federal disclosure rules.

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

f. In addition to the rulemaking authority granted the commissioner with respect to subsections a. through e. of this section, the commissioner shall be authorized to promulgate such rules and forms as may reasonably be deemed necessary by the commissioner to provide for the adequate disclosure to borrowers of fees permitted under this section consistent with the provisions of this section and with applicable provisions of federal regulations and forms.

14. Section 1 of P.L.1991, c.18 (C.17:46B-30.1) is amended to read as follows:

C.17:46B-30.1 Licensure as insurance producers for a title insurance agency.

1. Except for a State or federally chartered bank, savings bank, savings and loan association or its subsidiary or any officer or employee of any of the foregoing, no other lending institution, mortgage service, mortgage brokerage or mortgage guaranty company or service company or any person licensed pursuant to the “New Jersey Residential Mortgage Lending Act,” sections 1 through 39 of P.L.2009, c.53 (C.17:11C-51 through C.17C:11C-89) shall be licensed as or permitted to act as an insurance producer for a title insurance company. No bank, trust company, bank and trust company, or other lending institution,

mortgage service, mortgage brokerage or mortgage guaranty company, or any service company of or for any lending institution shall make the selection of a particular title insurance company or insurance producer a condition precedent to the granting of any mortgage loan.

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

C.17:1C-45 Exemption from certain fees and charges; remittance.

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) (Deleted by amendment, P.L.2009, c.326)
- (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);
- (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; and
- (8) fees charged any exempt company pursuant to subsection d. of section 4 of P.L.2009, c.53 (C.17:11C-54).

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), and subsection i. of section 3 of the "Governmental Unit Deposit Protection Act," P.L.1970, c.236 (C.17:9-43), 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.

16. Section 1 of P.L.1979, c.193 (C.17:16H-1) is amended to read as follows:

C.17:16H-1 Definitions.

1. As used in this act:

a. "Financial institution" shall mean any bank, savings bank, state association, credit union, residential mortgage lender, residential mortgage broker, consumer lender or any other institution, corporation, partnership or individual subject to the supervision, regulation or licensing by the Department of Banking and Insurance.

b. "Commissioner" shall mean the Commissioner of Banking and Insurance of New Jersey.

17. The Commissioner of Banking and Insurance may adopt 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.

18. This act shall take effect on the 90th day after the date of enactment, but the commissioner may take such anticipatory administrative action in advance as may be necessary for the implementation of this act.

Approved August 24, 2018.