



Regulatory Newsletter

Volume 1, Issue 2

August 5, 2009

Charlie's Corner

By Charlie Fields, Jr. Director

Dear Licensee,

The NC Office of the Commissioner of Banks (NCCOB) hopes that you found the NCCOB Non-Depository Entities Newsletter Vol. 1 to be both informative and useful in your daily business activities.

Suggestions received from our licensees regarding future topics have been incorporated into this issue and we thank you for your input. In order to continue to provide relevant articles, any feedback you may have regarding topics or issues of concern to you are welcomed. Please contact our agency at mortgage@nccob.gov to submit topics or concerns that you would like addressed in future volumes of the NCCOB Non-Depository Entities Newsletter.

Our office will be emailing mortgage licensees information regarding recent changes to the NC Mortgage Lending Act that went into

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Mortgage Examinations

By Molly Sheehan, Examination Supervisor

Common Violation

The mortgage examination staff of the NCCOB has identified the following as the most common violation cited in Examination Reports.

N.C.G.S. §§ 24-8(d), 24-1.1A(c)(1)f, and 53-243.11(5) Permitted Interest, Fees and Charges-Brokered Loans:

Pursuant to N.C.G.S. § 24-8(d), mortgage brokers are prohibited from charging or receiving "(i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed."

Additionally, N.C.G.S. § 24-1-1A(c)(1)f prohibits a mortgage lender from collecting miscellaneous fees which, in the aggregate ex-

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effect July 31, 2009, in order for you to stay abreast of changes included in [House Bill 1523, S.L. 2009-374](#) that affect you.

Regards,

Charlie Fields, Jr.
Director, Non-Depository Entities

Mortgage Licensing Updates

By Teresa Browning,
Assistant Director



Branch Licensure

A branch license is required of any office location that is separate and distinct from a principal office where a company or sole proprietor acts as a mortgage lender, affiliated mortgage banker, or mortgage broker regarding residential real property in North Carolina. In order to submit a branch application, you should complete the following steps:

Complete Form MU3 through the NMLS at: <http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Home3>.

Submit the following to the NCCOB:

Lease or other written agreement (s): Provide a copy of the lease agreement clearly setting out the terms of the lease and describing the leased premises, signed by a company official of the mortgage broker/lender licensee and the Landlord. SUB-LEASES ARE NOT ALLOWED.

Telephone package: Provide documentation from the local phone company greeting package showing the branch telephone number(s) listing, and the billing address as well as the address of the branch in which the telephone is located.

Resume: Provide a resume with branch manager's work experience.

Disclosure questions: Provide complete details of all events or proceedings for any "Yes"

answer to any of the Disclosure questions for the Branch Manager and provide a copy of any applicable orders or documents. If you have additional questions regarding opening a branch you may contact Vanessa Clark in the Mortgage division at vclark@nccob.gov.

Branch manager: Each branch office of an affiliated mortgage banker, mortgage broker or lender must have a licensed loan officer, with at least three years of experience in residential mortgage lending, who is in charge of and responsible for the business operations of the branch location.

Please note: A residential address will not be licensed as a valid branch location. Also, a branch manager must reside within 60 miles of the branch location where he or she is assigned.

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ceed $\frac{1}{4}$ of 1 percent of a loan amount or \$150, whichever is greater. Where a lender would be statutorily prohibited from charging miscellaneous fees, such a lender is prohibited from outsourcing those fees to a third-party broker. Thus, the imposition and collection of such miscellaneous fees by a broker constitutes unreasonable compensation.

During recent examinations performed by the NC Office of the Commissioner of Banks (NCCOB) a high percentage of the HUD-1 settlement statements reviewed by mortgage examiners reflect the broker and/or lender are charging and receiving miscellaneous fees exceeding that permitted under N.C.G.S. § 24-1-1A(c)(1)f. Such fees include, but are not limited to, underwriting, processing and document preparation fees, which in aggregate exceed the $\frac{1}{4}$ of 1 percent of the loan amount limitation mandated by N.C.G.S. § 24-1-1A(c)(1)f. In addition to refunding of all fees collected by the lender and/or broker, violations of the usury statutes (Chapter 24) may subject the company to the usury penalty set forth under N.C.G.S. § 24-2 requiring the forfeiture of all future interest and the return of twice the interest paid to date.

Legal Updates

By David Worth, Staff Attorney



Records

The NCCOB receives many questions regarding the records that licensees are required to maintain. These questions range from the types of records to the form of retention. All of these issues are addressed in the statutes or the administrative rules. See 04 NCAC 03M .0501 and .0502 for the type, time and form of such records.

Essentially, a licensee is required to maintain a complete loan file, to include the application, and copies of all documents that are executed in connection with the making, funding, and sale or assignment of a loan, for example, the note, deed of trust, settlement statement, and all disclosures such as GFE, TIL etc.

This information may be retained in hard copy or in other acceptable media forms. If maintained in other forms such as magnetic tape, magnetic disk, computer, electronic or microfilm data, it should be convertible into hard copy form, and it should have been stored and reproduced in such a manner that it will be admissible in court as equivalent to the original document. It should be stored in a safe, secure location, so that it is not subject to tampering, unauthorized access, or other degrading or questionable treatment which might raise questions about its authenticity or adversely affect its legibility.

The NCCOB also receives inquiries concerning the delivery of required disclosures or other documents by email. There are certain statutes with provisions specifically determining when this form of delivery of that type of information may be deemed acceptable. N.C.G.S. § 66-315 permits the use of electronic means to conduct business when **both parties** agree to use that medium. It should be noted that although an agreement to that effect may be reached, either party may withdraw its consent, and that the electronic record must be delivered by the sender without any inhibition which might prevent the receiver of the information from retain-

ing or later accurately reproducing the information so delivered.

And of course, the information so delivered must also satisfy the accurate reproduction criteria such that it could be admissible in court. Additionally, information so delivered must also be secure from unauthorized disclosure, therefore it is recommended that submission of applications with personal information not use this method of delivery unless both parties are certain that adequate encryption of all information is in place to protect against identity theft.

Use of alternative media for the storage, delivery or reproduction of required records should be discussed with counsel and careful preparation of policies and procedures should be undertaken, prior to adopting any of these alternative methods of record retention to ensure that all the criteria are satisfied when employing these methods of record retention and transmission.

Education Updates

By Mary DesChamps, Education Director



SAFE Act

The Housing and Economic Recovery Act of 2008 effective July 30, 2008 (HERA), is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections.

The SAFE Act which is a key part of HERA is designed to enhance consumer protection and reduce fraud. The main objective of the SAFE ACT is to bring uniformity between states that are participating in the Nationwide Mortgage Licensing System (NMLS)

The Secure and Fair Enforcement for Mortgage Lending Act of 2008 (SAFE Act) established requirements for the licensing and registration of all Mortgage Loan Originators (MLOs). MLOs are to be licensed by the states.

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The SAFE Act requires state-licensed MLOs to pass a written qualified test, to complete pre-licensure education courses (PE), and to take annual continuing education courses (CE). The SAFE Act also requires all MLOs submit fingerprints to the Nationwide Mortgage Licensing System and Registry (NMLS) for submission to the FBI for a criminal background check and state-licensed MLOs to provide authorization for NMLS to obtain an independent credit report.

Individual state law determines when a state-licensed MLO is required to take the SAFE Mortgage Test, complete pre-licensure or continuing education training, and when state-licensed MLOs are required to complete their background checks.

North Carolina Standards for licensing per the SAFE ACT- initial (never held a license in any of the approved states participating in NMLS applicants) should:

- Establish a unique identifier in NMLS prior to taking course and test (information used for course and test registration)
- Complete a 20 hour live classroom or classroom equivalent PE course for approval as outlined by the SAFE Mortgage Act standards developed by the T & E committee
- Complete a 4 hour live classroom or classroom equivalent PE course to meet the additional hours of education requirement for N.C.
- Pass the NMLS approved SAFE test which includes two components; the National Component and Unique (N.C.) State Component exam with a score of 75% or better
- Apply/Submit application online through NMLS
- Submit jurisdiction-specific requirements to NCCOB

North Carolina Standards for licensing per the SAFE ACT - candidates formerly licensed and/ or have taken the 20 hours PE course within the past **3** years in **any** other state approved through NMLS applicants should:

- Establish a unique identifier in NMLS prior to taking class and test (information used for course and test registration)
- Complete 20 hour live classroom, classroom equivalent or online instructor – led course for approval as outlined by the SAFE Mortgage Act standards developed by the T & E committee
- Complete a 4 hour live classroom or classroom equivalent PE course to meet the additional hours of education requirement for N.C.
- Pass the NMLS approved SAFE test which includes two components: the National Component (if not taken in any other state) and Unique (N.C.) State Component exam with a score of 75% or better
- Apply/Submit application online through NMLS
- Submit jurisdiction-specific requirements to NCCOB

North Carolina Standards for meeting the SAFE ACT - currently licensed MLOs are:

- Pass the national exam only; if state exam completed January 1, 2004 or thereafter – must be certified by the NC Commissioner of Banks - notification will be provided to all MLOs that meet this criteria.
- Pass the national exam and state exam if licensee was “**Grandfathered**” or were “**Exempted**” from state exam.
- Pass the national exam and state specific exam with a score of 75% or better if criteria above hasn’t been met. – **not certified by the NC Commissioner of Banks**
- Complete 20 hours of SAFE approved education (if cumulative total hours on record (must be certified by the NC Commissioner of Banks) are less than 20 hours.
- Deadline for completing these requirements is **July 31, 2010**.

Qualifying Individual Orientation

The NC Commissioner of Banks has introduced a training program for representatives of recently licensed brokers and lenders that have been approved within the last 60 days. Companies are invited to participate in this highly recommended training at **no cost** to you.

Our goal is to educate new licensees on the laws and guidelines for operating a successful mortgage company in North Carolina. The class is designed for managing principals/qualifying individuals and licensing contacts and the next session will be held **September 9, 2009** at our Raleigh, NC office. If you have personnel who wish to attend, please let us know as soon as possible.

The **all day** class will focus on four main areas: licensing, education, examinations, legal and regulatory updates. Registration will begin at 8:30 a.m., so please make travel arrangements accordingly. Licensed loan officers will receive **eight hours** of continuing education credit for the current year if course hasn't been repeated within the last three years.

Please register at:

https://www.surveymonkey.com/s.aspx?sm=B5i_2bwV3FIHtYcDrcBhYE4A_3d_3d for the classroom or webinar training. The deadline to register is September 1, 2009.

We look forward to hearing from you and hope that you will be able to participate in the upcoming class. Should you have any questions regarding this matter, you may call our office at 919/733-0589.

Mortgage FAQ's

Q. When will the National Component and Unique State Components of the SAFE test be ready?

A. The National Component of the test is scheduled to be available on **July 30, 2009**. The Unique State Component for 12 States (AZ, ID, IA, LA, MA, MI, NH, NC, PA, RI, VT, WA) are also scheduled to be avail-

able on July 30, 2009. Other Unique State Components are scheduled to be available in accordance with each state's SAFE Act implementation schedule and will be announced on the Testing pages found under the **Professional Requirements** section of the NMLS Resource website.

Q. Is it true I might not be required to take the Unique State Component of the test?

A. Mortgage loan originators who have successfully passed a state required test that meets certain conditions are not required to take the corresponding Unique State Component of the test. Loan originators should check with their state mortgage regulator for more information. However, nothing precludes any MLO from the requirement to take and successfully pass the National Component of the SAFE test.

Q. Can state-approved continuing education courses completed by existing state licensed loan originators count toward the 20 hour pre-licensure requirement?

A. Yes. States that have existing education requirements in place should continue administering those requirements through at least 2009 and beyond depending on each state's SAFE Act transition dates. It should be noted, however, that NMLS will not be accepting "**partial hours**" from existing licensees so a state-licensed loan originator that currently has anything less than 20 hours should complete their education as soon as possible or they will be required to take the full 20 hours. Loan originators should contact their state mortgage regulator for more information.

Q. When do I need to complete my 20 hours of pre-licensure education?

A. Currently state-licensed/registered mortgage loan originators (MLO) must have their 20 hours of pre-licensure education completed by January 1, 2011 or an earlier date determined by your state. (**NC deadline is July 31, 2010**) Non-licensed/registered MLO's must have their pre-licensure education completed by a deadline determined by the regulator of the state in which they conduct loan origination activity, but no later than July 30, 2010.

Consumer Industries

By Branton Grimes,
Financial Program Manager



Consumer Finance Examinations

If you are familiar with the Consumer Finance Act (CFA) and examination procedures, you know that one common issue stressed by examiners concerns the occurrence of dual loans. These violations are commonly cited and refunds to borrowers can be significant. There are two general categories of dual loans:

- The first regards multiple loans made to the same borrower from the same branch location.
- The second regards multiple loans made to the same borrower from different branch locations.

Multiple loans made to the same borrower from the same branch location is addressed under N.C.G.S. § 53-178 where it states, "No licensee shall divide into separate parts any contract made for the purpose of or with the effect of obtaining charges in excess of those authorized by this Article." This provision allows a single branch to make multiple loans to an individual as long as all charges are limited to that of a single loan.

Multiple loans made to the same borrower from different branches are addressed under N.C.G.S. § 53-179 where it states, "A licensee shall not grant a loan in one office to any borrower who already has a loan in another office operated by the same entity or by an affiliate, parent, subsidiary or under the same ownership, management or control, whether partial or complete." This provision strictly prohibits multiple office dual loans, and the CFA provides correction instructions when a violation occurs. When combined balances are \$3,000 or less, charges may be reduced to that of a single loan, but when combined balances are greater than \$3,000, the interest rate of charge on both loans is to be reduced to no greater than 8%.

The previous newsletter stressed the importance of having strong internal controls to prevent violations. According to examinations conducted, most companies that rely on credit reports at origination have failed to comply. To

prevent multiple office loans to an individual, we recommend that internal controls be automated by programming the internal system to cross check applicants. This extra measure will not only help you avoid violations, but it will save your company money!

Money Service Business Training Opportunity

We are pleased to announce that the NCCOB successfully hosted its first money service business compliance training event for check cashing licensees. This was the first ever joint effort between the Internal Revenue Service and a state agency to extend education outreach to the check cashing industry. Fifty-six people attended representing various sized companies. Two presentations were given that covered state and federal compliance, and with the exception of some technical difficulties, the session went very well.

Financial Examiner Taylor Warren from the NCCOB and Communications Analyst Susan Vega from the Internal Revenue Service each gave excellent presentations covering compliance with the N.C. Check Cashers Act and the Bank Secrecy Act, accordingly. Other guests representing state and federal agencies were on hand to help answer any questions. The dialogue between the attendees and presenters was positive and informative for both parties.

We appreciate everyone who attended and want to invite anyone who couldn't be there to attend our next training session that is planned for **October 27, 2009**. If you haven't provided our office an email address, please do. This is the most efficient way to communicate with licensees, and we plan to send an additional announcement soon.

Please know that the Internal Revenue Service and the NCCOB are firmly committed to extending education outreach and raising awareness of regulatory issues that impact you as a check cashing business.

To get the latest news and information on the upcoming training, just use the following link to navigate to the check cashing page of the NCCOB's website: <http://www.nccob.org/NCCOB/ConsumerIndustries/CheckCashers/>.

Check Cashing License Renewals

By Rodney Oldham,
Financial Program Manager



It is time for North Carolina check-cashing licensees to begin thinking about license renewals. Beginning July 15, 2009, check-cashers will be able to renew licenses online. **This license year our agency is moving to an all online renewal process.** This means we will not mail paper renewal forms; however, we will mail each licensee a reminder notice to renew online. The process will allow licensees to renew without the hassle of paper, resulting in a quicker renewal process. The renewal period will begin on July 15, 2009 and will end September 30, 2009.

Consumer Industries FAQ's

Q. Does NCCOB regulate retail installment sales lenders?

A. No. The Retail Installment Sales Act is described under N.C.G.S. 25A

Q. Can a check cashing licensee pay examination fees on-line by a credit card or ACH debit transaction?

A. Yes. Go to www.nccob.gov and click on "Check Cashers" under the "Consumer Industries" tab.

Q. What items are frequently omitted from the check-cashing application?

A. Documentation of **acceptance** with FinCEN as a money-service business, documentation of liquid assets, and a Certificate of Assumed Name (filed with the Register of Deeds Office in the county where you conduct business) for those using a DBA (doing business as).

Q. When is a fee schedule for check-cashing required?

A. When an application is approved, with each annual renewal, and any time during the license year that fees change.

Important Dates to Remember

- July 15—September 30, 2009 - check cashing online renewal period
- July 30, 2009—PSI Loan Officer exam ends
- July 30, 2009—New!!! SAFE ACT test begins
- August 15, 2009—(Proposed) MLO 20 hr PE and 4 hour course begins
- September 9, 2009—Qualifying Individual Orientation Session (Mortgage)
- October 27, 2009 Money Service Business Training (Check Cashing)
- December 31, 2009— deadline for CE (mortgage loan originators) 8 hours

SAFE ACT test information:

Visit the NMLS website at: http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Professional_Requirements for additional information regarding testing, education and background checks.

Licensing Statistics as of July 31, 2009

Mortgage Company License - Approved

Mortgage Brokers	414
Mortgage Lenders	489
Mortgage Servicers	34

Mortgage Individual License - Approved

Loan Officers	8,697
Exclusive Mortgage Brokers	414
Limited Loan Officers	957

Consumer Industries License—Approved

Check-Cashers	387
Consumer Finance Licensees	83
Refund Anticipation Loan Facilitator Registrants	874
Money Transmitters	68

Contact Information

N.C. Office of the Commissioner of Banks
316 W. Edenton Street (physical location)
Raleigh, NC 27603

4309 Mail Service Center (mailing address)
Raleigh, NC 27699-4309

Phone:
919.733.3016 Main Number

Fax:
919.733.6918 Main

Mortgage

Phone:
919.733.0589

Fax:
919.733.2978 Mortgage

Email:
Mortgage@nccob.gov

Consumer Industries

Phone:
919.733.3016

Fax:
919.733.6918

Email:
ConsumerIndustries@nccob.gov

Nationwide Mortgage Licensing System (NMLS)

Web address:
<http://www.stateregulatoryregistry.org/>

NMLS — Help Desk: 240.386.4444

File a complaint at:
<https://www.nccob.org/Online/CTS/ComplaintOnline.aspx>