

**Proposed Rule Amendments, Adoptions, and Repeals as Published in
the North Carolina Register Volume 24 – Issue 09 – Pages 608 – 619**

1 04 NCAC 03M .0101 is proposed for amendment as follows:

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3 **04 NCAC 03M .0101 DEFINITIONS**

4 As used in this Subchapter, unless a contrary definition is provided or required by the context:

- 5 (1) Terms used in this Subchapter which are defined in the Act have the same meaning as set forth in
6 the Act.
- 7 (2) When any term in this Subchapter is defined by reference to or incorporation of a regulation or
8 rule of a federal or state agency, board, commission or other regulatory body other than the
9 Commissioner, the reference shall be deemed to be to the regulation or rule as it is in effect and
10 interpreted on the effective date of this Subchapter.
- 11 (3) "Act" means Article ~~19A~~ 19B of Chapter 53 of the North Carolina General Statutes, commonly
12 known as the "~~Mortgage Lending Act~~", "North Carolina Secure and Fair Enforcement (S.A.F.E.)
13 Mortgage Licensing Act," or "NC SAFE Act," as codified and as amended.
- 14 (4) "Advertisement" means material used or intended to be used to induce the public to apply for a
15 mortgage loan. The term includes any printed or published material, or descriptive literature
16 concerning a mortgage loan to be solicited, processed, negotiated or funded by a licensee or
17 exempt entity whether disseminated by direct mail, newspaper, magazine, radio or television
18 broadcast, electronic mail or other electronic means, billboard or similar display. The term does
19 not include any disclosures, program descriptions, or other materials prepared or authorized by
20 any state or federal government agency, nor does the term include any material or communication
21 which has been excluded for purposes of any regulation of the Board of Governors of the Federal
22 Reserve System regulating consumer credit disclosures.
- 23 ~~(5) "Audited statement of financial condition" means a statement of financial condition prepared in~~
24 ~~accordance with generally accepted accounting principles and certified by a certified public~~
25 ~~accountant as fairly and accurately reflecting the financial condition of the licensee as of the date~~
26 ~~specified therein.~~
- 27 ~~(6) "Certified statement of financial condition" means a statement of financial condition prepared in~~
28 ~~accordance with generally accepted accounting principles and certified by the preparer as fairly~~
29 ~~and accurately reflecting the financial condition of the licensee as of the date specified therein.~~
- 30 (5) "Call Report" means a report of condition on a company and its operations which includes, but is
31 not limited to, financial and loan activity information.
- 32 ~~(7)~~ (6) "Commission" means the North Carolina Banking Commission. For purposes of complying with
33 these Rules by credit unions, Banking Commission means the North Carolina Credit Union
34 Commission.
- 35 ~~(8) "Continuing education program" means a classroom education program approved pursuant to Rule~~
36 ~~.0301 of this Subchapter.~~
- 37 ~~(9)~~ (7) "Controlling person" means a person who, with regard to a licensee:

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1 (a) has the ability to exercise "control", as the term is defined in ~~G.S. 53-243.01(6)~~, G.S.
2 53-244.030(7), or

3 (b) otherwise has the power to direct the management and policy of the licensee.

4 ~~(10) "Fundamentals Examination" means the mortgage lending fundamentals examination required by~~
5 ~~G.S. 243.05(b)(2).~~

6 ~~(11) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301~~
7 ~~of this Subchapter.~~

8 ~~(12) (8) "Instructor" means an individual who is employed by a provider and who is responsible for~~
9 ~~teaching a program.~~

10 ~~(13) (9) "License" means a mortgage lender, mortgage servicer, mortgage broker or loan officer exclusive~~
11 ~~mortgage broker, or mortgage loan originator license issued pursuant to the Act and this~~
12 ~~Subchapter.~~

13 ~~(14) (10) "Material" facts or "Material" information are facts or information, or changes in such facts or~~
14 ~~information, that, if known, would be likely to influence a decision to grant or revoke a license or~~
15 ~~to take other disciplinary action against a licensee or exempt person.~~

16 "Material":

17 (a) when used in connection with facts or information provided to the Commissioner, means
18 such facts or information that, if known, would be likely to influence a decision to grant,
19 suspend, condition, limit, or revoke a license or to take other disciplinary action against a
20 licensee or exempt person. Material facts requiring disclosure under this subsection,
21 including, but are not limited to:

22 (1) notice of a pending administrative action by any state or federal authority to
23 which the licensee is subject;

24 (2) the issuance of an administrative order by any state or federal authority to which
25 the licensee is subject;

26 (3) notice of a pending criminal charge against a person licensed under this statute
27 for actions related to financial services or moral turpitude;

28 (4) the entry of a conviction or other plea agreement on a criminal charge against a
29 person licensed under this statute for actions related to financial services or
30 moral turpitude;

31 (5) a change in status to the licensee's bond, including, but not limited to the
32 reduction or cancellation of such bond; and

33 (6) significant adverse changes to an individual licensee's credit report, including,
34 but not limited to, significant reduction in the licensee's credit score or the
35 reporting of liens, judgments, foreclosures, repossessions, or other derogatory
36 trade lines.

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1 **(b)** when used in connection with facts or information regarding provided to the
2 Commissioner, shall also mean such facts and information regarding the licensee’s
3 identity and contact information. Material facts requiring disclosure under this
4 subsection, including, but are not limited to:

5 **(1)** the licensee’s primary phone number, mailing address, and principal office
6 address;

7 **(2)** any assumed name, trade name, or d/b/a under which the licensee may be
8 operating;

9 **(3)** the address at which files and/or documents retained pursuant to the Act or these
10 Rules are stored;

11 **(4)** the identity of the licensee’s bonding company or carrier, and bond number;

12 **(5)** for corporate licensees, the identity of the any affiliated mortgage lender,
13 mortgage broker, mortgage servicer, and/or provider of settlement services; and.

14 **(6)** For corporate licensees, the identity of the licensee’s owners, officers, directors,
15 qualifying individual, branch manager(s), and/or control persons.

16 **(c)** when used in connection with facts or information provided to a borrower, means such
17 facts and/or information that, if known, would reasonably be expected to influence a
18 borrower’s decision with regard to one or more loans. Material facts requiring disclosure
19 under this subsection, include, but not limited to:

20 **(1)** the total compensation the mortgage broker expects to receive from any and all
21 sources in connection with each loan option presented to the borrower;

22 **(2)** the terms of each loan option presented to the borrower;

23 **(3)** the anticipated monthly payment (including property tax and insurance
24 payments) for each loan option presented to the borrower;

25 **(4)** if the loan contains a variable rate feature or other terms which may result in a
26 change to the borrower’s monthly payments over the life of the loan, the
27 circumstances upon which the terms and/or payments will change and the
28 impact of such changes upon the borrower’s required monthly payments; and

29 **(5)** any affiliate relationships that may exist between the licensee and any party or
30 parties to the sale or financing of the subject property, or any provider of
31 settlement services.

32 **(d)** when used in connection with the word “change” or “changes”, means a change to any
33 material facts and/or information.

34 **(11)** “Nationwide Mortgage Licensing System and Registry” or “NMLS&R” shall have the same
35 meaning as in the NC SAFE Act.

36 **(12)** “Prelicensing Education” means a classroom or classroom equivalent education program approved
37 pursuant to G.S. § 53-244.070.

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1 ~~(15)~~ (13) "Program" means either a ~~fundamentals~~ prelicensing ~~or continuing education~~ program.

2 ~~(16)~~ (14) "Provider" means any person who provides a program.

3 (15) "Qualified Written Test" means the mortgage prelicensing qualified written test required by G.S. §
4 53-244.080.

5 (16) "Settlement Services" shall have the same meaning as defined in federal Real Estatement
6 Procedures Act (RESPA) 12 U.S.C. Sec. 2601 et. seq. Regulation X, 24 C.F.R. Part 3500 et. seq.

7 (17) "Standard Mortgage" means a mortgage loan that has the following characteristics:

8 (a) a fixed interest rate;

9 (b) a term of 30 years;

10 (c) substantially equivalent monthly payments which will fully amortize the loan amount over the
11 term of the loan;

12 (d) includes an escrow for taxes and insurance; and

13 (e) does not include a payment of discount points.

14 ~~(17)~~ (18) "Testing Service" Provider" means an organization ~~selected~~ approved by the ~~Commissioner~~
15 NMLS&R to develop and administer the ~~examination~~ prelicensing qualified written test.

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17 History Note: Authority ~~G.S. 53-243.04~~; G.S. 53-244.118;
18 *Temporary Adoption Eff. July 1, 2002*;
19 *Eff. April 1, 2003*;
20 *Amended Eff. April 1, 2010; April 1, 2008*;

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1 04 NCAC 03M .0102 is proposed for amendment as follows:
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3 **04 NCAC 03M .0102 NOTICES**

4 (a) Except as may be provided in G.S. 150B or the rules of the North Carolina Office of Administrative Hearings,
5 any notice, pleading, decision or other communication required or permitted to be given by the Commissioner to a
6 licensee, an applicant for a license or an exempt person shall be considered given when deposited in the United
7 States mail with sufficient first class postage affixed, addressed to the most recent principal office address provided
8 by the addressee.

9 (b) Any application for licensure, report, annual statement, amendment to application, notice or other document
10 which is required or permitted by law or rule to be filed with the Commissioner shall be ~~in writing, signed by the~~
11 ~~sender or a principal officer and shall be effective upon actual receipt at the following address: Ordinary mail:~~
12 ~~North Carolina Commissioner of Banks, 4309 Mail Service Center, Raleigh, NC 27699 4309; Overnight mail~~
13 ~~service or hand delivery: North Carolina Commissioner of Banks, 316 W. Edenton Street, Raleigh, NC 27603.~~
14 submitted in an electronic format through the NMLS&R or other means approved by the Commissioner.
15

16 *History Note: Authority ~~G.S. 53-243.04; G.S. 53-244.118;~~*
17 *Temporary Adoption Eff. July 1, 2002;*
18 *Eff. April 1, 2003;*
19 *Amended April 1, 2010.*
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04 NCAC 03M .0201 is proposed for amendment as follows:

04 NCAC 03M .0201 APPLICATION

(a) All fees required by ~~G.S. 53-243.05~~ G.S. 53-244.090 or 53-244.101 shall be submitted with an application for licensure or renewal of license as a ~~mortgage banker~~ mortgage lender, ~~mortgage broker~~ mortgage servicer, ~~exclusive mortgage broker~~ or ~~loan officer~~ mortgage loan originator. Such fees are nonrefundable.

(b) Each type of application shall be ~~in writing~~ filed through the NMLS&R on a form ~~provided by the Commissioner~~, acceptable to the Commissioner as, ~~shall be accompanied by all information~~ required by these Rules or ~~statute~~ the Act and shall be verified by the oath or affirmation of the applicant or a principal officer thereof.

(c) In addition to the documents and information required by these ~~rules~~ Rules the Commissioner or his or her staff may require additional information according to the ~~rules~~ Rules in order to enable the Commissioner to make the determinations required by ~~G.S. 53-243(i)~~. G.S. 53-244.040, 53-244.050, 53-244.060, 53-244.070, 53-244.080, 53-244.100, 53-244.101, 53-244.102, 53-244.103 and 53-244.104.

(d) Applications submitted without the required fees or which are missing material information shall be held in ~~inactive~~ pending status for a period of 30 calendar days after written notice to the applicant specifying the nature of the deficiency. If any such deficiency remains outstanding for more than 30 days, the application shall automatically be considered ~~denied~~ withdrawn without further action by the Commissioner, and the applicant shall be required to submit a new application and pay all fees associated therewith.

History Note: Authority ~~G.S. 53-243.04; 53-243.05; 53-243.06; G.S. 53-244.040, 53-244.050; 53-244.060; 53-244.070, 53-244.080, 53-244.100; 53-244.101; 53-244.102; 53-244.103; 53-244.104; G.S. 53-244.118;~~

Temporary Adoption Eff. July 1, 2002;

Eff. April 1, 2003;

Amended Eff. April 1, 2010.

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04 NCAC 03M .0202 is proposed for amendment as follows:

04 NCAC 03M .0202 NONTRANSFERABILITY

(a) Any attempt to transfer or assign a license through a change of control without the prior consent of the Commissioner shall:

- (1) be ineffective;
- (2) be grounds for ~~immediate revocation of such license;~~ summary suspension, revocation, or other remedies available to the Commissioner of such license; and
- (3) render the assignor licensee ~~responsible for any and all actions or omissions of its the assignee which occur while acting under the apparent authority of such license.~~ jointly and severally liable with the assignee for any and all actions or omissions of its assignee which occur while acting under the apparent authority of such license.

(b) A change in the identity of a licensee's controlling person or any material change in the licensee's organizational structure shall be considered a transfer or assignment of the license. However, the Commissioner shall permit such change without requiring the licensee to apply for a new license, provided:

- (1) the licensee gives notice to the Commissioner at least 60 days in advance of the effective date of the proposed change; and
- (2) the Commissioner determines that permitting the licensee to continue to operate under its existing license would not be inconsistent with the purposes of the Act.

(c) A notice pursuant to Subparagraph (b)(1) of this Rule shall include sufficient detail to enable the Commissioner to make the determination described in that Subparagraph (b)(2) of this Rule.

(d) The Commissioner may waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if circumstances beyond the licensee's reasonable control would make strict compliance therewith unduly burdensome to the licensee.

*History Note: Authority ~~G.S. 53-243.04; 53-243.05; 53-243.12;~~ G.S. 53-244.050; 53-244.060; G.S. 53-244.118;
Temporary Adoption Eff. July 1, 2002;
Eff. April 1, 2003;
Amended April 1, 2010.*

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1 04 NCAC 03M .0204 is proposed for amendment as follows:

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3 **04 NCAC 03M .0204 EXPERIENCE**

4 As used in ~~G.S. 243.05(e)(1)~~, G.S. 53-244.050(b)(2), a person is considered to have acquired "experience in
5 residential mortgage lending" during any documented period in which:

6 (1) that person's employment income was principally derived from employment in the mortgage
7 ~~banking, lending, mortgage servicing,~~ or mortgage brokerage industry; and

8 (2) ~~he or she had~~ that person's actual responsibility for job functions in each area of study included in
9 a ~~fundamentals~~ prelicensing education program approved by the Commissioner, pursuant to 4
10 ~~NCAC 03M .0301(e)~~; G.S. 53-244.070.

11

12 *History Note:* Authority ~~G.S. 53-243.05~~; G.S. 244:118;

13 *Eff. April 1, 2003;*

14 *Amended Eff. April 1, 2010; April 1, 2008*

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1 04 NCAC 03M .0205 is proposed for amendment as follows:

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3 **04 NCAC 03M .0205 FINANCIAL RESPONSIBILITY**

4 (a) In order for applicants to be deemed to have the financial responsibility such as to command the confidence of
5 the community and to warrant belief that the business will be operated honestly and fairly under ~~G.S. 53-243.05(i)~~,
6 G.S. 53-244.60(4), the applicant shall:

7 (1) If a ~~mortgage banker~~: mortgage lender:

8 (A) provide an audited statement of financial condition that demonstrates a net worth of at
9 least \$100,000;

10 (B) provide evidence of warehouse line of credit of \$1,000,000 or other evidence of funding
11 capacity to conduct mortgage originations;

12 (C) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal
13 credit report(s) that does not contain evidence of current outstanding judgments or tax
14 liens against applicant, its officers or directors, by creditors within the past seven (7)
15 years; and

16 (D) provide an explanation of the corporate or ownership structure of the applicant, including
17 information regarding any required distributions to investors or owners.

18 (2) If a mortgage broker:

19 (A) provide a certified statement of financial condition that demonstrates a net worth of at
20 least \$25,000;

21 (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal
22 credit report(s) that does not contain evidence of current outstanding judgments or tax
23 liens against applicant, its officers or directors, by creditors within the past seven (7)
24 years; and

25 (C) provide evidence (in the form of a copy of a bank statement or other verifiable document)
26 that the broker owns and holds on a continual basis cash or other liquid assets in a
27 demand deposit account under the firm's name of at least ten thousand dollars
28 (\$10,000.00) in an FDIC-insured financial institution.

29 (3) If a ~~loan officer or limited loan officer~~: mortgage loan originator:

30 (A) have a credit score of 600 or greater; ~~and~~

31 (B) demonstrate a history of satisfying debt obligations, as indicated by an absence of current
32 outstanding ~~judgments by creditors or tax liens~~ liens, other government liens or filings,
33 outstanding judgments, except judgments resulting solely from medical expenses, by
34 creditors within the past seven (7) ~~years.~~ years; and

35 (C) not have any foreclosures or serious delinquent accounts within the past three years.

36 (4) If a mortgage services:

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1 (A) provide an audited statement of financial condition that demonstrates a net worth of at
2 least \$100,000.00;

3 (B) demonstrate a history of satisfying debt obligations, as indicated by a trade or personal
4 credit report(s) that does not contain evidence of current outstanding judgments or tax
5 liens against applicant, its officers or directors, by creditors within the past seven (7)
6 years; and

7 (C) provide an explanation of the corporate or ownership structure of the applicant, including
8 information regarding any required distributions to investors or owners;

9 (b) The Commissioner may, waive any requirement listed in Paragraph (a) of this Rule if he believes the
10 predominant weight of the evidence supports a determination that the applicant has the financial responsibility
11 necessary to command the confidence of the community and to warrant belief that the business will be operated
12 honestly and fairly.

13 (c) Financial Responsibility is an ongoing requirement.

14
15 *History Note: Authority ~~G.S. 53-92; 53-104; 53-243.04; 53-243.05(i);~~ G.S. 53-92; 53-104, 53-244.060(4), 53-
16 244.118;*

17 *Eff. April 1, 2008;*

18 *Amended, April 1, 2010.*

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1 04 NCAC 03M .0206 is proposed for amendment as follows:

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3 **04 NCAC 03M .0206 SURETY BOND**

4 (a) All licensees with surety bonds under ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 must ensure that full amount of the
5 surety bond is in effect at all times. In the event of a claim against the bond, the licensee shall have 30 days to
6 reinstate the bond to the level required in ~~G.S. 53-243.05(f)~~ G.S. 53-244.103. Failure to maintain the surety bond at
7 the level required in ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 is grounds for immediate suspension of licensure.

8 (b) All licensees with surety bonds under ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 must report any claims made against
9 the surety bond to the Commissioner within ten (10) business days upon receipt of notice of any claim.

10 (c) All surety bonds under ~~G.S. 53-243.05(f)~~ G.S. 53-244.103 shall:

11 (1) require the bonding company to report all claims and any claims paid on the bond to the
12 Commissioner within ten (10) days of such claim or payment;

13 (2) require the bonding company to pay within thirty (30) days any amount which the Commissioner
14 orders the bonding company to pay upon a determination by the Commissioner that the licensee
15 has failed to faithfully perform the licensee's obligations; and

16 (3) remain in effect for a minimum of five (5) years after lapse or termination of the bond in order to
17 satisfy possible claims for failure to faithfully fulfill obligations during the term of the bond.

18

19 *History Note:* Authority ~~G.S. 53-92; 53-104; 53-243.04; 53-243.05(f)~~ G.S. 53-103;

20 *Eff. April 1, 2008;*

21 *Amended April 1, 2010.*

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1 04 NCAC 03M .0301 is proposed for amendment as follows:

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3 **04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND PROGRAMS COURSES OF STUDY;**
4 **PROVIDER REQUIREMENTS; QUALIFIED WRITTEN TEST**

5 (a) A licensee or prospective licensee shall receive credit for participation in a program if it is presented by a
6 provider approved by the ~~Commissioner and the Commissioner has approved the program pursuant to this Rule.~~
7 NMLS&R, subject to the Commissioner's approval of any course of study required by G.S. 53-244.070(a)(4). The
8 Commissioner shall make available to the public a current listing of approved ~~providers.~~ providers courses of study,
9 and times and locations at which the qualified written test will be administered. ~~The list shall indicate whether a~~
10 ~~provider is approved to present fundamentals programs, continuing education programs, or both.~~

11 ~~(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to~~
12 ~~any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner~~
13 ~~approve the provider's qualifications and approve one or more specific programs. The application shall be upon a~~
14 ~~form provided by the Commissioner and shall include the following information:~~

- 15 (1) ~~the name and address of the provider and date(s) on and locations at which the program is to be~~
16 ~~offered;~~
17 (2) ~~the qualifications and experience of the provider's principal officers, staff, and instructor(s);~~
18 (3) ~~the costs of all programs for which approval is sought; and~~
19 (4) ~~a description of each program for which approval is sought.~~

20 ~~A prospective provider shall be approved if the Commissioner determines that its general business experience, its~~
21 ~~knowledge of and experience in the mortgage lending and brokerage industries, its experience in the provision of~~
22 ~~professional educational presentations and the quality of such presentations warrant belief that its fundamentals or~~
23 ~~continuing education programs will meet the standards set forth in Paragraphs (c) and (d) of this Rule.~~

24 ~~(c) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and~~
25 ~~competency in basics of home purchase and ownership, the mortgage industry generally, loan evaluation and~~
26 ~~documentation, the operation of a mortgage firm, features of various loan products, state and federally required~~
27 ~~disclosures, and ethical considerations. Fundamentals programs shall consist of a total of at least 24 hours of~~
28 ~~classroom instruction.~~

29 ~~(d) Continuing education programs must enhance the existing professional competence of the target group of~~
30 ~~licensees by providing updated information or more detailed or narrowly focused information than the fundamentals~~
31 ~~program.~~

32 ~~(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and~~
33 ~~thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program~~
34 ~~approval must be filed by not later than 60 days prior to each such expiration date.~~

35 (b) The Commissioner's approval of any course of study required by G.S. 53-244.070(a)(4) shall expire in
36 accordance with NMLS&R's rules regarding expiration of approval.

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1 (c) The Commissioner may deny, revoke, suspend, condition, limit, or terminate approval of any provider or any
2 individual ~~program~~ course of study upon a finding that:

- 3 (1) the provider has refused or failed to comply with any applicable provision of this ~~Subchapter or of~~
4 ~~any contractual agreement with the Commissioner or has refused or failed to submit in a timely~~
5 ~~manner information or properly completed forms prescribed by the Commissioner;~~ Subchapter;
6 (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any
7 manner or form, the ~~examination~~ qualified written test questions;
8 ~~(3) during any six month period fewer than 50 percent of the provider's fundamentals program~~
9 ~~students taking the examination for the first time achieve a passing score;~~
10 ~~(4) the provider has not conducted at least one fundamentals or continuing education program (as~~
11 ~~applicable) during the preceding 12 month period;~~
12 ~~(3) the provider has not conducted at least one prelicensing education course (as applicable) during~~
13 ~~the preceding 12-month period; and~~
14 ~~(5) (4) the provider has knowingly employed in connection with any program any person who has been~~
15 ~~convicted of any crime described in G.S. 53-243.05(a)(4)(ii) or (iii); G.S. 53-244.060(2)(3).~~
16 ~~(6) the provider of an on-line or video course fails to provide evidence of a control system sufficient~~
17 ~~to certify that licensees participating in the on-line course have personally accessed the course and~~
18 ~~have met the number of hours required for continuing education requirements.~~

19 (d) Providers shall:

- 20 (1) Designate one person as a contact person who shall be available to the Commissioner during
21 ordinary business hours and shall be knowledgeable and have authority to act with regard to all
22 administrative matters concerning instructors, scheduling, advertising, recordkeeping, and
23 supervising all programs offered by the provider.
24 (2) Retain the following material from each program on file at one location for a minimum of three
25 years: class schedules; advertisements; bulletins, catalogues, and other publications distributed to
26 students; a list of student names, with unique identifier, for each program; and the name of the
27 instructor. All files shall be made available to the Commissioner upon request.
28 (3) Refrain from the use of any words, symbols or other means which to indicate that either the
29 provider or a program has received the NMLS&R approval unless such approval has been issued
30 and remains in effect.

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32 *History Note:* Authority G.S. 53-243.05; 53-243.07; 53-243.13; G.S. 53-244.060; 53-244.070; 53-244.080; 53-
33 244.118;

34 *Temporary Adoption Eff. July 1, 2002;*

35 *Eff. April 1, 2003;*

36 *Amended April 1, 2010; April 1, 2008.*

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1 04 NCAC 03M .0302 - .0303 are proposed to be repealed as follows:

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3 **04 NCAC 03M .0302** **MORTGAGE LOAN ORIGINATOR QUALIFIED WRITTEN TEST**

4 **04 NCAC 03M .0303** **REQUIREMENTS FOR PROVIDERS**

5

6 *History Note:* *Authority G.S. 53-243.05; 53-243.07; 53-243.13;*

7 *Temporary Adoption Eff July 1, 2002; (Rule .0302)*

8 *Eff. April 1, 2003;*

9 *Repealed Eff. April 1, 2010.*

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1 04 NCAC 03M .0401 is proposed for amendment as follows:

2
3 **04 NCAC 03M .0401 ANNUAL REPORTING REQUIREMENTS**

4 (a) No later than 90 days after the end of the calendar year, ~~mortgage bankers~~ mortgage lenders, mortgage services
5 and mortgage brokers shall file an annual report in a format required by the ~~National Mortgage Licensing System,~~
6 NMLS&R unless the Commissioner determines that the report is not in the public interest. In addition, the
7 Commissioner shall require the annual report to be supplemented with additional information about operations,
8 characteristics of loans made, or other similar composite data if the Commissioner determines that this additional
9 information is necessary in order to safeguard the interests of the borrowing public (See N.C. Gen. Stat. ~~53-243.04).~~
10 53-244.118). Mortgage brokers shall as a part of the annual report provide certification from the insured financial
11 institution holding the account required under ~~04 NCAC 03M.0205(a)~~ 04 NCAC 03M .205(a)(2)(C) that the account
12 exists and that the account has contained an average daily balance, for the previous year covered by the annual
13 report of ten thousand dollars \$10,000 or more. The Commissioner may summarily suspend the license of a
14 mortgage lender, mortgage servicer, or mortgage broker license until such time as the licensee submits a completed
15 annual report, as required by 04 NCAC 03M .0401(a).

16 (b) Mortgage ~~bankers~~ lenders, mortgage servicers, and mortgage brokers shall provide an audited statement of
17 financial condition or a certified statement of financial condition as required by 04 NCAC 03M.0205(a) within 90
18 days of the end of the licensee's fiscal year. If not shown in the audited statement of financial condition, mortgage
19 ~~bankers~~ lenders shall provide evidence of available warehouse lines of credit or other funding facilities.

20 (c) Mortgage ~~bankers~~ lenders and mortgage brokers shall provide information on the characteristics of loan
21 originations in an electronic format prescribed by the Commissioner on a quarterly basis within forty-five (45) days
22 after the close of the calendar quarter. Mortgage lenders shall, at a minimum, be able to provide:

- 23 (1) Information sufficient to identify the mortgage loan and the unique identifier of the mortgage loan
24 originator, mortgage broker (if applicable), and mortgage lender for the loan;
- 25 (2) Information sufficient to enable a computations of key items in the federal Truth in Lending
26 disclosures, including the annual percentage rate, finance charge, and a schedule of payments, and
27 any deviations between initial and final disclosures.;
- 28 (3) Information included in the Good Faith Estimate (GFE) disclosure, including the rate, the date of
29 any interest rate lock, the itemization of amount financed and all broker compensation,
- 30 (4) Information included in the final HUD-1 Settlement Statement;
- 31 (5) Information related to the terms of the loans, including adjustable rate loan features (including
32 timing of adjustments, indices used in setting rates, maximum and minimum adjustments, floors
33 and ceilings of adjustments), the undiscounted interest rate, penalties for late payments, and
34 penalties for prepayment (including computation of the penalty amount, duration of prepayment
35 penalty, the maximum amount of penalty)

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1 (6) Information typically used in underwriting, including the appraised value of the property, sales
2 price of the property (if a purchase loan), borrowers' income, monthly payment amount, housing
3 debt-to-income ratio, total debt-to-income ratio, and credit score(s) of borrowers; and

4 (7) Information included in a Loan Application Register for mortgage lenders required to be submit
5 such information pursuant to the federal Home Mortgage Disclosure Act,

6 Mortgage brokers shall be able to provide information identified above unless such information is not prepared or
7 known by the mortgage broker and the mortgage broker does not reasonably have access to the information in an
8 electronic format. The Commissioner shall permit mortgage lenders and mortgage brokers to utilize compatible
9 third-party software to provide information required under this provision.

10 (d) ~~Mortgage bankers, lenders and mortgage brokers, and loan officers shall report within thirty (30) days the name~~
11 ~~of any person suspected of making a material misstatement in connection with the mortgage lending process.~~

12 ~~Mortgage bankers and mortgage brokers shall report within 30 days any loan repurchased due to a material~~
13 ~~misstatement made in connection with the mortgage lending process. brokers shall provide periodic call reports~~
14 ~~containing financial and loan activity information in an electronic format through the NMLS&R as required by the~~
15 ~~Commissioner.~~

16 (e) Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage broker, and mortgage loan
17 originators shall report within thirty (30) days the name of any person suspected of making a material misstatement
18 in connection with the mortgage lending or servicing process to the Commissioner. Mortgage lenders and mortgage
19 brokers shall report within 30 days any loan repurchased due to a material misstatement made in connection with the
20 mortgage lending process.

21 (f) Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage broker, and mortgage loan
22 originators shall report within thirty (30) days the name of any person suspected of making a material misstatement
23 in connection with a general or specific inquiry, investigation, or examination to the Commissioner.

24 *History Note: Authority ~~G.S. 53-243.04~~; G.S. 53-244.108; 53-244.118;*

25 *Eff. April 1, 2003;*

26 *Amended April 1, 2010; May 1, 2008.*

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28

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1 04 NCAC 03M .0402 is proposed for amendment as follows:

2
3 **04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER**

4 (a) A licensee shall notify the Commissioner within 30 days of any material change in any document or information
5 previously submitted to the Commissioner during the application process, upon renewal, upon filing of the annual
6 statement, during a general or specific inquiry, investigation, examination or otherwise filed with the Commissioner.

7 ~~For purposes above, a material change includes:~~

8 (1) ~~notice of a pending administrative action by any state or federal authority to which the licensee is~~
9 ~~subject;~~

10 (2) ~~an administrative order by any state or federal authority to which the licensee is subject;~~

11 (3) ~~notice of a pending criminal charge against a person licensed under this statute for actions related~~
12 ~~to financial services or moral turpitude; or~~

13 (4) ~~a conviction or other plea agreement on a criminal charge against a person licensed under this~~
14 ~~statute for actions related to financial services or moral turpitude.~~

15 (b) Upon a licensee's discovery of an information security breach as defined in G.S. 75-61(14), the licensee shall
16 immediately provide to the Commissioner a copy of any notification which the licensee is required to give under
17 G.S. 75-65.

18 (c) Notification shall be ~~accomplished by letter or by submission of revised pages of the application or annual~~
19 ~~report filed pursuant to Rule .0201 and .0401, of this Subchapter.~~ in the form of an amendment filed through the
20 NMLS&R or other means approved by the Commissioner.

21
22 *History Note: Authority ~~G.S. 53-243.04; G.S. 53-244.105(b); 53-244.118;~~*

23 *Eff. April 1, 2003;*

24 *Amended Eff. April 1, 2009; April 1, 2008*

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1 04 NCAC 03M .0403 is proposed for amendment as follows:

2

3 **(04 NCAC 03M .0403 TERMINATION OF OPERATIONS**

4 (a) A licensee shall notify the Commissioner in writing of its decision to cease operations as a ~~mortgage banker~~
5 mortgage lender, mortgage servicer, or mortgage broker in this State, and the anticipated effective date of the
6 cessation of operations, ~~within seven at least fifteen days of before such decision.~~ cessation.

7 (b) A ~~mortgage lender, mortgage services, or mortgage broker or mortgage banker~~ that has not originated or
8 serviced a mortgage loan ~~in the prior calendar year~~ within a twelve month period is considered to have ceased
9 operations. The Commissioner ~~shall~~ may suspend the license of any such mortgage ~~broker lender, mortgage~~
10 ~~servicer, or mortgage banker, mortgage broker,~~ broker lender, mortgage servicer, or
11 ~~mortgage banker mortgage broker~~ mortgage broker until such time as the mortgage ~~broker lender, mortgage servicer, or~~
12 ~~mortgage banker mortgage broker~~ mortgage broker provides reasonable evidence of intent to restart its operations and the
13 Commissioner determines the mortgage ~~broker lender, mortgage servicer, or mortgage banker mortgage broker~~
14 satisfies the requirements for licensure under the Act. Act; provided, however, that such suspension for inactivity
15 shall not extend or revive any license that would otherwise terminate on December 31st based on the licensee's
failure to renew its license or the Commissioner's refusal to renew the licensee's license.

16

17 *History Note: Authority G.S. ~~53-243.04~~; 53-244.118;*
18 *Eff. April 1, 2003;*
19 *Amended Eff. April 1, 2010; April 1, 2008.*

20

21

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the North Carolina Register Volume 24 – Issue 09 – Pages 608 – 619**

1 04 NCAC 03M .0501 is proposed for amendment as follows:

2
3 **04 NCAC 03M .0501 RECORDS TO BE MAINTAINED**

4 (a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments
5 received in connection with each mortgage loan application showing the identity of the payor, date received,
6 amount, and purpose.

7 (b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating
8 to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and
9 purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the
10 bank accounts monthly. Financial records must be kept in a manner to permit efficient review by examiners.

11 (c) A licensed mortgage ~~banker~~ lender or mortgage broker shall maintain a current listing of all mortgage loan
12 applications. ~~The list shall contain all essential information about each application, including the customer's name;~~
13 ~~current address; telephone number; all prepaid loan fees submitted by the customer; amount of loan; brief~~
14 ~~description of the proposed loan (including the term, rate, type, and priority); address of the mortgage property;~~
15 ~~application status; and the expected closing date. The licensee shall create and retain a file for each mortgage loan~~
16 ~~application which shall contain, as applicable, the applicant's name, date, name of person taking the application, the~~
17 ~~application itself, and if closed, the HUD-1 Settlement Statement, copies of the loan note, deed of trust, and all~~
18 ~~agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures~~
19 ~~required by State and Federal law. applications, in a format prescribed by the Commissioner.~~

20 (d) A licensed mortgage lender or mortgage broker shall create and retain a file for each mortgage loan application
21 which shall contain, as applicable, the applicant's name, date, name of person taking the application, the application
22 itself, and if closed, the HUD-1 Settlement Statement, copies of the loan note, deed of trust, and all agreements or
23 contracts with the applicant, including any commitment and lock-in agreements, other information utilized in the
24 origination of the mortgage loan, and all disclosures required by State or Federal law.

25 (e) A licensed mortgage servicer shall create and retain a file for each mortgage loan which it services, which shall
26 contain, as applicable:

27 (1) the borrower or borrowers names;

28 (2) a copy of the original note and Deed of Trust;

29 (3) a copy of any disclosures or notifications provided to the borrower required by State or Federal
30 law;

31 (4) a copy of all written requests for information received from the borrower and the servicers
32 response to such requests as required by State or Federal law;

33 (5) a record of all payments received from the borrower which contains all information required to be
34 provided to a borrower upon request under G.S. 45-92(2)b;

35 (6) a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the
36 property subject to the mortgage;

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1 (7) a communications log, if maintained by the servicer, which documents all verbal communication
2 with the borrower or the borrower’s representative;

3 (8) a record of all efforts by the servicer to comply with the duties required under G.S. 53-244.110(7)
4 including all information utilized in the servicer’s determination regarding loss mitigation
5 proposals offered to the borrower;

6 (9) a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the
7 encumbered property; and

8 (10) records regarding the final disposition of the loan including, but not limited to, a copy of any
9 collateral release document, records of servicing transfers, charge-off information, or REO
10 disposition.

11 ~~(d)~~ (f) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business
12 of mortgage ~~brokerage~~ lending or mortgage ~~banking~~ brokerage in North Carolina for a period of 12 months.

13 ~~(e)~~ (g) A licensee shall maintain copies of all contracts, agreements and escrow instructions to or with any
14 depository institution, any mortgage ~~lender~~ lender, mortgage servicer, or mortgage broker, any warehouse lender or
15 other funding facility, any servicer of mortgage loans, and any investor, for a period of not less than three years after
16 expiration of any such contract or agreement.

17
18 *History Note:* Authority ~~G.S. 53-243.13;~~ G.S. 53-244.105; 53-244.115; 53-244.118;
19 Eff. April 1, 2003;
20 Amended Eff. April 1, 2010; April 1, 2008.

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1 04 NCAC 03M .0502 is proposed for amendment as follows:

2
3 **04 NCAC 03M .0502 FORM AND LOCATION OF RECORDS**

4 (a) Except for samples of advertising materials retained pursuant to 4 NCAC 03M .0501(d), all records required by
5 this Section shall be kept for a period of at least three years, and shall be available for inspection and copying upon
6 request by the Commissioner.

7 (b) Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer,
8 electronic or microfilm media available for examination on the basis of computer printed reproduction, video
9 display or other medium that is easily convertible by the Commissioner into legible, tangible documents.

10 (c) All records required by this Rule shall be prepared in accordance with generally accepted accounting principles,
11 where applicable.

12 (d) All records required to be maintained shall be secured against unauthorized access and damage in an accessible
13 location within the State of North Carolina. However, a mortgage banking licensee which maintains a centralized
14 out-of-state storage facility for such records from multiple states may request the Commissioner to approve its
15 storage of such records in such out-of-state location. Such requests will be approved provided that:

16 (1) The Commissioner determines that the proposed storage will ensure that the records are secured
17 against unauthorized access and damage; and

18 (2) The licensee agrees in writing to make available at its expense for inspection and copying upon
19 request by the Commissioner copies of all requested records in a form which satisfies the
20 requirements of Subsection (b) of this Rule.

21 (e) If the Commissioner subsequently has reason to believe that records are not or will not be adequately secured
22 against unauthorized access or damage, the Commissioner may summarily revoke any approval previously granted
23 under paragraph (d) of this rule.

24 ~~(f)~~ (f) A licensee shall notify the Commissioner of any change in the location of its books and records within 10
25 days following such change.

26
27 *History Note: Authority ~~G.S. 53-243.13~~; G.S. 53-244.105; 53-244.115; 53-244.118;*
28 *Eff. April 1, 2003;*
29 *Amended Eff. April 1, 2010.*
30
31

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the North Carolina Register Volume 24 – Issue 09 – Pages 608 – 619**

1 04 NCAC 03M .0503 is proposed for adoption as follows:
2

3 **04 NCAC 03M .0503 COMPLIANCE WITH GOVERNMENT PROGRAMS**

4 No mortgage lender, mortgage broker, or mortgage servicer shall fail to comply with applicable guidelines related to
5 federal or state programs related to the mortgage business.

6
7 History Note: Authority 53-244.11(14)1; 53-244.118(a);
8 Eff. April 1, 2010.
9
10

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the North Carolina Register Volume 24 – Issue 09 – Pages 608 – 619**

1 04 NCAC 03M .0601 is proposed for adoption as follows:
2

3 **04 NCAC 03M .0601 PROHIBITED BASIS FOR COMPENSATION TO MORTGAGE BROKERS**
4 **AND MORTGAGE LOAN ORIGINATORS**

5 No mortgage lender or mortgage broker shall, in connection with the making of a mortgage loan, provide to a
6 mortgage loan originator or to a mortgage broker any compensation that may vary based on the terms of the loan,
7 with the exception that compensation may be based solely on the principal balance of the loan.
8

9 *History Note:* Authority G.S. 53-244.111(16); 53-244.118(a);
10 Eff. January 1, 2011.
11
12

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the North Carolina Register Volume 24 – Issue 09 – Pages 608 – 619**

1 04 NCAC 03M .0602 is proposed for adoption as follows:

2

3 **04 NCAC 03M .0602 SELLER DISCOUNTS FOR USE OF AFFILIATED MORTGAGE LENDER OR**
4 **BROKER**

5 No mortgage lender or mortgage broker shall originate a mortgage loan if the use of that mortgage lender or
6 mortgage broker is a condition for the borrower to receive a discount or thing of value by a seller affiliated with the
7 mortgage lender or mortgage broker.

8

9 *History Note:* Authority G.S. 53-244.111(1); 53-244.111(8), 53-244.118(a);
10 Eff. April 1, 2010.

11

12

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04 NCAC 03M .0603 is proposed for adoption as follows:

04 NCAC 03M .0603 MORTGAGE LENDERS TO OFFER STANDARD MORTGAGE

- (a) Mortgage lenders and mortgage brokers shall inform qualified applicants of the availability of a standard mortgage at or before presenting an alternative mortgage loan product.
- (b) When offering an alternative or non-standard mortgage, mortgage lenders and mortgage brokers shall present qualified applicants with a comparison between a standard mortgage and the proposed alternative mortgage in a format prescribed by the Commissioner and discuss the risks and benefits of the alternative mortgage compared to the standard mortgage.

1. A mortgage broker shall be deemed to have met this requirement if the mortgage broker has presented and discussed a comparison of the standard mortgage and the proposed alternative mortgage product offered by the prospective mortgage lender, and shall not have an additional duty to present a comparison of a standard mortgage offered by one lender with an alternative mortgage loan product offered by a different mortgage lender.

2. A mortgage lender offering an alternative mortgage loan through a mortgage broker may meet this requirement through a certification by the mortgage broker that the comparison provided by the mortgage lender has been presented and discussed to the applicant.

History Note: Authority G.S. 53-244.111(1); 53-244.111(8), 53-244.118(a);
Eff. January 1, 2011.

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04 NCAC 03M .0604 is proposed for adoption as follows:

04 NCAC 03M .0604 DECEPTIVE SOLICITATIONS FOR REFINANCE

No person engaging in the mortgage business shall deliver to a person any unsolicited advertisement, marketing material, or solicitation to refinance a residential mortgage loan unless all of the following requirements are satisfied:

a. In addition to any disclosures otherwise required by law, the following must be disclosed on the face of any envelope containing the advertisement, marketing material, or solicitation and in print that is in boldface type, capital letters, and no smaller than the largest print used elsewhere in advertisement, marketing material, or solicitation, the following statement: ‘THIS IS A SOLICITATION TO REFINANCE YOUR EXISTING MORTGAGE LOAN.’

b. In addition to any disclosures otherwise required by law, the following must be disclosed at the top of the first page of the advertisement, marketing material, or solicitation:

1. In print that that is in boldface type and larger than the name of the original lender and any other person or governmental entity identified herein, the name, address, and unique identifier of the mortgage lender, mortgage broker, or mortgage loan originator who is providing, or on whose behalf is provided, the unsolicited advertisement, marketing material, or solicitation.

2. In print that that is boldface type and at least as large as the print identified in b.1 above, the following statement: ‘If you believe this solicitation is deceptive, you may file a complaint with the North Carolina Office of the Commissioner of Banks at 888-384-3811 or www.nccob.gov.

*History Note: Authority G.S. 53-244.111(1); 53-244.111(8), 53-244.118(a);
Eff. April 1, 2010.*

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the North Carolina Register Volume 24 – Issue 09 – Pages 608 – 619**

1 04 NCAC 03M .0701 is proposed for adoption as follows:
2

3 **04 NCAC 03M .0701 TRANSFER OF SERVICING RIGHTS**

4 No mortgage servicer may transfer servicing rights or obligations to a person that does not hold a current mortgage
5 servicing license or is otherwise exempt from this Article.

6
7 *History Note: Authority 53-244.100(a); 53-244.110(1); 53-244.110(3);*
8 *Eff. April 1, 2010.*

9
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04 NCAC 03M .0702 is proposed for adoption as follows:

**04 NCAC 03M .0702 REQUIREMENTS FOR MORTGAGE SERVICERS TO COMMUNICATE
EFFECTIVELY WITH BORROWERS REGARDING LOSS MITIGATION**

- (1) A mortgage servicer shall acknowledge, in writing, a borrower’s request for loss mitigation no later than five (5) business days after such a request. The acknowledgement must identify with specificity any information needed from the borrower in order for the mortgage servicer to consider the borrower’s loss mitigation request.
- (2) A mortgage servicer shall respond to a loss mitigation request from a borrower no later than thirty (30) business days after the receipt of all information necessary from the borrower to access whether or not a borrower qualifies for any loss mitigation programs offered by the mortgage servicer.
- (3) A mortgage servicer shall include in a final response denying a loss mitigation request a specific reason for the denial and contact information for a person at the mortgage servicer to reconsider such a denial. In addition, such denial shall also include the following statement, in a boldface type and in a print no smaller than the largest print used elsewhere in the main body of the denial: ‘If you believe the loss mitigation request has been wrongly denied, you may file a complaint with the North Carolina Office of the Commissioner of Banks at 888-384-3811 or www.nccob.gov.’

History Note: Authority G.S. 53-244.110(7); 53-244.118(a);
 Eff. April 1, 2010.

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04 NCAC 03M .0703 is proposed for adoption as follows:

**04 NCAC 03M .0703 CESSATION OF FORECLOSURE ACTIVITY DURING PENDENCY OF
LOSS MITIGATION REQUEST**

No mortgage servicer shall initiate or further a foreclosure proceeding or impose a charge incident to a foreclosure proceeding during the pendency of a loss mitigation request; provided however, that this requirement does not apply if:

- (1) the borrower has failed to comply with the terms of a sustainable loss mitigation plan within the previous 12 months; or
- (2) the mortgage servicer has provided a final response regarding a loss mitigation request within the last 12 months and reasonably believes that the current loss mitigation request was not made in good faith; or
- (3) the servicing contract or the terms of the mortgage loan, entered into prior to October 1, 2009, prohibits such a delay.

History Note: Authority G.S. 53-244.110(7); 53-244.118(a);
Eff. April 1, 2010.