



Regulatory Newsletter

Volume 1, Issue 3

October 31, 2009

Charlie's Corner

By Charlie Fields, Jr. Director

Dear Licensee,

The Fall renewal season is upon us. Licensees and registrants with upcoming renewal requirements are encouraged to take proactive steps that will enable you to submit your renewal request(s) early and avoid possible processing delays later in the renewal period.

Please pay particular attention to deadline dates and requirements pertaining to renewals, as certain criteria have changed since the last renewal period.

As always, please feel free to contact our agency at mortgage@nccob.gov to submit topics or concerns that you would like addressed in future issues of the NCCOB Non-Depository Entities Newsletter.

Regards,

Charlie Fields, Jr.
Director, Non-Depository Entities Division

Mortgage Examinations

By Jeff Browning, Examination Supervisor

Broker Responsibility for Lender Charges

Like the Mortgage Lending Act ("MLA"), the North Carolina Secure and Fair Enforcement Mortgage Licensing Act ("NC SAFE"), imposes a duty upon mortgage brokers and loan originators to ensure that the loans they originate comply with our State's usury laws. Under both the MLA and NC SAFE, it is a prohibited practice to make or broker a loan which contains terms or conditions contrary to those set forth in Chapter 24. See G.S. §§ 53-243.11(5), 53-244.111(5). As such, it is critical that brokers familiarize themselves with the restrictions set forth in Chapter 24. While a thorough review of state's usury laws cannot be condensed into our newsletter, the present article is intended to address a reoccurring issue that has been identified by the NCCOB during examinations of mortgage licensees.

Recent examinations of mortgage brokers have identified loans originated by brokers where the lender failed to comply with the

(Examinations continued on page 2)

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[Please reference the NC General Statutes and Administrative Rules as noted for additional information](#)

statutory provisions imposed by Chapter 24. For example, a brokered loan where the lender charged “junk” fees (e.g. processing, administrative, document preparation, document review, consulting, and final review fees) which, in aggregate, are greater than one quarter of one percent (1/4 of 1%) of the principal amount of the loan or one hundred fifty dollars (\$150.00). In this example the broker has violated both the MLA and NC SAFE Act by brokering a loan which contains terms or conditions contrary to those set forth in Chapter 24. Be aware that it is a prohibited act to make or broker a loan which contains any terms or conditions contrary to those set forth in Chapter 24 (e.g. second mortgage fee limitations, reasonable and bona fide third-party charges, and bona fide discount points) and not just the miscellaneous fee provision as stated in the preceding example.

Many brokers have questioned whether it is proper to penalize them for illegal and/or usurious charges imposed by a lender. In response, the NCCOB reiterates that it is a statutorily prohibited act for a licensee to “broker” a loan which contains terms or conditions contrary to those set forth in Chapter 24. We believe that it is our responsibility to hold brokers accountable for such illegal activity. Furthermore, brokers are under a duty to find their borrowers loans that are reasonably advantageous, considering all circumstances, including the rates, charges, and repayment terms. The NCCOB feels that an inherent piece of this duty is ensuring that any loans brokered comply with our State’s usury laws.



[Don't let the sun set on this opportunity to register for free training](#)

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 **December 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 originators 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 [here](#) for the classroom or webinar training. The deadline to register is **November 30, 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.

Legal Updates

By Will Corbett, Staff Attorney



Education Updates

By Mary DesChamps, Education Director



State Home Foreclosure Project Update

The State Home Foreclosure Prevention Project (or SHFPP) is beginning its second year of existence and recently surpassed 2000 foreclosures prevented. In 2008, the SHFPP was established as a 2-year program requiring that for certain subprime loans, mortgage servicers notify homeowners at least 45 days prior to foreclosure to inform them of options to help avoid foreclosure. Additionally, the servicers have to contemporaneously submit basic information to a database which SHFPP utilizes to contact these homeowners directly to inform them of resources available to help avoid foreclosure.

So far, over 6,000 homeowners have received free housing counseling and budgeting advice through HUD-certified housing counselors. Thirty-four local non-profit counseling agencies across the state and one national non-profit phone counseling agency have joined the program. SHFPP staff work with the counselors and servicers to facilitate loss mitigation negotiations and to determine when a homeowner is entitled to a 30-day delay in any permissible foreclosure filing.

On September 15, NCCOB hosted a press conference to announce the "Fight NC Foreclosure" public awareness campaign supported by NCCOB, the Attorney General's Office, and the Center for Responsible Lending, Capitol Broadcasting, the N.C. Association of REALTORS®, State Employees Credit Union, and the Z Smith Reynolds Foundation. The campaign aims to encourage individuals to reach out for free counseling assistance if they are struggling to pay their mortgage.

More information about the SHFPP can be found at: www.ncforeclosurehelp.org. The Fight NC Foreclosure's toll-free number is **1-866-234-4857** (8:00 a.m.-9:00 p.m., Mon.-Fri.; 8:00 a.m.-5:00 p.m., Sat.), and is available to any homeowner who needs free foreclosure assistance. For additional information, visit the campaign website at: www.fightncforeclosure.org.

Certification, what does it mean and how do I comply?

The SAFE Testing and Education Work Group recommended a process allowing mortgage loan originators (MLOs) who have completed state required education the opportunity to receive credit in satisfaction of the SAFE Act Prelicensing (PE) education requirement. This process is referred to as "**certification**". Education completed and approved by the NCCOB will be certified for the period **July 1, 2002 through December 31, 2009**. MLOs are required to have 20 hours of PE on record in order to be certified per the SAFE Act.

Please note: The 20 hours may be a cumulative total of prelicensing (formerly fundamentals) education and continuing education taken with an approved North Carolina education provider, during the period mentioned above.

MLOs are strongly encouraged to complete their education by October 31, to avoid any delay in recording of education hours. NCCOB will only certify education hours approved by this office on record through December 31, 2009. Continuing education hours **will** count towards hours needed for certification. MLOs in need of education should see the list of available [Continuing Education Courses](#) and register directly with the education provider.

If a licensee fails to complete the education hours needed for certification by the deadline of December 31, 2009, the MLO will need to complete the 24 hour prelicensing course approved through NMLS for certification by July 31, 2010.

An education chart was designed to further explain the process and is found at: <http://www.nccob.org/NR/rdonlyres/8D26CEAF-53C4-4104-A688-05A17E9C8651/0/CertificationChart92309.pdf>

MLOs will need their license number and the last 4 digits of their social to view their [Education History](#).

Mortgage Licensing Updates

By Teresa Browning,
Assistant Director



Financial responsibility

As you are aware, licenses issued by the North Carolina Office of the Commissioner of Banks (NCCOB) expire annually on December 31. Current licensees who wish to renew their licenses for another year may file a renewal application on or after November 1st. However, licensees should be aware that as part of this renewal process, licensees must attest that they continue to meet the minimum standards for licensure under the NC SAFE Mortgage Licensing Act. Such minimum standards include possessing “financial responsibility” as that term has been defined under the NC SAFE Act and in rules promulgated by the NCCOB.

Pursuant to NC Administrative Rule G.S. § 53-244.060(4) and 04 NCAC 03 M .0205, “Financial Responsibility” is clearly defined. Among the factors used to determine a licensee’s financial responsibility is a mortgage loan originator’s credit score. Other criteria include whether the licensee has a documented history of making timely payments on his or her bills, whether the licensee has any outstanding judgments or liens, and whether real property owned by the licensee has gone through foreclosure in the past 3 years. Should you have questions or concerns regarding your personal financial history, credit score, or the NCCOB’s interpretation of the term “financial responsibility,” please do not hesitate to contact me directly.

Also, please remember that licensees are required to disclose judgments, liens, and bankruptcies at the time of their initial application. Furthermore, pursuant to G.S. § 53-244.105(b) and 04 NCAC 03M .0402, licensees are required to keep the NCCOB informed of any events which may result in any information filed with our office becoming inaccurate. As an example, if a licensee initially discloses on his or her initial application that he or she has no outstanding judgments and/or

liens, and thereafter, a tax lien is imposed, the licensee is under a duty to disclose the imposition of that lien to the NCCOB. As a result, this licensee would need to visit the NMLS&R and amend his or her MU4 disclosure questions. The licensee should then send me an email with the detail of the change, if applicable also include copies of court documents.

Should you have questions please send me an email at: Tbrowning@nccob.gov

Unique Identifier

Over the past few weeks our office has received questions regarding the NMLS Unique Identifier required for licensure and or registration in the NMLS. Pursuant to the NC SAFE Act G.S. § 53-244.107, effective July 31, 2009, all mortgage loan originators’ unique identifier (NMLS ID #) shall be clearly shown on but not limited to the following:

- Mortgage loan application forms, the Identifier should follow the MLO’s printed name
- Solicitations and advertisements
- MLOs business cards
- Email correspondence sent from the MLO
- Web sites and any other documents as established by rule or order of the Commissioner.

Should you have specific questions regarding this new **statute** please submit all questions to: mortgage@nccob.org

The Mortgage License Renewal Period for all licensed companies and mortgage loan originators begins November 1, and will end December 31, 2009. All license renewals will be done through the [Nationwide Mortgage Licensing System](#) .



Mortgage FAQs

Q. When does the renewal period begin and what are the steps for renewing my license?

A. Licensees are required to renew their licenses during the renewal period which begins November 1 and ends December 31, 2009. All license renewals will be done through the [Nationwide Mortgage Licensing System](#).

MLOs are required to complete 8 hours of CE as a condition of license renewal except for the first year of licensing. View listing of approved NCCOB [Continuing Education Courses](#) if additional education is needed to renew. All education must be completed by December 31, 2009.

There is no grace period for CE this year.

Q. Do I have to take and pass the national test in order to renew?

A. No, however the national test and state test (if needed) must be completed by July 31, 2010, in order to renew for 2011.

Q. I took the state test in 2003 with PSI Examination Services, will it count toward certification?

A. No, the test will not count toward your test certification. The North Carolina State test component is only required of licensees who have never taken the test or took the test prior to January 1, 2004.

Please note: Grandfathered MLOs are required to take both test components national and state. by the deadline of July 31, 2010.

Q. Are there study materials available for currently licensed MLOs in preparation for the exams?

A. The NCCOB doesn't provide any study materials, however you should review the [National Outline](#) and [NC State Outline](#) in preparation for the exams.

Q. I am a mortgage loan originator working for a bank which is exempt, what is the process to become compliant as mandated by the SAFE Act?

A. You do nothing at this time. Contact the [Nationwide Mortgage Licensing System](#) or your federal agency representative for additional information regarding registration of insured depository institutions.

Q. I just completed my CE for this year and the education hours are not showing in NMLS. What should I do?

A. The education credit hours for NCCOB approved courses completed will only be shown in the [NCCOB's database](#). NMLS approved courses completed will only be shown in the [NMLS' database](#). View your education history [here](#).

Q. I have a new home address. Who do I need to notify and how do I make these changes?

A. You should make all changes online through the [Nationwide Mortgage Licensing System](#).

Q. My email address has changed, is this relevant to my personal record in NMLS?

A. Yes, a change to your email address is a critical part of the notification system. All notices, and updates are relayed to licensees through the electronic delivery system (via email). If your email address is not current on record, you will not receive notification from NMLS or your state regulator.

Please keep all email addresses current in NMLS.

Q. May I collect advance fees for debt settlement or foreclosure assistance?

A. No, this practice is strictly prohibited by NC law.

The best practice if contacted by a borrower seeking this type of assistance is to encourage him/her to contact a local non-profit housing or credit counseling agency (a list is on our state foreclosure prevention website www.ncforeclosurehelp.org) or by calling 1-888-995-HOPE to speak with a counselor who is authorized to provide this service.

Consumer Industries

By Branton Grimes,
Financial Program Manager



Consumer Finance / Non-Filing Insurance

Under the Consumer Finance Act a licensee may 1) collect from the borrower the amount of any fees necessary to file or record its security interest with any public official or agency with the county or state, or 2) in lieu of recording or filing, collect a fee to purchase non-filing insurance on the instrument securing the loan, or 3) collect a fee to be retained by the licensee that elects to self-insure against the loss of a security interest by reason of not filing or recording its security instrument. The maximum non-filing premiums allowed to collect are determined by the Commissioner of Insurance.

Non-filing insurance is intended to compensate the licensee for damages sustained by being prevented from obtaining possession of the property represented by the instrument and/or retaining the proceeds thereof; and/or enforcing the licensee's rights under the instrument; solely as a result of the failure to record or file the security instrument. An example of a valid non-filing insurance claim would arise in a situation where the debtor had pledged the same collateral to a second creditor, the debtor defaulted on the underlying debt to the first and second creditor, and the second creditor repossessed the collateral before the first creditor could do so; had the first creditor duly filed a UCC-1 beforehand, they could recover the collateral from the second creditor, but since they didn't, a non-filing insurance claim is justified.

Submitting claim applications based on anything outside of the above provision is a violation of G.S. § 58-2-161 and in no way should non-filing insurance be used as default insurance. It is important for all licensees to review their policies and procedures for compliance with the non-filing insurance agreement and state law. Our office will be submitting further guidance on this issue in the future.

Check-Cashing Examinations / Risk Assessment

We have taken many questions about what a risk assessment involves. One confusing point

is that the Bank Secrecy Act (BSA) never uses the term "risk assessment". However, the BSA does require that the anti-money laundering program "...shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business" per 31 CFR 103.125(b). FinCEN, the IRS, and state regulators therefore developed the term "risk assessment" to describe the process and means of detailing and documenting the money services business's specific risks, and the steps taken to mitigate those risks.

In December of 2008 the Bank Secrecy Act / Anti-Money Laundering Examination Manual for Money Services Businesses was released and the following is an excerpt describing the MSB's duty to conduct a risk assessment:

"Each MSB's BSA/AML compliance program must be commensurate with the risks posed by the location and size of the particular MSB, and the nature and volume of the financial services it offers. Each MSB should identify and assess the money laundering risks that may be associated with its unique combination of products, services, customers, and geographic locations, etc. Regardless of where risks arise, MSBs must take reasonable steps to manage them. Each MSB should focus resources on the areas of its business that management believes pose the greatest risks. Although MSB's are not required by regulation to create a written risk assessment, management is encouraged to document its risk assessment in writing in order to provide a clear basis for the MSB's policies and procedures. If the MSB does not have a written risk assessment, the examiner will generally need to conduct more in depth interviews in order to determine the MSB's risk profile."

The BSA/AML Examination Manual for MSB's is an excellent resource and it can be found at http://www.fincen.gov/news_room/rp/files/MSB_Exam_Manual.pdf (Refer to page 19). General MSB compliance resources and materials from FinCEN can be found at http://www.fincen.gov/financial_institutions/msb/. The risk assessment is a very important part of developing an AML program. Providing a quality written detailed assessment gives the examiner confidence in your ability to prevent money laundering.

Check Cashing License Renewals

By Rodney Oldham,
Financial Program Manager



**REFUND ANTICIPATION LOAN (RAL)
FACILITATOR ONLINE REGISTRATION
RENEWALS** for 2010 began October 15, 2009, and will end December 31, 2009. Renewals not received by the deadline will not be processed. The web address for RAL online registration renewals is found [here](#).

**MONEY TRANSMITTER ONLINE LICENSE
RENEWALS** for 2010 begins November 1, 2009, and will end December 31, 2009. Renewals not received by the deadline will not be processed. Our web address for money transmitter online license renewals is found [here](#).

Important Dates to Remember

- October 15 - December 31, 2009 Refund Anticipation Loan Online Registration Renewal
- November 1, 2009 begins Money Transmitter Online License Renewal
- November 1 - December 31, 2009 Mortgage Renewal Period
- December 9, 2009 Qualifying Individual Orientation Training Session
- December 31, 2009 — deadline for CE (mortgage loan originators)

Non - Depository Enforcement Actions July 1, - October 26, 2009

*Access supporting documentation at the highlighted link or view all [Enforcements Actions](#).

10/26/2009	McCully, Michael W.	Consent Order	*09:143A MBB
10/26/2009	Meyers, William M.	Consent Order	09:142A MBB
10/26/2009	Numerica Franchising, LLC	Consent Order	09:140A MBB
10/26/2009	Numerica Mortgage, LLC	Consent Order	09:139A MBB
10/26/2009	Thomas, Jr., Leo	Consent Order	09:141A MBB
10/22/2009	MUMA, JAY ALAN	Notice of Hearing	09:144 MBB
10/19/2009	American Advantage Mortgage Company, LLC	Order of Suspension	09:130 MBB
10/19/2009	Bynum, Craig	Order of Suspension	09:131 MBB
10/19/2009	Kaye, Steven	Order of Suspension	09:133 MBB
10/19/2009	Koehler, Kenneth T.	Order of Suspension	09:134 MBB
10/19/2009	Raulerson, David M	Notice of Hearing	09:129 MBB
10/19/2009	Zuccarelli, Kelly	Order of Suspension	09:132 MBB
10/16/2009	McCully, Michael W.	Cease and Desist Order	09:143 MBB
10/16/2009	Myers, William M.	Cease and Desist Order	09:142 MBB
10/16/2009	Numerica Franchising, LLC	Cease and Desist Order	09:140 MBB
10/16/2009	Numerica Mortgage, LLC	Cease and Desist Order	09:139 MBB

Non - Depository Enforcement Actions July 1, - October 26, 2009 (Continued)

10/16/2009	Thomas, Jr., Leo	Cease and Desist Order	09:141 MBB
10/15/2009	FAMAYEGUN, OLUINI KOLADE	Order and Decision	09:138 MBB
10/15/2009	Malarchick, Robert Eugene	Order and Decision	09:135 MBB
10/02/2009	Abundant Perspectives, LLC	Consent Order	09:137 MBB
10/02/2009	MORTGAGE APPROVAL CENTER, LLC	Consent Order	09:136 MBB
09/24/2009	Fargis, Jr, James Michael	Order and Decision	09:124 MBB
09/10/2009	Hutchison, Scott V	Order and Decision	09:121 MBB
09/09/2009	Brisson, Lee Curtis	Consent Order and Settlement Agreement	09:081 MBB
09/09/2009	Final Denial September 2009	Order Confirming Denial of Licensure	09:2009 MBB
08/26/2009	Howell, Robert A	Notice of Hearing	09:120 MBB
08/26/2009	Logie, Brian Anthony	Notice of Hearing	09:119 MBB
08/24/2009	Pontz, Rosalie Clara	Order and Decision	09:070 MBB
08/20/2009	KOWITZ, JOSEPH MARVIN	Order and Decision	09:118 MBB
08/07/2009	Allen, Paul R.	Cease and Desist Order	09:116 MBB
08/07/2009	Bowman, Raymond E.	Cease and Desist Order	09:115 MBB
08/07/2009	Farkas, Lee B.	Cease and Desist Order	09:117 MBB
08/07/2009	POSTON, JR, MICHAEL RAY	Order Allowing Withdrawal of Appeal	09:069 MBB
08/07/2009	Taylor, Bean & Whitaker Mortgage Corp.	Cease and Desist Order	09:114 MBB
08/03/2009	GALLIGAN, JAMES ALEXANDER	Order and Decision	09:079 MBB
07/24/2009	Hairston, Michelle	Order and Decision	09:048 MBB
07/24/2009	Napier, Ronald	Notice of Hearing	09:086 MBB
07/22/2009	Early, Curtis Ashley	Notice of Hearing	09:092 MBB
07/22/2009	Frindt, James R	Order and Decision	09:050 MBB
07/15/2009	MIDDLETON, LASHAWN DENISE	Voluntary Surrender and Order	09_091 MBB
07/15/2009	NFS Loans, Inc.	Notice of Hearing	09:087 MBB
07/15/2009	Perkins, Anthony	Notice of Hearing	09:088 MBB
07/07/2009	Deaver, Justin Thomas	Order and Decision	09:078 MBB
07/07/2009	FIRST FINANCIAL SERVICES, INC.	Consent Order	09:059 MBB
07/07/2009	Leischner, Tina Fink	Consent Order	09:060 MBB
07/07/2009	Osborne, Maria Cristina	Consent Order	09:061 MBB
07/01/2009	Kingsley, Jennifer Alice	Order and Decision	09:084 MBB

Licensing Statistics as of September 30, 2009

Mortgage Company License - Approved

Mortgage Brokers	379
Mortgage Lenders	484
Mortgage Servicers	37

Mortgage Individual License - Approved

Loan Officers	8,887
Exclusive Mortgage Brokers	417
Limited Loan Officers	934

Consumer Industries License—Approved

Check-Cashers	362
Consumer Finance Licensees	82
Refund Anticipation Loan Facilitator Registrants	872
Money Transmitters	69

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>