

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H

D

HOUSE BILL 126
PROPOSED SENATE COMMITTEE SUBSTITUTE H126-PCS10413-TS-15

Short Title: Mortgage Origination Support Registration. (Public)

Sponsors:

Referred to:

March 3, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO AUTHORIZE THE OFFICE OF THE COMMISSIONER OF BANKS TO
3 IMPLEMENT A REGISTRATION SYSTEM FOR PERSONS ENGAGED
4 EXCLUSIVELY IN THE PROCESSING OR UNDERWRITING OF RESIDENTIAL
5 MORTGAGE LOANS AND NOT ENGAGED IN THE MORTGAGE BUSINESS.

6 The General Assembly of North Carolina enacts:

7 SECTION 1. Article 19B of Chapter 53 of the General Statutes reads as rewritten:

8 "Article 19B.

9 "The Secure and Fair Enforcement Mortgage Licensing Act.

10 ...

11 "§ 53-244.030. Definitions.

12 For purposes of the Article, the following definitions apply:

13 ...
14 (20) "Mortgage lender" means a person engaged in the mortgage business as
15 defined in sub-subdivision b. of subdivision (11) of this section. However,
16 the definition does not include a person who acts as a mortgage lender only
17 in a tablefunding transaction.

18 (20a) "Mortgage origination support registrant" or "registrant" means a person
19 engaged exclusively in the processing or underwriting of residential
20 mortgage loans and not engaged in the mortgage business.

21 ...

22 "§ 53-244.040. License and registration requirements.

23 ...
24 (c) Each mortgage loan originator and person engaged in the mortgage business must
25 register with and maintain a valid unique identifier issued by the Nationwide Mortgage
26 Licensing System and Registry.

27 (c1) A registrant operating in this State must register with the Commissioner. Upon
28 issuance of the registration, a registrant is authorized to sponsor and employ licensed mortgage
29 loan originators or transitional mortgage loan originators to control and supervise the
30 registrant's loan processors or underwriters in accordance with Title V of the Housing and
31 Economic Recovery Act of 2008, P.L. 110-289, and 24 C.F.R. 3400. Nothing in this subsection
32 shall be construed as authorizing a registrant to engage in the mortgage business.

33 ...

34 (e) Each mortgage broker, mortgage lender, or mortgage servicer licensed under this
35 Article Article, or registrant registered under this Article, shall have a qualifying individual who
36 operates the business under that person's full charge, control, and supervision. Each mortgage



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1 broker, mortgage lender, or mortgage servicer licensed under this ~~Article~~Article, or registrant
2 registered under this Article, shall file through the Nationwide Mortgage Licensing System and
3 Registry a form acceptable to the Commissioner indicating the licensee's designation of a
4 qualifying individual and each qualifying individual's acceptance of the responsibility. Each
5 mortgage broker, mortgage lender, or mortgage servicer licensed under this ~~Article~~Article, or
6 registrant registered under this Article, shall notify the Commissioner within 15 days of any
7 change in its designated qualifying individual. Any individual licensee who operates as a sole
8 proprietorship shall qualify as and be considered the qualifying individual for the purposes of
9 this subsection.

10 ...

11 **"§ 53-244.050. License and registration application; claim of exemption.**

12 (a) Applicants for a license or registration shall apply through the Nationwide Mortgage
13 Licensing System and Registry on a form acceptable to the Commissioner, including the
14 following information:

15 ...

16 (b) The eligibility requirements for an application for licensure or registration under this
17 Article are as follows:

18 ...

19 (2) Each applicant for licensure as a mortgage ~~broker or broker~~, mortgage
20 ~~lender~~lender, or mortgage ~~servicer~~servicer, or registration as a registrant, at
21 the time of application shall comply with the following requirements:

22 a. If the applicant is a sole proprietor, the applicant shall have at least
23 three years of experience in residential mortgage lending or other
24 experience or meet competency requirements as the Commissioner
25 may impose.

26 b. If the applicant is a corporation, limited liability company, general or
27 limited partnership, association, or other group engaged in a joint
28 enterprise, however organized, at least one of its principal officers,
29 managers, or general partners shall have three years of experience in
30 residential mortgage lending or other experience or meet competency
31 requirements as the Commissioner may impose.

32 c. If the applicant will be a qualifying individual or branch manager, the
33 applicant shall have at least three years of experience in residential
34 mortgage lending or other experience or meet competency
35 requirements as the Commissioner may impose.

36 ...

37 (c) In connection with an application for licensing as a mortgage loan originator,
38 transitional mortgage loan originator, mortgage lender, mortgage broker, or mortgage servicer,
39 or registration as a registrant, the applicant and its owners, qualifying individual, and
40 controlling persons shall furnish to the Nationwide Mortgage Licensing System and Registry
41 information concerning the applicant's identity, including:

42 (1) Fingerprints for submission to the Federal Bureau of Investigation and any
43 governmental agency or entity authorized to receive such information for a
44 state, national, and international criminal history background check.

45 (2) Personal history and experience in a form prescribed by the Nationwide
46 Mortgage Licensing System and Registry and the Commissioner to obtain:

47 a. Independent credit reports obtained from a consumer reporting
48 agency described in section 603(p) of the Fair Credit Reporting Act;
49 and

50 b. Information related to any administrative, civil, or criminal findings
51 by any governmental jurisdiction.

- 1 (3) The personal history may be obtained by the Commissioner at any time and
2 the fingerprint information shall be furnished upon the Commissioner's
3 request.
4 (4) An authorization for the Commissioner to obtain personal history or
5 fingerprint information at any time.

6 ...
7 (f) For purposes of this section, the Commissioner may request and the North Carolina
8 Department of Public Safety may provide a criminal record check to the Commissioner for any
9 person who (i) has applied for or holds a mortgage lender, mortgage broker, mortgage servicer,
10 mortgage loan originator, or transitional mortgage loan originator license as provided by this
11 ~~section~~ section or (ii) has applied for or holds a registration as a registrant under this section.
12 The Commissioner shall provide the Department of Public Safety, along with the request, the
13 fingerprints of the person, any additional information required by the Department of Public
14 Safety, and a form signed by the person consenting to the check of the criminal record and to
15 the use of the fingerprints and other identifying information required by the State or national
16 repositories. The person's fingerprints shall be forwarded to the State Bureau of Investigation
17 for a search of the State's criminal history record file, and the State Bureau of Investigation
18 shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national
19 criminal history check. The Department of Public Safety may charge a fee for each person for
20 conducting the checks of criminal history records authorized by this section.

21 ...
22 **"§ 53-244.060. Issuance of ~~license~~ license or registration.**

23 If an applicant satisfies the requirements of G.S. 53-244.050, the Commissioner shall issue
24 a mortgage lender, mortgage broker, mortgage servicer, mortgage loan originator, or
25 transitional mortgage loan originator ~~license~~ license, or a mortgage origination support
26 registrant registration, unless the Commissioner finds any of the following:

- 27 (1) The applicant has had a mortgage loan originator or mortgage lender,
28 mortgage broker, or mortgage servicer ~~license~~ license, or mortgage
29 origination support registrant registration or its equivalent, revoked in any
30 governmental jurisdiction, except that a subsequent formal vacation of the
31 revocation shall not be deemed a revocation.
32 ...
33 (4) The applicant has demonstrated a lack of financial responsibility, character,
34 or general fitness such as to fail to command the confidence of the
35 community and to warrant a determination that the mortgage loan originator,
36 transitional mortgage loan originator, or other licensee or registrant will
37 operate honestly, fairly, and efficiently within the purposes of this Article.
38 For purposes of this subdivision, a person shows a lack of financial
39 responsibility when the person has shown a disregard in the management of
40 the person's own financial affairs. Evidence that a person has not shown
41 financial responsibility may include:
42 a. Current outstanding judgments, except judgments resulting solely
43 from medical expenses;
44 b. Current outstanding tax liens or other government liens and filings;
45 c. Foreclosures within the past three years; or
46 d. A pattern of serious delinquent accounts within the past three years.

47 ...
48 **"§ 53-244.090. ~~License application~~ Application fees.**

49 (a) Every applicant for initial licensure shall pay a nonrefundable filing fee of one
50 thousand two hundred fifty dollars (\$1,250) for licensure as a mortgage broker, mortgage
51 lender, or mortgage servicer, three hundred dollars (\$300.00) for licensure as an exclusive

1 mortgage broker, or one hundred twenty-five dollars (\$125.00) for licensure as a mortgage loan
2 originator or transitional mortgage loan originator.

3 Every applicant for initial registration as a mortgage origination support registrant shall pay
4 a nonrefundable filing fee of (i) two hundred fifty dollars (\$250.00) for applicants who employ
5 or contract with fewer than a total of five individuals engaged solely as loan processors or
6 underwriters, (ii) one thousand dollars (\$1,000) for applicants who employ or contract with
7 between a total of five and 30 individuals engaged solely as loan processors or underwriters, or
8 (iii) two thousand dollars (\$2,000) for applicants who employ or contract with more than a total
9 of 30 individuals engaged solely as loan processors or underwriters.

10 In addition, ~~an~~every applicant for initial licensure or registration must pay the actual cost of
11 obtaining a credit report, State and national criminal history record checks, and the processing
12 fees required by the Nationwide Mortgage Licensing System and Registry.

13 ...

14 "**§ 53-244.100. Active license or registration requirements and assignability.**

15 (a) It is unlawful for any person to engage in the mortgage business without first
16 obtaining a license as a mortgage loan originator, transitional mortgage loan originator,
17 mortgage lender, mortgage broker, or mortgage servicer issued by the Commissioner under this
18 Article. It is unlawful for any person to employ, to compensate, or to appoint as its agent a
19 mortgage loan originator unless the person is a licensed mortgage loan originator or a
20 transitional mortgage loan originator under this Article. Persons defined in G.S. 53-244.030(8)
21 or G.S. 53-244.030(29) are not subject to this subsection.

22 (b) The license of a mortgage loan originator or transitional mortgage loan originator is
23 not effective during any period when that person is not employed by (i) a mortgage lender,
24 mortgage broker, or mortgage servicer licensed under this ~~Article~~Article or (ii) a mortgage
25 origination support registrant registered under this Article, but only for the purpose of
26 supervising and controlling loan processors or underwriters. When a mortgage loan originator
27 or transitional mortgage loan originator ceases to be employed by a mortgage lender, mortgage
28 broker, or mortgage servicer licensed under this ~~Article~~Article, or a mortgage origination
29 support registrant registered under this Article, the mortgage loan originator or transitional
30 mortgage loan originator and the mortgage lender, mortgage broker, or mortgage servicer
31 licensed under this ~~Article~~Article, or the mortgage origination support registrant registered
32 under this Article, by whom that person ~~is~~was employed shall promptly notify the
33 Commissioner in writing. The mortgage lender, mortgage broker, ~~or mortgage servicer~~servicer,
34 or mortgage origination support registrant shall include a statement of the specific reason for
35 the termination of the mortgage loan originator's or transitional mortgage loan originator's
36 employment. A mortgage loan originator or transitional mortgage loan originator shall not be
37 employed simultaneously by more than one mortgage lender, mortgage broker, ~~or mortgage~~
38 ~~servicer~~servicer, or mortgage support registrant licensed or registered under this Article.

39 (c) Each mortgage lender, mortgage broker, ~~and mortgage servicer~~servicer, and
40 mortgage origination support registrant licensed or registered under this Article shall maintain
41 on file with the Commissioner a list of all mortgage loan originators and transitional mortgage
42 loan originators who are employed with the mortgage lender, mortgage broker, ~~or mortgage~~
43 ~~servicer~~servicer, or mortgage origination support registrant.

44 (d) No person, other than an exempt person, shall hold himself or herself out as a
45 mortgage lender, a mortgage broker, a mortgage servicer, a mortgage loan originator, ~~or a~~
46 ~~transitional mortgage loan originator~~originator, or mortgage origination support registrant
47 unless the person is licensed or registered in accordance with this Article.

48 (e) Licenses and registrations issued under this Article are not assignable. Control of a
49 licensee or registrant shall not be acquired through a stock purchase, merger, or other device
50 without the prior written consent of the Commissioner. The Commissioner shall not give

1 written consent if the Commissioner finds that any of the grounds for denial, revocation, or
2 suspension of a license or registration are applicable to the acquiring person.

3 ...
4 **"§ 53-244.101. License and registration renewal.**

5 (a) All licenses and registrations issued by the Commissioner under the provisions of
6 this Article shall expire annually on the 31st day of December following issuance or on any
7 other date that the Commissioner may determine. The license is invalid after that date and shall
8 remain invalid unless renewed under subsection (b) of this section.

9 (b) A license or registration may be renewed on or after November 1 of each year by
10 complying with the requirements of subsection (c) of this section.

11 A mortgage loan originator shall pay a nonrefundable renewal fee of one hundred
12 twenty-five dollars (\$125.00) plus the actual cost of obtaining credit reports and State and
13 national criminal history record checks and processing fees for the Nationwide Mortgage
14 Licensing System and Registry as the Commissioner shall require.

15 A mortgage origination support registrant shall pay a nonrefundable renewal fee of (i) one
16 hundred twenty-five dollars (\$125.00) for registrants who employ or contract with fewer than a
17 total of five individuals engaged solely as loan processors or underwriters, (ii) five hundred
18 dollars (\$500.00) for registrants who employ or contract with between a total of five and 30
19 individuals engaged solely as loan processors or underwriters, or (iii) one thousand dollars
20 (\$1,000) for registrants who employ or contract with more than a total of 30 individuals
21 engaged solely as loan processors or underwriters. In addition to the nonrefundable renewal
22 fee, a mortgage support registrant shall pay the actual cost of obtaining credit reports and State
23 and national criminal history record checks and processing fees for the Nationwide Mortgage
24 Licensing System and Registry as the Commissioner shall require.

25 (c) Licensees may apply to renew a mortgage loan originator, mortgage lender,
26 mortgage broker, and mortgage servicer ~~license-license~~, and registrants may apply to renew a
27 mortgage origination support registrant registration. The application for renewal shall
28 demonstrate ~~that~~ that all of the following applicable requirements are met:

- 29 (1) The licensee or registrant continues to meet the initial minimum standards
30 for licensure or registration under ~~G.S. 53-244.060~~; G.S. 53-244.060.
31 (2) The mortgage loan originator has satisfied the annual continuing education
32 requirements described in ~~G.S. 53-244.102~~; and G.S. 53-244.102.
33 (3) The licensee or registrant has paid all required fees and assessments.

34 (d) If a mortgage lender, mortgage broker, or mortgage servicer's license is not renewed
35 prior to the expiration date, then the licensee shall pay two hundred fifty dollars (\$250.00) as a
36 nonrefundable late fee. If a mortgage loan originator's license is not renewed prior to the
37 expiration date, then the licensee shall pay a nonrefundable late fee of one hundred dollars
38 (\$100.00) in addition to the renewal fee set forth in subsection (b) of this section. In the event a
39 licensee fails to obtain a reinstatement of the license prior to March 1, the Commissioner shall
40 require the licensee to comply with the requirements for the initial issuance of a license under
41 the provisions of this Article.

42 (d1) If a mortgage origination support registrant registration is not renewed prior to the
43 expiration date, in addition to the renewal fees set forth in subsection (b) of this section, the
44 registrant shall pay a nonrefundable late fee of (i) sixty-two dollars and fifty cents (\$62.50) for
45 registrants who employ or contract with fewer than a total of five individuals engaged solely as
46 loan processors or underwriters, (ii) two hundred fifty dollars (\$250.00) for persons who
47 employ or contract with between a total of five and 30 individuals engaged solely as loan
48 processors or underwriters, or (iii) five hundred dollars (\$500.00) for persons who employ or
49 contract with more than a total of 30 individuals engaged solely as loan processors or
50 underwriters.

1 In the event a registrant fails to obtain a reinstatement of the registration prior to March 1,
2 the Commissioner shall require the registrant to comply with the requirements for the initial
3 issuance of a registration under the provisions of this Article.

4 (e) When required by the Commissioner, each person shall furnish to the Commissioner
5 the person's consent to a criminal history record check and a set of the person's fingerprints in a
6 form acceptable to the Commissioner or to the Nationwide Mortgage Licensing System and
7 Registry. Refusal to consent to a criminal history record check shall constitute grounds for the
8 Commissioner to deny renewal of the license of the person as well as the license of any other
9 person by whom the person is employed, over which the person has control, or as to which the
10 person is the current or proposed qualifying individual or current or proposed branch manager.

11 ...

12 **"§ 53-244.103. Surety bond requirements.**

13 (a) ~~Each~~Except as provided in subsection (a1) of this section, each mortgage loan
14 originator or transitional mortgage loan originator shall be covered by a surety bond through
15 employment with a licensee in accordance with this section. The surety bond shall provide
16 coverage for each mortgage loan originator or transitional mortgage loan originator employed
17 by the licensee in an amount as prescribed by subsection (b) of this section and shall be in a
18 form prescribed by the Commissioner. The Commissioner may adopt rules with respect to the
19 requirements for the surety bonds as needed to accomplish the purposes of the Article.

20 (a1) The requirements of subsection (a) of this section shall not apply to a mortgage loan
21 originator or transitional mortgage loan originator employed only by a registrant for the sole
22 purpose of supervising and controlling loan processors or underwriters.

23 ...

24 **"§ 53-244.105. Records, addresses, escrow funds, or trust accounts.**

25 (a) Every licensee or registrant shall make and keep the accounts, correspondence,
26 memoranda, papers, books, and other records as prescribed in rules adopted by the
27 Commissioner. All records shall be preserved for three years unless the Commissioner, by rule,
28 prescribes otherwise for particular types of records.

29 (b) No person shall make any false statement or knowingly and willfully make any
30 omission of a material fact in connection with any information or reports filed with the
31 Commissioner, a governmental agency, or the Nationwide Mortgage Licensing System and
32 Registry or in connection with any oral or written communication with the Commissioner or
33 another governmental agency. If the information contained in any document filed with the
34 Commissioner or the Nationwide Mortgage Licensing System and Registry is or becomes
35 inaccurate or incomplete in any material respect, the ~~licensee~~licensee, registrant, or exempt
36 entity shall within 30 days file a correcting amendment to the information contained in the
37 document.

38 (c) ~~Each mortgage broker licensee shall maintain and transact business from a principal~~
39 ~~place of business in this State.~~ The Commissioner may, by rule, impose terms and conditions
40 under which the records and files of a mortgage ~~lender or~~lender, mortgage broker, mortgage
41 servicerservicer, or mortgage origination support registrant may be maintained outside of this
42 State. ~~A~~Except for a mortgage origination support registrant, a principal place of business shall
43 not be located at an individual's home or residence. A mortgage lender, mortgage broker, or
44 mortgage servicer ~~licensee~~licensee, or a mortgage origination support registrant, shall maintain
45 a record of the principal place of business with the Commissioner and report any change of
46 address of the principal place of business or any branch office within 15 days after the change.

47 (d) A licensee shall maintain in a segregated escrow fund or trust account any funds
48 which come into the licensee's possession but which are not the licensee's property and which
49 the licensee is not entitled to retain under the circumstances. The escrow fund or trust account
50 shall be held on deposit in a federally insured financial institution. Individual loan applicants' or
51 borrowers' accounts may be aggregated into a common trust fund so long as (i) interests in the

1 common fund can be individually tracked and accounted for and (ii) the common fund is kept
2 separate from and is not commingled with the licensee's own funds.

3 ...
4 **"§ 53-244.108. Reports.**

5 Each mortgage lender, mortgage ~~broker, or broker,~~ mortgage servicer ~~licensee~~licensee, or
6 mortgage origination support registrant shall submit to the Commissioner and to the
7 Nationwide Mortgage Licensing System and Registry reports of condition and any other reports
8 requested by the Commissioner pursuant to G.S. 53-244.115(d). The reports shall be in the
9 form and shall contain any information that the Commissioner or Nationwide Mortgage
10 Licensing System and Registry may require.

11 ...
12 **"§ 53-244.113. Regulatory authority.**

13 (a) Unless otherwise provided, all actions, hearings, and procedures under this Article
14 shall be governed by Article 3A of Chapter 150B of the General Statutes.

15 (b) For purposes of this Article, the Commissioner shall be deemed to have complied
16 with the requirements of law concerning service of process upon mailing by certified mail any
17 notice required or permitted to a licensee or registrant under this Article, postage prepaid and
18 addressed to the last known address of the licensee or registrant on file with the Commissioner
19 pursuant to G.S. 53-244.105(c).

20 (c) Upon the issuance of any summary order permitted under this Article, including
21 summary suspensions and cease and desist orders, the Commissioner shall promptly notify the
22 person subject to the order that the order has been entered and the reasons for the order. Within
23 20 days of receiving notice of the order, the person subject to the order may request in writing a
24 hearing before the Commissioner. Upon receipt of such a request, the Commissioner shall
25 calendar a hearing within 15 days. If a licensee or registrant does not request a hearing, the
26 order will remain in effect unless it is modified or vacated by the Commissioner.

27 **"§ 53-244.114. Licensure and registration authority.**

28 (a) The Commissioner may, by order, deny, suspend, revoke, or refuse to issue or
29 renew a license or registration of a ~~licensee~~licensee, registrant, or applicant under this Article,
30 or may restrict or limit the manner in which a licensee, registrant, applicant, ~~or~~ any person who
31 owns an interest in or participates in the business of a licensee and engages in the mortgage
32 ~~business;~~business, or any person who owns an interest in or participates in the business of a
33 registrant and engages in the business of a registrant, if the Commissioner finds both of the
34 following:

- 35 (1) That the order is in the public interest; and
36 (2) That any of the following circumstances apply to the applicant, licensee,
37 registrant, or any partner, member, manager, officer, director, loan
38 originator, qualifying individual, or any person occupying a similar status or
39 performing similar functions or any person directly or indirectly controlling
40 the ~~applicant or licensee;~~applicant, licensee, or registrant. The person:
41 a. Has filed an application for ~~licensure;~~licensure or registration, report,
42 or other document to the Commissioner that, as of its effective date
43 or as of any date after filing, contained any statement that, in light of
44 the circumstances under which it was made, is false or misleading
45 with respect to any material ~~fact;~~fact.
46 b. Has violated or failed to comply with any provision of this Article,
47 rule adopted by the Commissioner, or order of the
48 ~~Commissioner;~~Commissioner.
49 c. Is permanently or temporarily enjoined by any court of competent
50 jurisdiction from engaging in or continuing any conduct or practice
51 involving any aspect of the mortgage ~~business;~~business.

- 1 d. Is the subject of an order of the Commissioner denying or suspending
 2 that person's (i) license as a mortgage loan originator, transitional
 3 mortgage loan originator, mortgage broker, mortgage lender, or
 4 mortgage ~~servicer~~;servicer or (ii) registration as a registrant or its
 5 equivalent.
- 6 e. Is the subject of an order entered within the past five years by the
 7 authority of any state or federal agency with jurisdiction over the
 8 mortgage brokerage, mortgage lending, or mortgage servicing
 9 industry;industry.
- 10 f. Fails at any time to meet the requirements of G.S. 53-244.060,
 11 53-244.070, 53-244.080, 53-244.090, 53-244.100, 53-244.103, or
 12 ~~53-244.104~~;53-244.104.
- 13 g. Controls or has controlled any mortgage broker, mortgage lender, ~~or~~
 14 mortgage ~~servicer~~servicer, or registrant or its equivalent who has
 15 been subject to an order or injunction described in sub-subdivision c.,
 16 d., or e. of this ~~subdivision~~;subdivision.
- 17 h. Has been the qualifying individual, branch manager, mortgage loan
 18 originator, or transitional mortgage loan originator of a licensee or
 19 registrant who had knowledge of or reasonably should have had
 20 knowledge of, or participated in, any activity that resulted in the
 21 entry of an order under this Article suspending or withdrawing the
 22 license of a ~~licensee~~;licensee or registration of a registrant.
- 23 i. Has failed to respond to inquiries from the Commissioner or the
 24 Commissioner's designee regarding any complaints filed against the
 25 licensee or registrant which allege or appear to involve violation of
 26 this Article or any law or rule affecting the mortgage lending
 27 ~~business~~; or business.
- 28 j. Has failed to respond to and cooperate fully with notices from the
 29 Commissioner or the Commissioner's designee relating to the
 30 scheduling and conducting of an examination or investigation under
 31 this Article.

32 (b) In the event the Commissioner has reason to believe that a licensee, registrant,
 33 individual, or person subject to this Article may have violated or failed to comply with any
 34 provision of this Article, the Commissioner ~~may~~; may take either of the following actions:

- 35 (1) Summarily order the licensee, registrant, individual, or person to cease and
 36 desist from any harmful activities or violations of this ~~Article~~; or Article.
- 37 (2) Summarily suspend the (i) license of the licensee under this Article.Article
 38 or (ii) the registration of a registrant under this Article.

39 These summary powers are in addition to the summary suspension procedures authorized
 40 by G.S. 150B-3(c).

41 "**§ 53-244.115. Investigation and examination authority.**

42 (a) For purposes of initial ~~licensing~~; licensing or registration, renewal,
 43 suspension, conditioning, revocation, or termination, or general or specific inquiry,
 44 investigation, or examination to determine compliance with this Article, the Commissioner may
 45 access, receive, and use any books, accounts, records, files, documents, information, or
 46 evidence, ~~including~~; including all of the following:

- 47 (1) Criminal, civil, and administrative history information, including
 48 nonconviction ~~data~~; data.
- 49 (2) Personal history and experience information, including independent credit
 50 reports obtained from a consumer reporting agency described in section
 51 603(p) of the Fair Credit Reporting ~~Act~~; and Act.

1 (3) Any other documents, information, or evidence the Commissioner deems
2 relevant to the inquiry, investigation, or examination regardless of the
3 location, possession, control, or custody of the documents, information, or
4 evidence.

5 (b) For purposes of investigating violations or complaints arising under this Article, or
6 for the purposes of examination, the Commissioner may review, investigate, or examine any
7 licensee, registrant, individual, or person subject to this Article as often as necessary in order to
8 carry out the purposes of this Article. The Commissioner may interview the officer, principals,
9 person with control, qualified individual, mortgage loan originators, transitional mortgage loan
10 originators, employees, independent contractors, agents, and customers of the licensee,
11 registrant, individual, or person concerning their business. The Commissioner may direct,
12 subpoena, or order the attendance of and examine under oath all persons whose testimony may
13 be required about the loans or the business or subject matter of any examination or
14 investigation and may direct, subpoena, or order the person to produce books, accounts,
15 records, files, and any other documents the Commissioner deems relevant to the inquiry. The
16 assessment set forth in G.S. 53-244.100A is for the purpose of meeting the cost of regulation
17 under this Article. Any investigation or examination that, in the opinion of the Commissioner
18 of Banks, requires extraordinary review, investigation, or special examination shall be subject
19 to the actual costs of additional expenses and the hourly rate for the staff's time, to be
20 determined annually by the Banking Commission.

21 (c) Each licensee, registrant, individual, or person subject to this Article shall make
22 available to the Commissioner upon request the books and records relating to the operations of
23 the licensee, registrant, individual, or person. No licensee, registrant, individual, or person
24 subject to investigation or examination under this section may knowingly withhold, abstract,
25 remove, mutilate, destroy, or secrete any books, records, computer records, or other
26 information. Each licensee, registrant, individual, or person subject to this Article shall also
27 make available for interview by the Commissioner the officers, principals, persons with
28 control, qualified individuals, mortgage loan originators, transitional mortgage loan originators,
29 employees, independent contractors, agents, and customers of the licensee, registrant,
30 individual, or person concerning their business.

31 (d) Each licensee, registrant, individual, or person subject to this Article shall make or
32 compile such reports or prepare other information as may be directed or requested by the
33 Commissioner in order to carry out the purposes of this section, ~~including~~including any of the
34 following:

- 35 (1) Accounting ~~compilations~~compilations.
36 (2) Information lists and data concerning loan transactions in a format
37 prescribed by the ~~Commissioner~~Commissioner.
38 (3) Periodic reports, ~~including~~including any of the following:
39 a. Annual Report ~~Questionnaire~~Questionnaire.
40 b. Servicer Activity ~~Report~~Report.
41 c. Servicer Schedule of the Ranges of Costs and ~~Fees~~Fees.
42 d. Lender/Servicer Audited Statements of Financial
43 ~~Condition~~Condition.
44 e. Broker Certified Statements of Financial ~~Condition~~and Condition.
45 f. Quarterly Loan Origination Reports.
46 (4) Any other information deemed necessary to carry out the purposes of this
47 section.

48 (e) In making any examination or investigation authorized by this Article, the
49 Commissioner may control access to any documents and records of the ~~licensee~~licensee,
50 registrant, or person under examination or investigation. The Commissioner may take
51 possession of the documents and records or place a person in exclusive charge of the

1 documents and records in the place where they are usually kept. During the period of control,
2 no individual or person shall remove or attempt to remove any of the documents and records
3 except pursuant to a court order or with the consent of the Commissioner. Unless the
4 Commissioner has reasonable grounds to believe the documents or records of the licensee or
5 registrant have been or are at risk of being altered or destroyed for purposes of concealing a
6 violation of this Article, the ~~licensee~~licensee, registrant, or owner of the documents and records
7 shall have access to the documents or records as necessary to conduct its ordinary business.

8 (f) In order to carry out the purposes of this section, the Commissioner ~~may~~may do
9 any of the following:

- 10 (1) Retain attorneys, accountants, or other professionals and specialists as
11 examiners, auditors, or investigators to conduct or assist in the conduct of
12 examinations or ~~investigations;~~investigations.
- 13 (2) Enter into agreements or relationships with other government officials or
14 regulatory associations in order to improve efficiencies and reduce
15 regulatory burden by sharing resources, standardized or uniform methods or
16 procedures, documents, records, information, or evidence obtained under
17 this ~~section;~~section.
- 18 (3) Use, hire, contract, or employ public or privately available analytical
19 systems, methods, or software to examine or investigate the licensee,
20 individual, or person subject to this ~~Article;~~Article.
- 21 (4) Accept and rely on examination or investigation reports made by other
22 government officials, within or without this ~~State;~~or State.
- 23 (5) Accept audit reports made by an independent certified public accountant for
24 the licensee, registrant, individual, or person in the course of that part of the
25 examination covering the same general subject matter as the audit and may
26 incorporate the audit report in the report of the examination, report of
27 investigation, or other writing of the Commissioner.

28 (g) In addition to the authority granted by G.S. 53-244.113 and G.S. 53-244.115, the
29 Commissioner is authorized to take action, including summary suspension of the ~~license;~~license
30 or registration, if the licensee or registrant fails, within 20 days or a lesser time if specifically
31 requested for good cause, ~~to~~to do any of the following:

- 32 (1) Respond to inquiries from the Commissioner or the Commissioner's
33 designee regarding any complaints filed against the licensee or registrant that
34 allege or appear to involve violation of this Article or any law or rule
35 affecting the mortgage lending ~~business;~~business.
- 36 (2) Respond to and cooperate fully with notices from the Commissioner or the
37 Commissioner's designee relating to the scheduling and conducting of an
38 examination or investigation under this ~~Article;~~or Article.
- 39 (3) Consent to a criminal history record check. The refusal shall constitute
40 grounds for the Commissioner to deny licensure to the applicant as well as to
41 any ~~entity;~~entity that meets any of the following criteria:
 - 42 a. By whom or by which the applicant is ~~employed;~~employed.
 - 43 b. Over which the applicant has ~~control;~~or control.
 - 44 c. As to which the applicant is the current or proposed qualifying
45 individual or a current or proposed branch manager.

46 (h) The authority of this section shall remain in effect, whether a licensee, registrant,
47 individual, or person subject to this Article acts or claims to act under any licensing or
48 registration law of the State, or claims to act without such authority.

49 **"§ 53-244.116. Disciplinary authority.**

50 (a) The Commissioner may, by order:

- 51 (1) Take any action authorized under G.S. 53-244.113.

- 1 (2) Impose a civil penalty upon a licensee, registrant, individual, or person
2 subject to this Article, or upon any partner, officer, director, or other person
3 occupying a similar status or performing similar functions on behalf of a
4 ~~licensee~~licensee, registrant, or other person subject to this Article for any
5 violation of or failure to comply with this Article. The civil penalty shall not
6 exceed twenty-five thousand dollars (\$25,000) for each violation of or
7 failure to comply with this Article. Each violation of or failure to comply
8 with this Article shall be a separate and distinct violation.
- 9 (3) Impose a civil penalty upon a licensee, registrant, individual, or person
10 subject to this Article, or upon any partner, officer, director, or other person
11 occupying a similar status or performing similar functions on behalf of a
12 ~~licensee~~licensee, registrant, or other person subject to this Article for any
13 violation of or failure to comply with any directive or order of the
14 Commissioner. The civil penalty shall not exceed twenty-five thousand
15 dollars (\$25,000) for each violation of or failure to comply with any
16 directive or order of the Commissioner. Each violation of or failure to
17 comply with any directive or order of the Commissioner shall be a separate
18 and distinct violation.
- 19 (4) Require a licensee, registrant, individual, or person subject to this Article to
20 disgorge and pay to a borrower or other individual any amounts received by
21 the licensee, registrant, individual, or person subject to the Article, including
22 any employee of the person, to the extent that the amounts were collected in
23 violation of Chapter 24 of the General Statutes or in excess of those allowed
24 by law.
- 25 (5) Prohibit licensees or registrants under this Article from engaging in acts and
26 practices in connection with residential mortgage loans that the
27 Commissioner finds to be unfair, deceptive, designed to evade the laws of
28 this State, or that are not in the best interest of the borrowing public.

29 (b) When a licensee or registrant is accused of any act, omission, or misconduct that
30 would subject the licensee or registrant to disciplinary action, the ~~licensee~~licensee or registrant,
31 with the consent and approval of the Commissioner, may surrender the license or registration
32 and all the rights and privileges pertaining to it. A person who surrenders a license shall not be
33 eligible for or submit any application for licensure under this Article during any period
34 specified by the ~~Commissioner~~Commissioner, and a person who surrenders a registration shall
35 not be eligible for or submit any application for registration under this Article during any
36 period specified by the Commissioner.

37 (c) The requirements of this Article apply to any person who seeks to avoid its
38 application by any device, subterfuge, or pretense whatsoever, including structuring a loan in a
39 manner to avoid classification of the loan as a residential mortgage loan.

40 ...

41 **"§ 53-244.118. Rule-making authority; records.**

42 (a) The Commissioner may adopt any rules that the Commissioner deems necessary to
43 carry out the provisions of this Article, to provide for the protection of the borrowing public, to
44 prohibit unfair or deceptive practices, to instruct mortgage lenders, mortgage brokers, mortgage
45 servicers, mortgage loan originators, ~~or~~ transitional mortgage loan ~~originators~~originators, or
46 registrants in interpreting this Article, and to implement and interpret the provisions of
47 G.S. 24-1.1E, 24-1.1F, and 24-10.2 as they apply to licensees and registrants under this Article.

48 (b) The Commissioner shall keep a list of all applicants for licensure or registration
49 under this Article or claimants of exempt status under G.S. 53-244.050(g) that includes the date
50 of application, name, place of residence, and whether the ~~license~~license, registration, or claim
51 of exempt status was granted or denied.

1 (c) The Commissioner shall keep a current roster showing the names and places of
 2 business of all licensees and registrants that shows their respective mortgage loan originators
 3 and transitional mortgage loan originators and a roster of exempt persons required to file a
 4 notice under G.S. 53-244.050(g). The roster ~~shall~~ shall meet all of the following requirements:

5 (1) Be kept on file in the office of the ~~Commissioner~~ Commissioner.

6 (2) Contain information regarding all orders or other actions taken against the
 7 ~~licensees~~ licensees, registrants, and other ~~persons~~ persons.

8 (3) Be open to public inspection.

9 **"§ 53-244.119. Commissioner's participation in nationwide registry.**

10 (a) The Commissioner shall require mortgage loan originators and transitional
 11 mortgage loan originators to be licensed and registered through the Nationwide Mortgage
 12 Licensing System and Registry. In order to carry out this requirement, the Commissioner is
 13 authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this
 14 purpose, the Commissioner may establish by rule any requirements as necessary, including:

15 (1) Background checks for:

16 a. Criminal history through fingerprint or other databases;

17 b. Civil or administrative records;

18 c. Credit history; or

19 d. Any other information as deemed necessary by the Nationwide
 20 Mortgage Licensing System and Registry.

21 (2) The payment of fees to apply for, renew, or amend licenses through the
 22 Nationwide Mortgage Licensing System and Registry;

23 (3) The setting or resetting as necessary of renewal or reporting dates; and

24 (4) Requirements for amending or surrendering a license or any other activities
 25 as the Commissioner deems necessary for participation in the Nationwide
 26 Mortgage Licensing System and Registry.

27 (b) The Commissioner is authorized to establish relationships or contracts with the
 28 Nationwide Mortgage Licensing System and Registry or other entities designated by the
 29 Nationwide Mortgage Licensing System and Registry to collect and maintain records and
 30 process transaction fees or other fees related to ~~licensees~~ licensees, registrants, or other persons
 31 subject to this Article.

32 ...

33 **"§ 53-244.120. Confidentiality of information.**

34 ...

35 (e) The confidentiality provisions contained in subsection (c) of this section shall not
 36 apply with respect to the information or material relating to the employment history of and
 37 publicly adjudicated disciplinary and enforcement actions against mortgage lenders, mortgage
 38 brokers, mortgage servicers, mortgage loan originators, ~~or~~ transitional mortgage loan
 39 ~~originators~~ originators, or registrants that are included in the Nationwide Mortgage Licensing
 40 System and Registry for access by the public.

41"

42 **SECTION 2.** If any provision of this act or its application to any person or
 43 circumstance is held invalid, the remainder of the act or the application of the provision to other
 44 persons or circumstances is not affected. Any provision of this act deemed by Housing and
 45 Urban Development (HUD) to conflict with its interpretation of Title V of the Secure and Fair
 46 Enforcement for Mortgage Licensing Act (S.A.F.E. Act) shall be interpreted, applied, or
 47 amended in such a way as to comply with the S.A.F.E. Act as interpreted by HUD.

48 **SECTION 3.** The Commissioner of Banks may adopt temporary rules to
 49 administer this act.

1 **SECTION 4.** Section 3 of this act is effective when this act becomes law. The
2 remainder of this act becomes effective October 1, 2015, and applies to all applications for
3 registration as a mortgage origination support registrant filed on or after that date.