

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03E .0101 is readopted with changes as published in 32-19 NCR 1826 as follows:

2

3 **04 NCAC 03E .0101 APPLICATION**

4 (a) ~~No person shall make loans under the provisions of the North Carolina Consumer Finance Act without first~~
5 ~~obtaining a license from the Commissioner of Banks.~~ The application for a consumer finance license shall ~~contain a~~
6 ~~request for a license to operate a business under the North Carolina Consumer Finance Act, incorporate all statutory~~
7 ~~requirements and criteria, and include payment of the statutory fee.~~ include information necessary to determine
8 whether an applicant is qualified to hold a consumer finance license pursuant to G.S. ~~[53-168(a)]~~ 53-168(a) and 53-
9 169. A copy of the application may be obtained from the agency's website located at <https://www.nccob.org>.

10 ~~The form shall be obtained from and filed with:~~

11

12 Office of the Commissioner of Banks

13 316 West Edenton Street

14 4309 Mail Service Center

15 Raleigh, North Carolina 27699-4309.

16 (b) Upon receipt of an application for a consumer finance license, the Commissioner of Banks shall give written
17 notice of the application to all ~~licensees operating within the community proposed to be served as described in the~~
18 ~~application.~~ licensees by electronic mail. ~~Where a licensee holds two or more licenses the notification is to be~~
19 ~~mailed [provided] to the home office of such [the] licensee.~~ The notification may be by copy of acknowledgment to
20 the applicant.

21 (c) Following an investigation of the application pursuant to G.S. 53-168, the Commissioner of Banks shall ~~decide~~
22 ~~as to:~~ either approve or deny the application.

23 (1) ~~approval of the application; [or]~~

24 (2) ~~denial of the application.~~

25

26 *History Note:* Authority ~~G.S. 53-92; 53-95; 53-104; [53C-2-1; 53C-2;]~~ 53-168; ~~53-169; 53-170; [53-171;]~~

27 53-185; ~~150B-21.2;~~

28 *Eff. February 1, 1976;*

29 *Amended Eff. September 1, 2006; January 1, 1993; August 1, 1978. 1978;*

30 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03E .0204 is readopted as published in 32-19 NCR 1826 as follows:
2

3 **04 NCAC 03E .0204 TRANSFER OF LICENSE AND CHANGE OF LOCATION**

4 (a) ~~Transfer or assignment.~~ Before a licensee may transfer or assign its license to another entity, the licensee shall
5 ~~apply to the Commissioner of Banks for authority to do so.~~ Request Requests to transfer or assign a license shall be
6 by letter which shall set forth contain the name, address address, and telephone number of the proposed transferee or
7 assignee, the reasons for the transfer or ~~assignment~~ assignment, and the date ~~upon which~~ that the licensee proposes
8 to make the transfer or assignment. ~~The request letter shall also be accompanied by a fee of one hundred dollars~~
9 ~~(\$100.00) payable to the Commissioner of Banks for each license proposed for transfer or assignment together with~~
10 ~~written acknowledgement of the proposed transaction by the transferee or assignee.~~ In reviewing an application for
11 transfer or assignment, the Commissioner of Banks shall consider whether a proposed transfer or assignment meets
12 the requirements of G.S. 53-168(a). Transfer or assignments of a license to anyone other than existing licensees ~~will~~
13 ~~shall~~ not be approved. If the request is approved, the licensee shall surrender to the Commissioner of Banks its
14 consumer finance license for reissuance to the transferee or assignee.

15 (b) ~~Change of Location.~~ Prior to any change in the business location of a licensee, the licensee shall apply to the
16 Commissioner of ~~Banks for authority to do so.~~ Banks. In reviewing an application for a change of location, the
17 Commissioner of Banks shall consider whether a proposed change of location meets the requirements of G.S. 53-
18 168(a). ~~The request shall be by letter setting forth the address of the new location and shall be accompanied by a fee~~
19 ~~of twenty five dollars (\$25.00) payable to the Commissioner of Banks.~~ If the request is approved, the licensee shall
20 submit to the Commissioner of Banks its license for amendment.

21

22 *History Note: Authority G.S. 53-122(3); 53-168(e); 53-170(a); ~~150B-21.2;~~*

23 *Eff. January 1, ~~1993.~~ 1993;*

24 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03E .0302 is readopted as published in 32-19 NCR 1826 as follows:
2

3 **04 NCAC 03E .0302 ANNUAL REPORT**

4 Each licensee under the North Carolina Consumer Finance Act, on a form provided by the Office of the
5 Commissioner of Banks, shall file an annual report with the Commissioner of Banks on or before March 31 each
6 year. The annual report form shall contain various schedules ~~which that~~ reflect the financial condition of the
7 licensee licensee, as well as the results of its operations. The form ~~along with necessary and~~ instructions ~~relative to~~
8 ~~its execution~~ shall be obtained ~~from~~ and filed ~~with~~: online through the agency's internal website for licensees
9 licensees, <https://www.nccob.org/online.aspx>.

10 Office of the Commissioner of Banks
11 316 West Edenton Street
12 4309 Mail Service Center
13 Raleigh, North Carolina 27699-4309.

14
15 *History Note: Authority G.S. ~~53-92; 53-184(b); 53-185; 150B-21.1;~~*
16 *Eff. February 1, 1976;*
17 *Amended Eff. September 1, 2006; January 1, 1993; September 26, ~~1979~~. 1979;*
18 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03E .0601 is readopted with changes as published in 32-19 NCR 1827 as follows:

2
3 **04 NCAC 03E .0601** **BOOKS AND RECORDS** **BOOKS, RECORDS, AND APPLICATION OF FEES**

4 Each consumer finance office licensed by the Commissioner of Banks shall keep the following books and
5 accounting records. Except as may be permitted by G.S. 53-184(a), these records shall be maintained in each office
6 and be readily available to the Commissioner of Banks or his or her authorized agent. ~~No books or records of the~~
7 ~~licensee shall show any account or reflect any transaction other than those~~ Licensees shall maintain separate loan
8 ~~ledgers and accounts~~ directly related to the making and collecting of loans within the provisions of the Consumer
9 Finance Act. ~~Act, including~~ Where where a licensee is also an installment paper dealer, ~~completely separate books~~
10 ~~and records shall be maintained, including for general ledger purposes a separate cash account.~~ dealer. Allocation of
11 expenses shall be made monthly according to appropriate and reasonable generally accepted accounting principles.
12 All ~~books and records~~ books, records, and fees covered by these Rules this Rule ~~must~~ shall be retained for a period
13 of not less than three years after the last transaction:

- 14 (1) Cash Transaction Journal. ~~The cash transaction journal shall be the book of original entry in~~
15 ~~which all~~ All transactions of receipts and disbursements of any nature or amount whatsoever shall
16 be ~~itemized.~~ recorded in a cash transaction journal, which shall be the book of original entry. Each
17 transaction made in connection with a loan shall be identified with the loan by the name or
18 account number of the borrower and shall clearly define the nature of each charge, collection, or
19 refund made in connection with such the loan. All entries shall ~~be made as of~~ [reflect] state the
20 exact date the transactions occur.
- 21 (2) General Ledger. The general ledger shall be double entry, showing in ~~full~~ detail the total of assets,
22 liabilities, capital, income, and expenses. Each account shall be clearly and appropriately
23 [separately and distinctly] individually designated. No net or "wash" entries shall be made to any
24 account. The general ledger shall be posted at least once each month and such the posting shall
25 include all transactions through the last business day of the month. The actual posting ~~must~~ shall
26 be completed by the ~~20th~~ 30th day of each ensuing month for the previous month's business. ~~In~~
27 ~~instances where an organization operates two or more offices, the general ledger may be~~
28 ~~maintained in a central accounting office of the organization, provided a trial balance shall be~~
29 ~~made as of the last business day of each month and a copy placed on file in each office not later~~
30 ~~than the last business day of the following month.~~ Each debit or credit entry appearing on the
31 ~~general ledger each month shall appear on the trial balance.~~ A detailed licensee shall maintain a
32 description of each general ledger entry originating outside of a local office and not reflected on
33 the cash book of that office shall be on file in each office to support such entries appearing on the
34 general ledger. ~~This shall include~~ entry, including adjusting and closing entries. If any account on
35 the general ledger does not agree with the corresponding account on the annual report to the
36 Commissioner of Banks, a supplement to the annual report shall be furnished ~~which~~ that
37 reconciles or explains any differences.

- 1 (3) Individual Account Record. A separate account record shall be maintained for each loan made.
2 Each account record shall provide the following information:
- 3 (a) the name and address of ~~borrower spouse's name,~~ borrower(s) and the name of any other
4 person obligated directly or indirectly on the loan;
 - 5 (b) the cross reference to other loans of the borrower, ~~or spouse, or~~ endorser, guarantor, ~~or~~
6 surety, or to any joint obligation of the borrower;
 - 7 (c) the account number;
 - 8 (d) the date of loan and maturity;
 - 9 (e) the length of contract;
 - 10 (f) the cash advance, finance charge, number of ~~payments~~ payments, and amount of each;
 - 11 (g) the date and amount of each payment, an allocation between ~~principal, and interest,~~
12 principal, interest, and any fees authorized by statute for each payment, and the remaining
13 loan balance after each payment;
 - 14 (h) a brief description of security;
 - 15 (i) the type of insurance, insurance origination fees, and amount of insurance premium for
16 each coverage written;
 - 17 (j) the amount of recording fee or non-filing charges;
 - 18 (k) the amount of any other charge ~~whatsoever~~ made in connection with the loan;
 - 19 (l) the amount of unearned insurance premium refunded for each coverage written;
 - 20 (m) if refunds are paid by cash or check, [an] acknowledgment of a receipt of refund by
21 signature of borrower; refund; and
 - 22 (n) the contract interest rate and the annual percentage rate computed under Regulation Z, 12
23 C.F.R. Part 226 (Regulation Z), if the rates are different. Regulation Z is incorporated by
24 reference and includes subsequent amendments, if different. amendments. A copy of the
25 regulation may be obtained from the website free of charge at U. S. Government
26 Publications Office website at [https://www.gpo.gov/fdsys/granule/CFR-2012-title12-](https://www.gpo.gov/fdsys/granule/CFR-2012-title12-vol3/CFR-2012-title12-vol3-part226)
27 vol3/CFR-2012-title12-vol3-part226.
- 28 (4) Index of Borrowers. Each office shall keep ~~an~~ a single report showing a cumulative index record
29 on which of all loans to each individual, which shall be entered in order, showing order by date
30 made, showing the account number, amount of loan, and date of cancellation. ~~This record shall be~~
31 ~~maintained on individual index cards or on the face of the borrower's individual file, "shuck,"~~
32 ~~"jacket," or folder and shall be filed alphabetically or by account number, provided where the~~
33 ~~account number is used an alphabetical cross index be available to the examiner.~~
- 34 (5) Loan Documents. ~~After January 1, 1994, loans~~ Loans made by a licensee shall on the loan
35 contract contain the following statement printed in a conspicuous manner: "This loan is regulated
36 by the provisions of the North Carolina Consumer Finance Act, located at Chapter 53, Articles 15

of the North Carolina General Statutes.” For the purpose of this Rule, “conspicuous” means the term as defined in G.S. 25-1-201(b).

(6) Judgments. When a loan has been reduced to final judgment, all of the following provisions shall be complied with:

- (a) the individual account record maintained pursuant to Subpart Item (3) of this Rule shall clearly be designated a judgment account;
- (b) payments received shall be identified and applied on the judgment account record;
- (c) the licensee shall maintain ~~in the office from which the judgment account originated~~ a copy of the final judgment and any other court documents ~~which that~~ are necessary to disclose the following information:
 - (i) the final judgment date;
 - (ii) the name of the licensee;
 - (iii) the final judgment debtor's name;
 - (iv) the date the suit was filed;
 - (v) the nature of the suit;
 - (vi) the name and location of the court;
 - (vii) the amount of the final judgment, specifying principal, interest charges, any fees authorized by statute, and court costs; and
 - (viii) the disposition of the case;
- (d) a licensee ~~which that~~ charges a borrower for court costs it incurred on a final judgment account shall itemize such these costs on the individual account record and retain a receipt or other document substantiating showing the costs; and
- (e) a licensee shall retain a copy of the sheriff's return of execution issued when property is sold pursuant to a final judgment.

(7) Repossessions. When property is taken in accordance with the terms of a security agreement or agreement, by judicial process process, or abandonment, the individual account record shall be clearly designated as a repossession account and shall state when and how possession of the security was obtained and shall identify the proceeds of the sale of the property. The licensee shall also retain ~~in the office in which the repossession account originated~~, all of the following:

- (a) a copy of any agreement entered into with the borrower with respect to the terms of surrender;
- (b) a copy of the notice of sale, together with evidence proof of mailing or personal delivery;
- (c) an inventory of the property taken, unless it otherwise appears in detail on the notice of sale;
- (d) a signed bill of sale or a statement from the purchasers, or from the auctioneer if the sale was public, describing the collateral purchased and showing the amounts paid;

- 1 (e) evidence that the sale took place on the date set forth in the notice of sale, including a
2 notice of any bids received;
- 3 (f) a copy of a detailed final accounting sent to the borrower borrower, setting forth the
4 disposition of the proceeds of sale and the principal balance due, if any, on the account;
5 and
- 6 (g) paid receipts evidencing showing the costs incurred in the repossession and sale of the
7 security which that have been charged to the borrower.
- 8 (8) Insurance Records. ~~A licensee shall maintain in each office where a loan account originated, a~~
9 ~~record of any claims paid under insurance written in connection with a consumer finance loan.~~
10 The records shall include: Late Fees.
- 11 (a) ~~the loan number and name of debtor;~~ Lenders may apply a borrower's most recent
12 payment to the oldest installment due;
- 13 (b) ~~description of the insurance claim, i.e., whether death claim, property damage, or claim~~
14 ~~for benefits under accident and health insurance; and A lender may not collect more than~~
15 ~~one late fee from any full or partial payment made toward a particular scheduled~~
16 ~~installment [payment; however,] payment. However, a lender may collect more than one~~
17 ~~late fee from any payment made toward more than one installment payment, provided the~~
18 ~~number of late fees collected does not exceed the number of different installment~~
19 ~~payments that were past due for 10 days or more and to which such payment was applied.~~
20 (c) ~~in the case of claims under credit life insurance, a copy of the certified death certificate. If~~
21 ~~a lender declares a borrower in default and accelerates a loan, the lender may collect a~~
22 ~~late fee for each installment payment that was, as of the date of acceleration, [is] past due~~
23 ~~for 10 days or more. A lender may not collect a late fee for any installment that becomes~~
24 ~~due solely because the lender has declared a borrower in default and accelerated a loan.~~
- 25 (d) ~~If a lender refinances a loan, a lender may include in the amount financed late fees for~~
26 ~~each installment payment that was, as of the date of refinancing, [is] past due for 10 days~~
27 ~~or more.~~
- 28 (e) ~~If a loan reaches maturity, a lender may include in the final balance owed a late fee for~~
29 ~~each installment payment that remains past due for 10 days or more.~~
- 30 (9) Deferral Charges. For any loan made on or after July 1, 2013, licensees may assess a deferral
31 charge [of one and one half percent (1 1/2%)] for each month of the remaining loan term on each
32 installment owed after the date of deferral. Licensees may charge a late fee on deferred payments
33 that remain past due for 10 days or more after the agreed upon due date. Deferrals [do] shall not
34 alter the maturity date of the loan contract, even where a payment is deferred beyond maturity.
- 35 (10) ELT Fees. Licensees who are required by the North Carolina [Department] Division of Motor
36 Vehicles (NCDMV) to use its electronic lien title (ELT) system to file or record the licensee's
37 security interest in a vehicle may collect from borrowers [those] the fees [actually] charged by

1 NCDMV, ELT vendors, and service provider vendors to use the ELT ~~system.~~ system at a rate
2 prescribed by 20-58.4A(b)(3). When a borrower takes out a junior lien on a vehicle pledged as
3 security, licensees who are senior lienholders with an already perfected lien may collect from
4 borrowers the fees charged to the licensee by NCDMV, ELT vendors, and service provider
5 vendors, provided the licensee has disclosed the potential for the fee at origination of the loan.
6 Licensees shall account for ELT fees as they account for other recording fees as described in [04
7 NCAC 03E .0601 (3)(j);] Sub-Item (3)(j) of this Rule.

8 *History Note:* Authority G.S. ~~53-92; 53-104; 20-58.4A; 53-177; 53-184; 53-185; 150B-21.2; 53C-2-1; 53C-2-~~
9 ~~2.]~~

10 *Eff. February 1, 1976;*

11 *Amended Eff. January 1, 1993. 1993;*

12 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03F .0301 is readopted with changes as published in 32-19 NCR 1829 as follows:
2

3 **04 NCAC 03F .0301 APPLICATION FOR A LICENSE INCOMPLETE APPLICATIONS**

4 ~~(a) Any person who wishes to sell or issue checks in this State pursuant to the Money Transmitters Act must first~~
5 ~~obtain a license issued by the Commissioner. An application for a license can be obtained from and shall be filed~~
6 ~~pursuant to Rule .0201(b) of this Subchapter.~~

7 ~~(b) An application for a Money Transmitters' license shall include information required by G.S. 53-208.5 through~~
8 ~~G.S. 53-208.10 of Chapter 53, Article 16A. The application must be submitted on a form provided by the~~
9 ~~Commissioner.~~

10 ~~(c) In addition to the documents and information listed in Paragraph (b) of this Rule, the Commissioner may require~~
11 ~~additional information necessary to complete an investigation pursuant to G.S. 53-208.10.~~

12 ~~(d) Incomplete application files shall be closed and deemed ~~denied~~ withdrawn without prejudice when the applicant~~
13 ~~has not submitted information requested by the Commissioner within 30 days of such ~~the~~ request.~~

14

15 *History Note: Authority G.S. 53-208.3; 53-208.27; G.S. 53-208.45; G.S. 53-208.60;*

16 *Eff. February 1, 1993;*

17 *Amended Eff. November 1, ~~2013~~. 2013;*

18 *Readopted August 1, 2018.*

Permanent Repeal of Consecutive Rules for Publication in the NCAC

1 04 NCAC 03F .0504 - .0509 are repealed through readoption as published in 32:19 NCR 1829 as follows:

2

3 **04 NCAC 03F .0504 AGENT ACTIVITY REPORTS**

4 **04 NCAC 03F .0505 AMENDMENTS TO APPLICATION**

5 **04 NCAC 03F .0506 REVOCATION OR CANCELLATION OF SURETY BOND**

6 **04 NCAC 03F .0507 CEASING OPERATIONS**

7 **04 NCAC 03F .0508 IMPAIRMENT OF MINIMUM NET WORTH**

8 **04 NCAC 03F .0509 DISHONOR OR DEFAULT IN PAYMENT INSTRUMENT**

9

10 *History Note: Authority G.S. 53-208.5; 53-208.8; 53-208.27;*

11 *Eff. February 1, 1993;*

12 *Amended Eff. November 1, 2013; June 1, 1995;*

13 *Repealed Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

04 NCAC 03J .0101 is readopted with changes as published in 32-19 NCR 1830 as follows:

04 NCAC 03J .0101 DEFINITIONS; FILINGS

(a) ~~Terms defined in G.S. 53-246 have the same meaning as in this Subchapter.~~ As used in this Subchapter, unless the context clearly requires otherwise, in addition to the definitions in G.S. 53, Article 20, for the purposes of this Subchapter the following definitions apply:

- (1) "Applicant" shall have the same meaning as set forth in G.S. 53-246(1).
- (2) "Commission" shall have the same meaning as set forth in G.S. 53-246(2).
- (3) "Commissioner" shall have the same meaning as set forth in G.S. 53-246(3).
- (4) (1) "Controlling person" ~~shall mean~~ means any person as defined in G.S. 53-246(7) who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant.
- (5) "Creditor" shall have the same meaning as set forth in G.S. 53-246(4).
- (6) (2) "Creditor loan fee" ~~shall mean~~ means the fee charges, fees, or other consideration charged or imposed by the creditor ~~which funds the refund anticipation loan in consideration for funding the refund anticipation loan.~~ for the making of a refund anticipation loan.
- (7) "Debtor" shall have the same meaning as set forth in G.S. 53-246(5).
- (8) (3) "Electronic filing fee" ~~shall mean~~ means the fee imposed by the facilitator in consideration for the electronic filing of a tax return.
- (9) "Executive officer" shall have the same meaning as such term is defined in Regulation "O" promulgated by the Board of Governors of the Federal Reserve System, and codified in the Code of Federal Regulations at Title 12, Chapter II, Part 215.
- (10) "Facilitator" shall have the same meaning as set forth in G.S. 53-246(6).
- (11) (4) "Facilitator loan fee" ~~shall mean~~ means the fee charges, fees, or other consideration charged or imposed by the facilitator ~~in consideration for assisting the debtor in obtaining the refund anticipation loan.~~ for the making of a refund anticipation loan.
- (12) "Income tax return preparation fee" shall mean the fee imposed by a person in consideration for preparation of the debtor's tax returns.
- (13) "Loan related fee" shall mean any fee other than a creditor fee, facilitator loan fee or electronic filing fee paid by the debtor for transmittal to third persons who provide services in connection with the refund anticipation loan.
- (14) "Person" shall have the same meaning as set forth in G.S. 53-246(7).
- (15) "Refund anticipation loan" shall have the same meaning as set forth in G.S. 53-246(8).
- (16) [(5)] "Refund Anticipation Loan Act" shall mean [means] the Refund Anticipation Loan Act codified at Chapter 53, Article 20 of the North Carolina General Statutes (G.S. 53-245, et seq.).
- (17) "Refund anticipation loan fee" shall have the same meaning as set forth in G.S. 53-246(9) and shall include a creditor fee, facilitator loan fee, and loan related fee as defined herein.
- (18) "Registrant" shall have the same meaning as set forth in G.S. 53-246(10).

1 (19) ~~(6)~~ (5) "Transmitter" shall mean means any person as defined herein who transmits sends electronic
2 returns directly to the Internal Revenue Service. This term shall include persons who receive
3 information to be reformatted and transmitted to the Internal Revenue Service, i.e., third-party
4 transmitters.

5 (b) An application for registration or any report, notice, form or other document which that is required by law or
6 rule to be filed with the Commissioner shall be addressed as follows: obtained from and [submitted electronically at]
7 filed online through <https://www.nccob.gov>.

8 Office of the Commissioner of Banks
9 4309 Mail Service Center
10 Raleigh, North Carolina 27699-4309.

11
12 *History Note:* Authority G.S. 53-245; 53-246; 53-248; 53-253; ~~150B-21.2;~~
13 *Eff. September 1, 1993;*
14 *Amended Eff. September 1, 2006; 2006;*
15 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

04 NCAC 03J .0201 is readopted with changes as published in 32-19 NCR 1831 as follows:

04 NCAC 03J .0201 APPLICATION FOR REGISTRATION AS A FACILITATOR

(a) ~~Any person who would like to engage in business as a facilitator pursuant to the Refund Anticipation Loan Act shall first be registered with the Commissioner, unless such person is exempt from registration pursuant to G.S. 53-247(c) or G.S. 53-254. An application for registration shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.~~

(b) (a) The application for registration as a facilitator shall include the following:

- (1) ~~A a~~ description of the applicant's organizational structure, including the name, business ~~and~~ residence ~~address~~ address, and business telephone number of the applicant, ~~its partners,~~ executive officers, directors and the name of its controlling persons;
- (2) ~~Copies~~ copies of the following documents, where applicable:
 - (A) ~~The the~~ applicant's Articles of Incorporation, Articles of Organization, or ~~general or~~ limited partnership agreement;
 - (B) ~~A a~~ Certificate of Existence or Certificate of Good Standing not more than 90 days old from the applicant's state of incorporation;
 - (C) ~~A a~~ Certificate of Authority to do business in this State; and
 - (D) ~~A a~~ copy of the applicant's Certificate of Assumed ~~Name;~~ Name.
- (3) ~~A a~~ description of the applicant's operations, including the names and addresses of the ~~banks~~ which lenders that will fund refund anticipation loans to its customers, ~~and~~ the names and addresses of ~~transmitters~~ transmitters, and any other intermediary parties involved in the process of facilitating refund anticipation loans;
- (4) ~~A a~~ description of the business(es) in which the applicant is primarily engaged;
- (5) ~~The the~~ applicant's Electronic Filer Identification Number (EFIN) and Preparer Tax Identification Number (PTIN) as provided by the Internal Revenue Service;
- (6) ~~Proof~~ proof that the applicant has been accepted by the Internal Revenue Service to participate in its electronic filing program for the present tax year;
- (7) ~~Disclosure~~ disclosure of any civil judgments entered against the ~~applicant,~~ applicant ~~its partners,~~ executive officers, directors or its controlling persons during the past 10 years ~~which that~~ have remained are partially or wholly unpaid;
- (8) ~~Disclosure~~ disclosure of any civil proceedings pending against or civil judgments entered against the ~~applicant,~~ applicant ~~its partners,~~ executive officers, directors or its controlling persons ~~which~~ that involve fraud or dishonesty;
- (9) ~~Disclosure~~ disclosure of any felony convictions entered against the ~~applicant,~~ applicant ~~its~~ partners, ~~executive officers, directors or its~~ controlling persons;
- (10) ~~Disclosure~~ disclosure of any misdemeanor convictions entered against the applicant ~~its partners,~~ executive officers, directors or its controlling persons ~~which that~~ involve theft, fraud, or dishonesty;

- 1 (11) Disclosure disclosure of any enforcement proceeding brought against the applicant ~~its partners,~~
 2 ~~executive officers, directors~~ or its controlling persons by any agency or department of this State,
 3 the Federal government or any other state ~~which~~ that involves the revocation or suspension of any
 4 business license;
- 5 (12) Disclosure disclosure of whether the applicant, ~~any partner, executive officer, director,~~ or its
 6 controlling ~~person has~~ persons have been denied acceptance in or suspended from the Electronic
 7 Filing Program of the Internal Revenue Service;
- 8 (13) Disclosure disclosure of whether the applicant is, or has ever been, the subject of the following
 9 proceedings: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship, or
 10 similar proceeding; and
- 11 (14) ~~Three business references, including one bank reference;~~
- 12 ~~(15)~~ (14) The the address of each office in this State at which ~~[that]~~ where the applicant intends to facilitate
 13 refund anticipation loans.

14 ~~(e) The application for registration as a facilitator shall be accompanied by a fee made payable to the Commissioner~~
 15 ~~in the amount set forth in G.S. 53-248(a).~~

16 ~~(d) The application shall be in writing and verified.~~

17 ~~(e) (b) Incomplete application files applications shall be closed and the application deemed denied without prejudice~~
 18 ~~withdrawn~~ when the applicant has not submitted information requested by the Commissioner within 30 days of
 19 request. If an application is withdrawn, in order to become registered, the applicant shall submit a new application
 20 and pay all fees associated with the application.

21

22 *History Note: Authority G.S. 53-245(b); 53-247(a); 53-248(a); 53-253; ~~150B-21.2;~~*

23 *Eff. September 1, 1993. 1993;*

24 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0204 is readopted with changes as published in 32-19 NCR 1831 as follows:
2

3 **04 NCAC 03J .0204 APPLICATION FOR RENEWAL OF CERTIFICATE OF REGISTRATION**

4 (a) The application for renewal of the Certificate of Registration shall include the following:

5 (1) ~~Where~~ where applicable, any amendments to the application for registration filed pursuant to Rule
6 .0201 of this Subchapter; and

7 (2) ~~A~~ a written verification of the accuracy of the application for Certificate of Registration filed
8 pursuant to Rule .0201 of this Subchapter and any amendments filed pursuant to ~~Rules .0204(a)(1)~~
9 Subparagraph (a)(1) of this Rule and Rule .0305 of this Subchapter.

10 ~~(b) The application for renewal of the Certificate of Registration shall be accompanied by a fee made payable to the~~
11 ~~Commissioner in the amount set forth in G.S. 53-248(b) for each office at which the registrant intends to facilitate~~
12 ~~refund anticipation loans during the succeeding year.~~

13 ~~(c)~~ (b) Incomplete applications for renewal of the Certificate of Registration shall be closed and the application for
14 renewal ~~deemed denied without prejudice~~ withdrawn when the registrant has not submitted information requested by
15 the Commissioner within 30 days of ~~such~~ the request. If an application is withdrawn, in order to become registered,
16 the applicant shall submit a new application and pay all fees associated with the application.

17

18 *History Note: Authority G.S. 53-248~~(a)~~; (b); 53-253; 150B-21.2;*

19 *Eff. September 1, 1993-1993;*

20 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0205 is readopted with changes as published in 32-19 NCR 1832 as follows:
2

3 **04 NCAC 03J .0205 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION**

4 (a) A Certificate of Registration shall be neither transferable nor assignable.

5 (b) ~~The circumstances under which the Commissioner shall deem a change in the registrant's organizational~~
6 ~~structure to constitute a transfer or assignment of the Certificate of Registration shall include, but not be limited to,~~
7 ~~the following:~~

8 (1) ~~If the registrant is a corporation:~~

9 (A) ~~A change in ownership of 50% or more of the registrant's stock;~~

10 (B) ~~The conversion of the corporation into a general or limited partnership or proprietorship;~~

11 (2) ~~If the registrant is a general or limited partnership:~~

12 (A) ~~A change in one of the registrant's general partners;~~

13 (B) ~~The conversion of the general partnership into a limited partnership, corporation or~~
14 ~~proprietorship;~~

15 (C) ~~The conversion of the limited partnership into a general partnership, corporation or~~
16 ~~proprietorship;~~

17 (3) ~~If the registrant is a proprietor:~~

18 (A) ~~The conversion of the proprietorship into a general or limited partnership or corporation;~~

19 (B) ~~The sale of all of the assets of the registrant's business to another person.~~

20 (e) (b) Upon a change in organization The Certificate of Registration shall become void if the registrant changes
21 organizational [structure that may include a change] structure, such as to or from a sole proprietorship, partnership,
22 limited partnership, general partnership, limited liability company, or [corporation] corporation, as set forth in
23 Paragraph (b) of this Rule, the The new entity may apply for a Certificate of Registration shall become void and the
24 registrant shall surrender its Certificate of Registration to the Commissioner within 30 days of such change. [void.]
25 pursuant to Rule .0201 of this Section. If the entity which that results from the change in the registrant's
26 organization would like to engage in business as a facilitator in this State, it shall apply for a Certificate of
27 Registration pursuant to Rule .0201 of this Section.
28

29 *History Note:* Authority G.S. 53-253; 150B-21.2;

30 *Eff. September 1, 1993; 1993;*

31 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0302 is readopted with changes as published in 32-19 NCR 1832 as follows:

3 **04 NCAC 03J .0302 RECORD AND BOOKKEEPING REQUIREMENTS**

4 (a) A registrant shall maintain the following records with respect to each application for a refund anticipation loan
5 in this ~~State, State:~~ These records shall be kept in an office or offices of the registrant in this State. This Rule shall
6 not be interpreted to require a registrant to maintain one central office at which all records required herein are
7 located:

- 8 (1) Name the name of applicant for a refund anticipation loan; applicant;
- 9 (2) Social the social security number of applicant for a refund anticipation loan; applicant;
- 10 (3) Date the date of application;
- 11 (4) Disposition disposition of application, e.g., whether loan was funded, denied, etc.;
- 12 (5) The the gross amount of the refund anticipation loan;
- 13 (6) The the amount of the creditor fee;
- 14 (7) The the amount of the facilitator loan fee, if any;
- 15 (8) The amount of the loan-related fees, if any;
- 16 ~~(9)~~ (8) The the amount of the electronic filing fee;
- 17 ~~(10)~~ (9) The the amount of refund anticipation loan proceeds disbursed by the registrant to the debtor;
- 18 ~~(11)~~ (10) The the date on which refund anticipation loan proceeds were disbursed by the registrant to the
19 debtor; and
- 20 ~~(12)~~ (11) The the identity of the registrant's executive officer, partner or employee the individual
21 originating the application for the refund anticipation loan; loan.
- 22 (13) The number, identity of drawer and amount of the check delivered to the debtor in payment of the
23 proceeds of the refund anticipation loan;
- 24 (14) A copy of Internal Revenue Service Form No. 8453 or any successor Form.

25 These records shall be kept in an office or offices of the registrant in this State. This Rule shall not be interpreted to
26 require a registrant to maintain one central office [at that] where all records required are located.

27 (b) ~~An original (where the drawer is the registrant) or a copy~~ Evidence of all checks ~~[disbursement]~~ disbursements
28 delivered by the registrant to each debtor in payment of the proceeds of the refund anticipation loan shall be
29 available upon request by the Commissioner.

30 ~~(c) All records required by Paragraph (a) of this Rule may be maintained in any reasonable manner that the~~
31 ~~registrant selects. Where applicable, the information required by Paragraph (a) of this Rule may be maintained by~~
32 ~~the retention of copies of forms used to comply with state or federal statutes, rules and regulations.~~

33 ~~(d) All records required to be kept pursuant to Paragraph (a) of this Rule may be maintained in the form of magnetic~~
34 ~~tape, magnetic disk or other form of computer, electronic or microfilm media. However, records kept in this manner~~
35 ~~shall be convertible into clearly legible, tangible documents within 24 hours of request. This time period shall be~~
36 ~~extended for an additional reasonable time by the Commissioner if the registrant demonstrates to the satisfaction of~~
37 ~~the Commissioner that it cannot provide the records requested within 24 hours of request.~~

1 ~~(e)~~ (c) All records required to be kept pursuant to Paragraph (a) of this Rule shall be kept for a period of ~~at least~~
2 three years.

3

4 *History Note:* Authority G.S. ~~53-249; 53-250; 53-253; 150B-21.2;~~

5 *Eff. September 1, ~~1993.~~ 1993;*

6 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0303 is readopted as published in 32-19 NCR 1833 as follows:
2

3 **04 NCAC 03J .0303 FILING AND POSTING OF FEE SCHEDULE**

4 (a) The fee schedule of refund anticipation loan fees required by G.S. 53-249(a) ~~shall be obtained from the~~
5 ~~Commissioner and~~ shall be filed pursuant to Rule .0101(b) of this Subchapter.

6 (b) The fee schedule referenced in Paragraph (a) of this Rule shall include the following fees:

- 7 (1) ~~The~~ the creditor fee; and
8 (2) ~~The~~ the facilitator loan fee; fee.
9 ~~(3) Any loan-related fee;~~
10 ~~(4) The electronic filing fee.~~

11 (c) Pursuant to G.S. 53-249(c), the registrant shall display the following fees:

- 12 (1) ~~The~~ the creditor fee;
13 (2) ~~The~~ the facilitator loan fee; and
14 ~~(3) All loan-related fees;~~
15 ~~(4) (3) The~~ the electronic filing fee.

16

17 *History Note: Authority G.S. ~~53-249(a), (e); 53-249; 53-253; 150B-21.2;~~*

18 *Eff. September 1, ~~1993; 1993;~~*

19 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0304 is readopted as published in 32-19 NCR 1833 with changes as follows:
2

3 **04 NCAC 03J .0304 DISCLOSURES**

4 (a) For the purposes of G.S. ~~53-249(d)(1)~~, 53-249(d)(1) and (2), the registrant shall disclose and provide a copy to
5 the debtor the following fees:

6 (1) The creditor loan fee;

7 (2) The facilitator loan fee; and

8 ~~(3) All loan-related fees;~~

9 ~~(4) (3) The electronic filing fee; fee.~~

10 ~~(5) The total dollar amount of the fees disclosed pursuant to Subparagraphs (a)(1)-(3) of this Rule.~~

11 (b) For the purposes of G.S. 53-249(d)(5), the term "appropriate taxing authority" shall mean the Internal Revenue
12 Service.

13 ~~(c) All disclosures made pursuant to G.S. 53-249(d) shall be made on a form or forms detached from the~~
14 ~~application. The registrant shall provide an applicant for a refund anticipation loan with a copy of all such~~
15 ~~disclosure forms. In the case of an application for a refund anticipation loan by a married couple who are filing a~~
16 ~~joint tax return, the registrant may satisfy this provision by providing one copy of all such disclosure forms to the~~
17 ~~couple.~~

18

19 *History Note: Authority G.S. 53-249(d); 53-253; 150B-21.2;*

20 *Eff. September 1, ~~1993~~; 1993;*

21 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0305 is readopted as published in 32-19 NCR 1833 with changes as follows:
2

3 **04 NCAC 03J .0305 AMENDMENTS TO APPLICATION**

4 (a) A registrant shall maintain a current application with the Commissioner. If there is a change in the information
5 contained in the application, the registrant shall notify the Commissioner within 30 days of the effective date of ~~such~~
6 ~~the~~ change. Notification ~~to the Commissioner~~ shall be ~~accomplished~~ be made by either ~~by~~ letter or by a revision of
7 the applicable ~~pages~~ section of the application filed pursuant to Rule .0201 of this Subchapter. ~~If the registrant~~
8 ~~elects to comply with this Rule by revising its application, it shall obtain the applicable pages of the application from~~
9 ~~the Commissioner.~~

10 (b) If a registrant decides to open a new office in this State ~~at which~~ where it intends to facilitate refund anticipation
11 loans, it shall notify the Commissioner of the opening of the new office at least 30 days before it begins business as
12 a facilitator in the new office. The notification shall comply with Paragraph (a) of this Rule and shall be
13 accompanied by a fee made payable to the Commissioner in the amount set forth in G.S. 53-248(a) for each new
14 office in this State at which the registrant facilitates refund anticipation loans.

15

16 *History Note:* Authority G.S. 53-253; ~~150B-21.2;~~

17 *Eff. September 1, 1993.* ~~1993;~~

18 *Readopted Eff. August 1, 2018.*

1 04 NCAC 03J .0401 is repealed through readoption as published in 31-19 NCR 1833 as follows:

2

3 **04 NCAC 03J .0401 HEARINGS**

4

5 *History Note: Authority G.S. 53-251; 53-253; 150B-21.2;*

6 *Eff. September 1, 1993;*

7 *Repealed Eff. August 1, 2018.*

8

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03J .0402 is readopted as published in 32-19 NCR 1833 as follows:

2

3 **04 NCAC 03J .0402 EXAMINATIONS, AUDITS**

4 The Commissioner may conduct or cause to be conducted an examination or audit of the books and records of any
5 ~~registrant at any time when considered proper.~~ registrant.

6

7 *History Note:* Authority G.S. 53-253; ~~150B-21.2;~~

8 *Eff. September 1, ~~1993.~~ 1993;*

9 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0101 is readopted with changes as published in 32-19 NCR 1833 as follows:

3 04 NCAC 03K .0101 DEFINITIONS; FILINGS

4 (a) ~~As used in this Subchapter, unless the context clearly requires otherwise;~~ In addition to the definitions in G.S.
5 53-257, for the purpose of this Subchapter, the following definitions apply:

6 ~~(1)~~ (1) ~~Terms defined in G.S. 53-257 shall have the same meaning as set forth therein;~~

7 ~~(2)~~ (1) "Accounting period" ~~shall mean~~ means either a period of 12 months (or less in the first year of
8 operation) ending December 31 or a fiscal year of not more than 12 months ~~(or less in the first~~
9 ~~year of operation)~~ ending on the last day of any month except ~~December;~~ December.

10 ~~(3)~~ (2) "Application fee" ~~shall mean~~ means any fee accepted by an authorized lender or lenders in
11 connection with an application for a reverse mortgage loan including any charge for soliciting,
12 processing, ~~placing~~ placing, or negotiating a reverse mortgage loan. ~~The term does not include a~~
13 ~~third-party fee as such term is defined in Subparagraph (a)(8) of this Rule;~~ loan; loan.

14 ~~(4)~~ (3) ~~["Branch"]~~ "Branch office" has the same meaning as defined in G.S. ~~53-244.030(4);~~ 53-244.030.

15 ~~(4)~~ (4) "Certified Financial Statements" shall mean the Statement of Financial Position, Income
16 Statement, Statement of Cash Flows, and Statement of Retained Earnings ~~which have been~~
17 ~~attested by a certified public accountant;~~ "Engaging in the mortgage business" has the same
18 meaning at G.S. 53-244.030(11); 53-244.030.

19 ~~(5)~~ (5) "Person" shall mean an individual, corporation, partnership, trust, association, or other entity;
20 "Mortgage lender" has the same meaning as G.S. 53-244.030(20); 53-244.030.

21 ~~(6)~~ (6) "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal
22 Reserve System and codified at 12 CFR Part 226, et seq.; "NC SAFE Act authorized lender"
23 means a mortgage lender licensed in this State that has obtained a Notice of ~~Authorization;~~
24 Authorization.

25 ~~(7)~~ (7) "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, et
26 seq.; "Notice of Authorization" means the document granted by the Commissioner that authorizes
27 a mortgage lender to engage in the business of making reverse mortgage ~~loans;~~ loans.

28 ~~(8)~~ (8) "Third-Party fee" shall mean the fees or charges paid by the borrower for a mortgage loan to the
29 lender for transmittal to third persons who provide services in connection with the mortgage loan,
30 including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal
31 fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance
32 premiums, surveys and similar charges; "Person" has the same meaning as G.S. [53-244.030(25);
33 53-244.030.

34 ~~(9)~~ "Truth In Lending Act" shall mean Title I of the Consumer Credit Protection Act, as amended, and
35 codified at 15 USC 1601, et seq.;

36 (b) Any application for authorization to make reverse mortgage loans, ~~or~~ any report, annual statement, amendment
37 to application, notice notice, or other document ~~which~~ that is required by law or rule shall be obtained and filed with
38 the Commissioner of Banks located at 316 West Edenton Street, Raleigh, North Carolina 27603. ~~The mailing~~

1 address is ~~4309 Mail Service Center, Raleigh, North Carolina 27699-4309~~. Banks. Forms Applications and Any
2 application documents shall be obtained and filed with the Commissioner of Banks at <http://www.nccob.gov>.

3

4 *History Note:* Authority G.S. 53-257; 53-259; 53-271(a);

5 *Eff. January 1, 1995;*

6 *Amended Eff. September 1, ~~2006~~, 2006;*

7 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0201 is readopted as published in 32-19 NCR 1834 with changes as follows:
2

3 **04 NCAC 03K .0201 APPLICATION FOR AUTHORIZATION AS A REVERSE MORTGAGE** 4 **LENDER**

5 ~~(a) No person shall make reverse mortgage loans pursuant to the Reverse Mortgage Act without first obtaining~~
6 ~~authorization from the Commissioner. An application for authorization to make reverse mortgage loans shall be~~
7 ~~obtained from the Commissioner and shall be filed pursuant to Rule .0101(b) of this Subchapter.~~

8 ~~(b) The following fees shall be submitted with the application for authorization to make reverse mortgage loans:~~

9 ~~(1) A non-refundable application fee made payable to the Commissioner in the amount set forth in~~
10 ~~G.S. 53-258(b);~~

11 ~~(2) An annual fee made payable to the Commissioner as set forth in G.S. 53-258(d).~~

12 ~~(c) (a) The application shall be in writing writing, and verified by the oath of attested by the applicant. [Applicant,]~~
13 ~~applicant, and filed pursuant to Rule .0101(b) of this Subchapter, and shall include the following:~~

14 ~~(d) The application shall include:~~

15 ~~(1) The applicant's Articles of Incorporation, or General or Limited Partnership Agreement;~~

16 ~~(2) A Certificate of Existence or Certificate of Good Standing, not more than 90 days old, from the~~
17 ~~applicant's state of incorporation;~~

18 ~~(3) A Certificate of Authority to do business in this State;~~

19 ~~(4) A copy of the applicant's Certificate of Assumed Name;~~

20 ~~(5) Disclosure of any criminal proceedings pending against or criminal convictions entered against the~~
21 ~~applicant, its partners, directors, principal officers or controlling persons;~~

22 ~~(6) Disclosure of any civil proceedings pending against or civil judgments entered against the~~
23 ~~applicant, its partners, directors, principal officers or controlling persons which involve fraud or~~
24 ~~dishonesty;~~

25 ~~(7) Disclosure of any civil judgments entered against the applicant, its partners, directors, principal~~
26 ~~officers or controlling persons during the past 10 years which have remained partially or wholly~~
27 ~~unpaid;~~

28 ~~(8) Disclosure of the following proceedings involving the applicant: bankruptcy, assignment for the~~
29 ~~benefit of creditors, receivership, conservatorship or similar proceeding;~~

30 ~~(9) Disclosure of enforcement proceedings by the Federal Housing Administration, Veterans~~
31 ~~Administration, Federal National Mortgage Association, or any other federal or state agency~~
32 ~~against the applicant, its partners, directors, principal officers or controlling persons which involve~~
33 ~~licensure or business activities as a mortgage broker or mortgage banker;~~

34 ~~(10) (1) A [an updated] a business plan that includes a description of the applicant's reverse mortgage~~
35 ~~business operations and organizational structure; operations;~~

36 ~~(11) (2) The the addresses at which where the applicant intends to engage in business as a reverse~~
37 ~~mortgage lender, including branch offices and the name of the each branch manager at each~~
38 ~~branch office; [manager:] manager;~~

1 ~~(12)~~ (3) A a description of the business ~~experience,~~ experience and current business activities ~~and~~
2 education of the applicant, its partners, directors, principal officers and controlling persons; and

3 ~~(13)~~ (4) ~~Three~~ three business references, including one bank reference.

4 ~~(e)~~ (b) In addition to the documents and information described in Paragraph ~~(d)~~ (a) of this Rule, the Commissioner
5 may require additional information as necessary to make the findings required by G.S. ~~53-258 and G.S. 53-271,~~ 53-
6 258.

7 ~~(f)~~ In the event of denial of an application, the Commissioner shall refund in full any annual fee paid pursuant to
8 G.S. ~~53-258(d).~~

9 ~~(g)~~ (c) Incomplete application files may be closed and deemed ~~denied without prejudice~~ withdrawn when the
10 applicant has not submitted information requested by the Commissioner within 30 days of the request.

11

12 History Note: Authority G.S. ~~53-258(a),(b),(d);~~ 53-258; 53-259; ~~53-271(a);~~

13 Eff. January 1, ~~1995.~~ 1995;

14 Readopted Eff. August 1, 2018.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0203 is readopted as published in 32-19 NCR 1835 with changes as follows:
2

3 **04 NCAC 03K .0203 CURRENT AUTHORIZED LENDER INFORMATION**

4 (a) ~~An A NC SAFE Act~~ authorized lender shall notify the Commissioner within 30 days of the effective date of any
5 material changes to the information on file with the Commissioner. Notification shall be made on the lender's
6 letterhead.

7 ~~(b) Notification to the Commissioner of all material changes shall be made on the authorized lender's letterhead and~~
8 ~~filed pursuant to Rule .0101(b) of this Subchapter.~~

9 ~~(c)~~ (b) For the purposes of this Rule, the term "material" ~~shall mean~~ means any information ~~which that~~ would be
10 likely to influence the granting of authorization to engage in reverse mortgage lending. The term "material" shall
11 also include ~~but not be limited to~~ information concerning a changes change in the address of the authorized lenders,
12 ~~directors, corporate officers, partners, or the business structure. It shall also include changes in the address of the~~
13 ~~authorized lender's main or branch offices and any names under which the applicant operates. lender's reverse~~
14 mortgage branch office locations or the cessation of reverse mortgage lending activities in this ~~[state:]~~ State.

15

16 *History Note:* Authority G.S. ~~53-258(b),(d);~~ 53-258; 53-259; 53-271;

17 *Eff. January 1, 1995. 1995;*

18 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0204 is readopted as published in 32-19 NCR 1835 as follows:

2

3 **04 NCAC 03K .0204 ANNUAL ~~REGISTRATION~~ RENEWAL FEE**

4 (a) On or before December 31 of each year, each ~~[NCSAFE]~~ **NC SAFE** Act authorized lender shall pay the annual
5 fee set forth in G.S. 53-258(d).

6 (b) Failure of an ~~[NCSAFE]~~ **NC SAFE** Act authorized lender to pay the annual fee as of the date specified in
7 Paragraph (a) of this Rule shall be grounds for revocation of its ~~authorization.~~ authorization to make reverse
8 mortgage loans.

9

10 *History Note:* Authority G.S. 53-258(d); 53-259; ~~53-271(a);~~ **53-271;**

11 *Eff. January 1, ~~1995.~~ 1995;*

12 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0302 is readopted as published in 32-19 NCR 1835 as follows:
2

3 **04 NCAC 03K .0302 SURETY BONDS**

4 ~~(a)~~ All NC SAFE Act authorized lenders shall post a surety bond in the amount of one hundred thousand dollars
5 (\$100,000) with the Commissioner ~~which that~~ shall run to the benefit of the ~~Commissioner~~. State. The bond shall be
6 executed by an insurance company authorized to do business in North Carolina and not affiliated with the lender.
7 The bond shall be conditioned upon the authorized lender's compliance with the provisions of ~~Article~~ Articles 19B
8 and 21 of Chapter 53 of the General Statutes and all rules adopted thereunder.

9 ~~(b) All authorized lenders which are approved by the Commissioner on or after the effective date of this rule shall~~
10 ~~meet the requirements of this Rule upon approval. Authorized lenders which were approved by the Commissioner~~
11 ~~before the effective date of this Rule shall have until March 31, 1995 to comply with this Rule.~~

12

13 *History Note:* Authority G.S. ~~[53-244.103(a),(c);]~~ 53-244.103; 53-244.118; 53-258(b); 53-259; 53-271(a);

14 Eff. January 1, 1995; 1995;

15 Readopted Eff. August 1, 2018.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0402 is readopted as published in 32-19 NCR 1836 with changes as follows:
2

3 **04 NCAC 03K .0402 RECORD AND BOOKKEEPING REQUIREMENTS**

4 (a) All NC SAFE Act authorized lenders shall maintain their books and records relating to the making of reverse
5 mortgage loans for a period of three years after payment of the debt ~~in a manner permitting~~ and make them available
6 for inspection by the Commissioner.

7 ~~(b) All financial records required by Paragraph (a) of this Rule shall be prepared in accordance with generally~~
8 ~~accepted accounting principles.~~

9 ~~(c)~~ (b) An NC SAFE Act authorized lender shall notify the Commissioner of any change in the location of its books
10 and records.

11 ~~(d) In the case of an out-of-state lender, the lender shall designate the Commissioner as agent for service of process~~
12 ~~in connection with any reverse mortgage loan transaction.~~

13

14 *History Note:* Authority G.S. 53-244.105; 53-259; 53-270; 53-271(a);

15 Eff. January 1, 1995; 1995;

16 Readopted Eff. August 1, 2018.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0403 is readopted as published in 32-19 NCR 1836 with changes as follows:

2

3 **04 NCAC 03K .0403 EXAMINATIONS**

4 The Commissioner may make such examination of the books, records and affairs of NC SAFE Act authorized lenders
5 ~~under Article 21 of Chapter 53 of the General Statutes at such times as he may deem necessary or desirable.~~ pursuant
6 to G.S. 53-244.115.

7

8 *History Note: Authority G.S. 53-244.115; 53-259; 53-270; 53-271(a);*

9 *Eff. January 1, ~~1995~~. 1995;*

10 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0405 is readopted as published in 32-19 NCR 1836 with changes as follows:
2

3 **04 NCAC 03K .0405 IMPAIRMENT OF ~~MINIMUM NET WORTH, AND~~ SURETY BOND**

4 ~~(a) An applicant shall notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth~~
5 ~~requirements of Rule .0301 of this Subchapter.~~

6 ~~(b) (a) An applicant shall immediately~~ A NC SAFE authorized lender shall notify the Commissioner in writing
7 within three business days of any cancellation or suspension of the surety bond required by Rule .0302 of this
8 Subchapter.

9 ~~(c) [(b)] For the purposes of this Rule, immediately means within three business days of discovery of the failure to~~
10 ~~meet the minimum net worth, and bonding requirements of Section .0300 of this Subchapter.~~

11 ~~(d) [(e)] (b)~~ If an applicant fails to meet the minimum net worth, and surety bond requirements, the Commissioner
12 may revoke or suspend authorization of ~~an~~ NC SAFE Act authorized lender ~~or lender~~ to engage in reverse
13 mortgages.
14

15 *History Note:* Authority G.S. 53-244.114; 53-258(b); 53-259; 53-271(a)(e); 53-271;

16 *Eff. January 1, ~~1995~~. 1995;*

17 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03K .0702 is readopted as published in 32-19 NCR 1836 as follows:
2

3 **04 NCAC 03K .0702 ENFORCEMENT ACTIONS**

4 The grounds upon which the Commissioner may ~~either revoke or suspend~~ the authorization of a lender to engage in
5 reverse mortgage loans ~~shall include, but not be limited to~~ includes the following:

- 6 (1) The making of any false statement in an application for ~~authorization, if the false statement would~~
7 ~~have been grounds for denial of the application; or~~ authorization;
- 8 (2) The making of any false statement on any form or document requested by the Commissioner; ~~or~~
- 9 (3) One or more violations of ~~the Reverse Mortgage Act~~ G.S. 53, Article 21 or ~~provisions~~ rules of this
10 Subchapter; ~~or~~
- 11 (4) The conviction of any crime ~~which that~~ would have a bearing upon the fitness or ability of the
12 authorized lender to conduct its business; or
- 13 (5) The commission of any action ~~which that~~ involves dishonesty, fraud, or misrepresentation. ~~This~~
14 ~~Subparagraph shall not be construed to apply to bona fide errors.~~
- 15 (6) ~~The failure to pay the annual fee pursuant to Rule .0204 of this Subchapter.~~

16

17 *History Note:* Authority G.S. 53-259; 53-270; ~~53-271(a)(c);~~ 53-271;

18 *Eff. January 1, 1995; 1995;*

19 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

04 NCAC 03L .0101 is readopted as published in 32-19 NCR 1836 as follows:

04 NCAC 03L .0101 DEFINITIONS

(a) ~~As used in this Subchapter unless the context or the language of~~ In addition to the definitions in G.S. 53, Article 22 ~~indicates a contrary intention, the following definitions shall apply:~~ 22, for the purpose of this Subchapter the following definitions apply:

- (1) "Any one maker" ~~shall mean~~ means any single signatory on a personal checking account.
- (2) "Branch location" ~~shall mean any~~ means a location, including a mobile unit, but not the principal place of business, where the licensee holds itself out to the public as engaging in a check-cashing business.
- (3) "Business day" ~~shall mean~~ means a calendar day, other than Saturday, ~~Sunday~~ Sunday, or ~~State~~ State recognized ~~holiday.~~ holiday under 25 NCAC 01E .0901, which is incorporated by reference and includes subsequent amendments. A copy of the regulation may be obtained from the website free of charge at <http://reports.oah.state.nc.us/ncac/title%2025%20-%20state%20human%20resources/chapter%2001%20-%20office%20of%20state%20human%20resources/subchapter%20e/25%20ncac%2001e%20.0901.pdf>.
- (4) "Check" ~~shall mean~~ means a draft (other than a draft payable upon presentation of ~~documentation~~ documentation, such as ~~as~~ [as, securities) payable on demand and drawn on a bank. The term "check" may also include any cashier's ~~check or~~ [check, teller's ~~check or other~~ check, ~~draft or~~ draft or money order, but shall not include travelers checks or foreign denomination payment instruments.
- (5) "Conspicuously posted" ~~shall mean~~ means placed in ~~plain~~ plain public view in ~~such a location and in such a way and of such form and in a location, manner, and size and of typeface that any a person seeking the services of a licensee could easily see and read the contents of the posted notice.~~
- (6) "Controlling person" ~~shall mean~~ means ~~any a~~ any a person who owns or holds with the power to vote 10% or more of the equity securities of an applicant or licensee, or who has the power to direct the management and policy of the licensee.
- (7) "Draft" ~~shall mean~~ means ~~a written order to pay money signed by one person, the drawer who signs the document, to another person,~~ a written order to pay money signed by the drawer, to another person, who is the drawee.
- (8) "Liquid assets" ~~shall mean~~ means cash, bank deposit accounts, ~~and~~ and money market ~~accounts or similar property~~ accounts, and US Treasury bonds owned by the applicant or licensee, plus undeposited checks cashed by a licensee, less any returned checks doubtful of collection and cash remittances due others.
- (9) "Location" ~~shall mean~~ means ~~any a~~ any a place of business where check-cashing activity is conducted.
- (10) "Mobile unit" ~~shall mean~~ means ~~a vehicle~~ vehicle, or other movable ~~means~~ means, or a computer terminal from which the business of check cashing is conducted.

1 (11) "Principal" ~~shall mean means~~; ~~any person who controls directly, or indirectly through one or more~~
2 ~~intermediaries, alone or in concert with others, a 10% or greater interest in a partnership,~~
3 ~~company, association or corporation; the owner of a sole proprietorship; any natural person acting~~
4 ~~with apparent authority for or on behalf of an owner, officer, member, or director of a licensee; or~~
5 ~~any natural person who directs the performance of other employees as manager of a branch of any~~
6 ~~licensee.~~

7 (A) any person who controls directly, or indirectly through one or more intermediaries, alone or in
8 concert with others, a 10% or greater interest in a partnership, company, association, or
9 corporation;

10 (B) the owner of a sole proprietorship;

11 (C) any natural person acting with apparent authority for or on behalf of an owner, officer,
12 member, or director of a licensee; or

13 (D) any natural person who directs the performance of other employees as manager of a branch of
14 any licensee.

15 (12) "Principal place of business" ~~shall mean means~~ the location where the licensee holds itself out to
16 the public as engaging in a check cashing business and ~~which that~~ the licensee has declared to the
17 Commissioner to be ~~its~~ the main site of ~~its~~ business operations.

18 (13) "Receipt" ~~shall mean means~~ a written record of ~~the a~~ check-cashing transaction.

19 (b) ~~Unless a term is defined herein~~ A term not defined in this Rule or in G.S. 53, Article 22, that term 22 shall have
20 the meaning given it, if any, by Article 3 "Negotiable Instruments" of Chapter 25, North Carolina Uniform
21 Commercial Code. G.S. 25, Article 3.

22
23 *History Note: Authority G.S. 53C-2-1; 53C-2-2; 53-288;*

24 *Eff. July 1, 2000;*

25 *Amended Eff. November 1, 2013. 2013;*

26 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0102 is readopted with changes as published in 32-19 NCR 1836 as follows:

2

3 **04 NCAC 03L .0102 FILINGS**

4 ~~Any Licensees may obtain from the agency's website, located at <https://www.nccob.gov>, information concerning~~
5 ~~application applications for a license, or any report reports, application applications for annual renewal, amendment~~
6 ~~amendments to application, [applications] applications, renewal notice notices, or other document documents which~~
7 ~~is that are required by law or rule to be filed with the Commissioner shall be addressed as follows: Commissioner.~~

8

~~Office of the Commissioner of Banks~~

9

~~4309 Mail Service Center~~

10

~~Raleigh, North Carolina 27699-4309~~

11 ~~or, if not mailed, then delivered to:~~

12

~~Office of the Commissioner of Banks~~

13

~~316 West Edenton Street~~

14

~~Raleigh, North Carolina 27603.~~

15

16 *History Note:* Authority G.S. 53-288; ~~53C-2-1; 53C-2-2;~~

17

Eff. July 1, 2000;

18

Amended Eff. September 1, 2006; 2006;

19

Readopted Eff. August 1, 2018.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0201 is readopted as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0201 APPLICATION FOR LICENSE**

4 ~~(a) Any person intending to engage in a check-cashing business pursuant to G.S. 53, Article 22 shall first be~~
5 ~~licensed by the Commissioner. An application shall be made on a form obtained from the Commissioner, and the~~
6 ~~completed application shall be filed pursuant to Rule .0102 of this Subchapter.~~

7 ~~(b) (a) The An~~ application for a license as a check-cashing business shall include a financial statement that is
8 ~~sufficient to show~~ shows liquid assets of fifty thousand dollars (\$50,000) as required by G.S. ~~53-279(a).~~ 53-279(a)
9 and shall include the following:

10 ~~(c) The application for license as a check-cashing business shall further include:~~

- 11 (1) the business address in North Carolina, mailing address, business telephone number, facsimile
12 number, and name of the supervisor or manager for the principal place of business and for each
13 branch location;
- 14 (2) the address where books and records for the business will be kept;
- 15 (3) name, title, and business telephone number and facsimile number for the application contact
16 person;
- 17 (4) the applicant's federal employer identification number; and
- 18 (5) a declaration as to whether the applicant's business will be conducted as a sole proprietorship, a
19 partnership, a limited liability company, or a corporation.

20 ~~(d) (b)~~ Each applicant shall provide a signed statement authorizing the Commissioner to run a credit report on the
21 applicant and on each owner, partner, director, principal, or controlling person thereof. person.

22 ~~(e) (c)~~ Each applicant shall provide a signed statement making ~~full~~ disclosure to the Commissioner concerning
23 information that pertains to either the applicant, its partners, directors, principal officers, or controlling persons for
24 the following:

- 25 (1) ~~Any all~~ criminal proceedings ~~pending against~~ or criminal ~~convictions entered against the~~
26 ~~applicant, its partners, directors, principal officers or controlling persons;~~ convictions;
- 27 (2) ~~Any all~~ civil proceedings ~~pending against~~ or civil judgments entered ~~against the applicant, its~~
28 ~~partners, directors, principal officers or controlling persons which that~~ involve fraud or dishonesty;
- 29 (3) ~~Any all~~ civil judgments entered ~~against the applicant, its partners, directors, principal officers or~~
30 ~~controlling persons~~ during the past 10 years ~~which that~~ have remained partially or wholly unpaid;
- 31 (4) ~~Any all~~ of the following ~~proceedings involving the applicant, its partners, directors, principal~~
32 ~~officers or controlling persons:~~ proceedings: bankruptcy, assignment for the benefit of creditors,
33 receivership, ~~conservatorship~~ conservatorship, or similar proceeding;
- 34 (5) ~~Any all~~ proceedings brought by a state or federal administrative ~~agency against the applicant, its~~
35 ~~partners, directors, principal officers or controlling persons;~~ agency;
- 36 (6) ~~Any all~~ judgments entered by state or federal administrative agency ~~against the applicant, its~~
37 ~~partners, directors, principal officers, or controlling persons which that~~ involve fraud, dishonesty,

1 or that reflect on the applicants' character and fitness to command the confidence of the public;
2 and

3 (7) A a description of the ~~business experience, current business activities and education of the~~
4 ~~applicant, its partners, directors, principal officers and controlling persons.~~ of the applicant and the
5 business experience, business activities, and education of the applicant's partners, directors,
6 principal officers, and controlling persons.

7 ~~(f)~~ (d) The application ~~shall be in writing and~~ shall be verified by the oath of the applicant.

8 ~~(g)~~ (e) In addition to the documents and information described in this Rule, the Commissioner may require ~~such~~
9 additional information ~~as he may deem~~ necessary or helpful in order to perform the investigation ~~required by~~
10 required by G.S. 53-278 and to make the findings required by G.S. 53-279.

11 ~~(h)~~ (f) Incomplete application files may be closed and may be ~~deemed~~ denied without prejudice when the applicant
12 has not submitted information requested by the Commissioner within 30 days of the request.

13

14 *History Note: Authority G.S. 53-276; 53-278; 53-279; 53-288; ~~53C-2-1; 53C-2-2;~~*
15 *Eff. July 1, ~~2000~~, 2001;*

16 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0302 is readopted as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0302 NONTRANSFERABILITY OF LICENSE**

4 (a) A check-cashing license ~~granted hereunder~~ shall be neither transferable nor assignable.

5 (b) ~~The circumstances under which the Commissioner shall deem a change in the licensee's organizational structure~~
6 ~~to constitute a transfer or assignment~~ A change in the licensee's organizational structure that constitutes a transfer or
7 assignment of the license shall include, but not be limited to, the following: include the following:

8 (1) ~~If~~ if the licensee is a corporation or limited liability company:

9 (A) ~~A~~ a change in ownership of 50% or more of the licensee's stock; or

10 (B) ~~The~~ the conversion of the corporation or company into a general or limited partnership or
11 sole proprietorship;

12 (2) ~~If~~ if the licensee is a general or limited partnership:

13 (A) ~~A~~ a change in one of the licensee's general partners;

14 (B) ~~The~~ the conversion of the general partnership into a limited partnership, ~~corporation~~
15 corporation, or sole proprietorship; or

16 (C) ~~The~~ the conversion of the limited partnership into a general partnership, ~~corporation~~
17 corporation, or sole proprietorship; and

18 (3) ~~If~~ if the licensee is a sole proprietor:

19 (A) ~~The~~ the conversion of the sole proprietorship into a general or limited partnership or
20 corporation; or

21 (B) ~~The~~ the sale or assignment of all of the assets of the licensee's business to another person.

22 (c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the licensee's license shall become void
23 and the licensee shall surrender its ~~license~~ license to the Commissioner within 10 days of ~~such~~ the change. ~~If the~~
24 The entity ~~which that~~ results from the change in the licensee's organizational structure ~~desires and intends to engage~~
25 shall not engage in a check-cashing business in this State, ~~it shall apply for~~ unless it first obtains a license pursuant
26 to Section .0200 of this ~~Subchapter, Subchapter, and this~~ An application for a license may be made prior to the
27 effective date of ~~said change: the change in structure.~~

28

29 *History Note: Authority G.S. 53-276; 53-278; 53-288; ~~53C 2-1; 53C 2-2;~~*

30 *Eff. July 1, ~~2000~~; 2000;*

31 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0303 is readopted as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0303 ANNUAL RENEWAL OF LICENSE**

4 ~~On or before September 1 of each year, a licensee may renew its license by filing with the Commissioner an~~
5 ~~application for license renewal on a form available from the Commissioner, along with payment of renewal fees~~
6 ~~required under G.S. 53-278(d). Absent such renewal each year, the license shall expire and become void on~~
7 ~~September 30 without further action by the Commissioner. A check-cashing license shall be valid from the date of~~
8 ~~issuance and, unless renewed annually, renewed, shall expire on September 30 of each year without further action~~
9 ~~by the Commissioner. The renewal period shall begin on July 1 of each year. Licensees may file renewal~~
10 ~~applications and pay applicable renewal fees on the agency website located at www.nccob.gov. Any new license~~
11 ~~issued on or after July 1 of each year shall not be required to be renewed until the subsequent renewal period.~~
12

13 *History Note:* Authority G.S. 53-276; 53-278; 53-288; 53C-2-1; 53C-2-2;

14 *Eff. July 1, 2000. 2000;*

15 *Readopted Eff. August 1, 2018.*
16

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0401 is readopted as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0401 POSTING OF LICENSE OR BRANCH CERTIFICATE**

4 A licensee shall obtain a branch location certificate for each location other than its principal place of business ~~at~~
5 ~~which~~ where its business of cashing checks is conducted. The license or certificate ~~must~~ shall be conspicuously
6 ~~posted in the unobstructed view of the public within the branch location.~~ posted.

7

8 *History Note: Authority G.S. 53-276; 53-278; 53-288; ~~53C-2-1; 53C-2-2;~~*

9 *Eff. July 1, ~~2000~~ 2000;*

10 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0402 is readopted as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0402 SURRENDER OF LICENSE**

4 A licensee shall notify the Commissioner in writing of its decision to cease operations as a check-cashing business
5 in this State within seven days of ~~such~~ the decision. A licensee shall surrender its license and branch certificates, if
6 any, to the Commissioner no later than 30 days after it has voluntarily ceased operations in this State ~~and~~ or within
7 ~~such a~~ shorter time as the Commissioner may order if operations end ~~involuntarily~~; involuntarily pursuant to G.S.
8 53-284 or G.S. 53-285.

9
10 *History Note:* Authority G.S. 53-285; 53-276; 53-288; ~~53C-2-1; 53C-2-2~~;
11 *Eff. July 1, 2000; 2000;*
12 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0403 is readopted as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0403 POSTING OF FEES**

4 (a) The notice of fees required by G.S. 53-280(c) ~~shall be clear, legible, and in bold and blocked letters and numbers~~
5 ~~not less than one inch in height. The information shall be conspicuously posted in a conspicuous location in the~~
6 ~~unobstructed view of the public within the check casher's premises. posted.~~

7 (b) A licensee shall file with the Commissioner ~~on paper 8 1/2 x 11 inches~~ a scaled duplicate of the notice ~~required~~
8 ~~by G.S. 53-280(c) and Paragraph (a) of this Rule. of fees on 8 1/2 x 11 inch paper.~~

9
10 *History Note: Authority G.S. ~~53C-2-1; 53C-2-2~~; 53-280; 53-288;*
11 *Eff. July 1, 2000;*
12 *Amended Eff. November 1, ~~2013~~. 2013;*
13 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0501 is readopted with changes as published in 32-19 NCR 1837 as follows:
2

3 **04 NCAC 03L .0501 BOOKS AND RECORDS**

4 (a) Each check-cashing business licensed by the Commissioner of Banks shall record all transactions of receipts and
5 disbursements pertaining to checks cashed. All entries shall be made as of reflect the exact document the date the
6 transactions occur. A licensee shall maintain books and accounting records which shall include, at a minimum: that
7 includes include the following:

- 8 (1) a daily transaction journal, journal or equivalent record, record ~~which shall show that~~ shows the
9 customer's name for each transaction;
- 10 (2) the written receipt required by G.S. 53-282(b); and
- 11 (3) the bank statements of the licensee. If the statements are not maintained on the premises of the
12 licensee, they ~~must~~ shall be made available upon request by the Office of the Commissioner of
13 Banks.

14 (b) These records shall be maintained at each business location for a period of three years from the date of entry and
15 shall be made available by the close of business on the next business day upon request to the Commissioner of
16 Banks or his or her designee for inspection or examination for a period of not less than three years from the date of
17 final entry, examination.

18 ~~(c) No books or records of the licensee required hereunder shall show any account or reflect any transaction other
19 than those related to the check-cashing business within the provisions of the Check-Cashing Businesses Act.~~

20 ~~(d) Books and records retained by a licensee which arise from or relate to a prior accounting period may be
21 maintained in the form of magnetic tape, magnetic disk, or other form of computer, electronic or microfilm media
22 available for examination on the basis of computer printed reproduction, video display, or other medium so long as
23 any books and records kept in such manner are convertible into legible, tangible documents within 72 hours of
24 request of the Commissioner. The time for such conversion may be extended if the Commissioner determines that
25 the burden to the licensee of such conversion exceeds the benefit to the Commissioner and the public.~~

26
27 *History Note:* Authority G.S. 53C-2-1; 53C-2-2; 53-282; 53-288;

28 *Eff. July 1, 2000;*

29 *Amended Eff. November 1, ~~2013.~~ 2013;*

30 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0502 is readopted as published in 32-19 NCR 1838 as follows:
2

3 **04 NCAC 03L .0502 EXAMINATIONS; INVESTIGATIONS EXAMINATIONS**

4 (a) ~~The Commissioner of Banks may make such examination of the books, records, business locations, and~~
5 ~~operations of any licensee and at such times as may seem necessary or desirable to the Commissioner or his~~
6 ~~designee. Such examinations~~ Examinations may be done with or without advance notice to the licensee.

7 (b) In addition to examinations authorized by G.S. 53-278(b) or G.S. 53-282(c), the Commissioner may request ~~from~~
8 ~~licensees hereunder such reports from the licensee and at such times as to him shall be necessary or advisable for the~~
9 purpose of determining the general results of operations ~~under G.S. 53,~~ pursuant to Article 22, 22 of Chapter 53.

10 ~~The Commissioner or his designee may also examine or investigate a licensee when the Commissioner has~~
11 ~~reasonable grounds to believe that a registrant has violated any law or regulation of this State, the Federal~~
12 ~~government or any agency thereof.~~

13 (c) If a licensee fails to pay the costs of examination as authorized by G.S. 53-282(c) and at a rate pursuant to 04
14 NCAC 03C .1601 or investigation to the Commissioner within a reasonable time as required by [60 days] 60 days of
15 billing, G.S. 53-282(e), then the Commissioner may proceed to remedies contemplated by set forth in G.S. 53-284 ~~et~~
16 ~~seq. 53-284.~~

17

18 *History Note:* Authority G.S. 53-278; 53-282; 53-284; 53-288; 53C-2-1; 53C-2-2;

19 *Eff. July 1, 2000. 2000;*

20 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0601 is readopted as published in 32-19 NCR 1838 as follows:
2

3 **04 NCAC 03L .0601 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER**

4 (a) A licensee shall notify the Commissioner within 30 days of any material change to information ~~which that~~ it
5 submitted to the Commissioner, whether provided in ~~its the~~ initial application, ~~in its~~ request for annual renewal, or in
6 any other report or ~~information otherwise provided to the Commissioner.~~ information.

7 (b) Notification shall be ~~accomplished~~ by letter or by revision or modification of the appropriate portions of the
8 application (whether initial or renewal). ~~If the licensee elects to revise or modify its initial application or annual~~
9 ~~renewal statement, it shall do so on pages obtained from the Commissioner.~~

10 (c) For the purposes of this Rule, the term "material" shall mean any information ~~which that~~ would ~~be likely to~~
11 influence the granting, revocation, or expiration of a ~~license hereunder.~~ license. The term "material" ~~shall include,~~
12 ~~but not be limited to:~~ includes the following:

- 13 (1) changes in the licensee's corporate officers, partners, or business structure;
- 14 (2) changes in the address of the licensee's main or branch ~~offices~~ locations and any names under
15 which the licensee operates; or
- 16 (3) changes ~~which that~~ would render untrue, inaccurate, or misleading any of the disclosures made by
17 the licensee in its application pursuant to Rule .0201 of this Subchapter.

18

19 *History Note:* Authority *G.S. 53-278; 53-283; 53-284; 53-288; ~~53C-2-1; 53C-2-2;~~*

20 *Eff. July 1, ~~2000.~~ 2000;*

21 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 NCAC 03L .0602 is readopted as published in 32-19 NCR 1838 as follows:
2

3 **04 NCAC 03L .0602 EXPANSION OR RELOCATION**

4 (a) A licensee shall notify the Commissioner of the opening of any new branch ~~office~~ locations or the relocation of
5 its principal place of business or of any branch ~~office~~ locations at least 20 days prior to the effective date of ~~such~~ the
6 change. The notification shall be on a form obtained from the Commissioner. The notification shall provide an
7 explanation of the reasons for ~~such~~ the change and shall be accompanied by a certificate fee for the new branch
8 certificate in the amount of fifty dollars (\$50.00). ~~The Commissioner shall issue a revised branch certificate upon~~
9 ~~his receipt of the required notification, the satisfactory explanation, and the filing fee, and upon surrender of the~~
10 ~~licensee's inaccurate certificate.~~ Licensees may surrender their inaccurate certificate by mailing the certificate to the
11 Commissioner at: Office of the Commissioner of Banks, 4309 Mail Service Center, Raleigh, North Carolina 27699-
12 4309 or may be delivered to ~~our~~ the physical address: 316 West Edenton Street, Raleigh, North Carolina 27603.
13 (b) The Commissioner shall issue a revised branch certificate upon his or her receipt of the required notification, the
14 explanation, and the filing fee and upon surrender of the licensee's inaccurate certificate.

15

16 *History Note:* Authority G.S. 53-276; 53-278; 53-279; 53-283; 53-288; ~~53C-2-1; 53C-2-2;~~

17 *Eff. July 1, 2000; 2000;*

18 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03L .0603 is readopted as published in 32-19 NCR 1838 as follows:

2

3 **04 NCAC 03L .0603 IMPAIRMENT OF FINANCIAL REQUIREMENTS**

4 A licensee shall ~~immediately~~ notify the Commissioner in writing within 30 days ~~if, at any time, if~~ it fails to meet the
5 minimum liquid asset requirement of G.S. 53-279(a).

6

7 *History Note:* Authority G.S. 53-279; 53-288; ~~53C-2-1; 53C-2-2;~~

8

Eff. July 1, ~~2000~~ 2000.

9

Readopted Eff. August 1, 2018.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0101 is readopted as published in 32-19 NCR 1838 with changes as follows:

2

3 04 NCAC 03M .0101 DEFINITIONS

4 As used in this Subchapter, unless a contrary definition is provided or required by the context: In addition to the
5 definitions in G.S. 53, Article 19B for the purposes of this Subchapter the following definitions apply:

6 (1) Terms used in this Subchapter which are defined in the Act have the same meaning as set forth in
7 the Act.

8 (2) When any term in this Subchapter is defined by reference to or incorporation of a regulation or
9 rule of a federal or state agency, board, commission or other regulatory body other than the
10 Commissioner, the reference shall be deemed to be to the regulation or rule as it is in effect and
11 interpreted in its most current version.

12 (3) (1) "Act" means Article 19B of Chapter 53 of the North Carolina General Statutes, commonly known
13 as the "North Carolina Secure and Fair Enforcement (S.A.F.E.) Mortgage Licensing Act," or "NC
14 SAFE Act."

15 (4) (2) "Advertisement" means material used or intended to be used to induce the public to apply for a
16 mortgage loan. The term includes any printed or published material, or descriptive literature
17 concerning a mortgage loan to be solicited, processed, negotiated negotiated, or funded by a
18 licensee or exempt entity whether disseminated by direct mail, newspaper, magazine, radio or
19 television broadcast, electronic mail or other electronic means, or billboard or similar display. The
20 term does not include any disclosures, program descriptions, or other materials prepared or
21 authorized by any state or federal government agency, nor does the term include any material or
22 communication which that has been excluded for purposes of any regulation of the Board of
23 Governors of the Federal Reserve System regulating consumer credit disclosures.

24 (5) (3) "Call Report" means a report of condition on a company and its operations which that includes
25 financial and loan activity information.

26 (6) ~~"Commission" means the North Carolina Banking Commission. For purposes of complying with~~
27 ~~these Rules by credit unions, Banking Commission means the North Carolina Credit Union~~
28 ~~Commission.~~

29 (7) "Controlling person" means a person who, with regard to a licensee:
30 (a) has the ability to exercise "control", as the term is defined in G.S. 53-244.030(7), or
31 (b) otherwise has the power to direct the management and policy of the licensee.

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

34 (9) (6) (4) "License" means a mortgage lender, mortgage servicer, mortgage broker, exclusive mortgage
35 broker, or mortgage loan originator license issued pursuant to the Act and this Subchapter.

36 (10) (7) "Material" when used in connection with facts or ["Material facts" means] information provided
37 to the Commissioner by a licensee or applicant, means facts or information [regarding the person's
38 identity, contact information, or business operations] that a reasonable person knows, or should

1 know, would be likely to influence a decision to grant, suspend, condition, limit, renew, or revoke
2 a license or to take other disciplinary action against a licensee or exempt person, including:

3 (a) notice of a pending administrative action involving the licensee or applicant for licensure
4 by any state or federal authority to which the licensee is subject;

5 (b) the issuance of an administrative order against the licensee or applicant for licensure by
6 any state or federal authority to which the licensee is subject;

7 (c) notice of a pending criminal charge against the licensee or applicant for actions related to
8 financial services or moral turpitude;

9 (d) the entry of a conviction or one of the following on a criminal charge against the licensee
10 or applicant for licensure for a felony or other criminal charge for actions related to
11 financial services or moral turpitude:

12 (i) a plea of guilty;

13 (ii) a plea of no contest or nolo contendere;

14 (iii) a prayer for judgment continued;

15 (iv) a deferred prosecution agreement;

16 (v) an adjudication or verdict of guilty by a domestic, foreign, military, or other
17 court of competent jurisdiction;

18 (vi) the equivalent of any of the foregoing in a domestic, foreign, military, or other
19 court of competent jurisdiction; or

20 (vii) any other classification that is deemed a conviction pursuant to the applicable
21 law in the jurisdiction where the criminal charge was brought.

22 (e) a change in status to the licensee's bond, including the reduction or cancellation of such
23 bond; and [bond];

24 (f) the licensee's primary phone number, mailing address, and principal office address;

25 (g) any assumed name, trade name, or d/b/a (doing business as) under which the licensee
26 may be operating;

27 (h) the address at which files and documents retained pursuant to the Act or the rules in this
28 Subchapter are stored;

29 (i) the identity of the licensee's bonding company or carrier, and the bond number;

30 (j) for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker,
31 mortgage servicer, or provider of settlement services; and

32 (k) for corporate license, the identity of the licensee's owners, officers, directors, qualifying
33 individual, branch manager(s), or control persons.

34 (11) "Material" when used in connection with facts or information provided to the Commissioner, by a
35 licensee or applicant for licensure, also means facts and information regarding the licensee's
36 identity and contact information, including:

37 (a) the licensee's primary phone number, mailing address, and principal office address;

- (b) ~~any assumed name, trade name, or d/b/a (doing business as) under which the licensee may be operating;~~
- (c) ~~the address at which files or documents retained pursuant to the Act or the rules in this Subchapter are stored;~~
- (d) ~~the identity of the licensee's bonding company or carrier, and bond number;~~
- (e) ~~for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker, mortgage servicer, or provider of settlement services; and~~
- (f) ~~for corporate licensees, the identity of the licensee's owners, officers, directors, qualifying individual, branch manager(s), or control persons.~~

(12) ~~(8)~~ (5) "Material" when used in connection with facts or information provided to a borrower, "Material borrower information" means facts or information that a reasonable person knows, or should know, would reasonably be expected to influence a borrower's decision with regard to one or more loans, including:

- (a) the total compensation the mortgage broker expects to receive from all sources in connection with each loan option presented to the borrower;
- (b) the terms of each loan option presented to the borrower;
- (c) the anticipated monthly payment (including property tax and insurance payments) for each loan option presented to the borrower;
- (d) if the loan contains a variable rate feature or other terms which that may result in a change to the borrower's monthly payments over the life of the loan, the circumstances upon which the terms or payments will change and the impact of the changes upon the borrower's required monthly payments; and
- (e) any affiliate relationships that may exist between the licensee and any party or parties to the sale or financing of the subject property, or any provider of settlement services.

(13) ~~(9)~~ (6) "Material" when used in connection with the word "change" or "changes," "Material change" means a change to any material facts or information facts.

(7) "Material facts" means information provided to the Commissioner by a licensee or applicant regarding the person's identity, contact information, or business operations that a reasonable person knows, or should know, would [be likely to] influence a decision to grant, suspend, condition, limit, renew, or revoke a license or to take other disciplinary action against a licensee or exempt person, including:

- (a) notice of a pending administrative action involving the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;
- (b) the issuance of an administrative order against the licensee or applicant for licensure by any state or federal authority to which the licensee is subject;
- (c) notice of a pending criminal charge against the licensee or applicant for actions related to financial services or moral turpitude;

- 1 (d) the entry of a conviction or one of the following on a criminal charge against the licensee
2 or applicant for licensure for a felony or other criminal charge for actions related to
3 financial services or moral turpitude:
4 (i) a plea of guilty;
5 (ii) a plea of no contest or nolo contendere;
6 (iii) a prayer for judgment continued;
7 (iv) a deferred prosecution agreement;
8 (v) an adjudication or verdict of guilty by a domestic, foreign, military, or other
9 court of competent jurisdiction;
10 (vi) the equivalent of any of the foregoing in a domestic, foreign, military, or other
11 court of competent jurisdiction; or
12 (vii) any other classification that is a conviction pursuant to the applicable law in the
13 jurisdiction where the criminal charge was brought.
- 14 (e) a change in status to the licensee's bond, including the reduction or cancellation of such
15 bond;
- 16 (f) the licensee's primary phone number, mailing address, and principal office address;
- 17 (g) any assumed name, trade name, or d/b/a (doing business as) under which the licensee
18 may be operating;
- 19 (h) the address at which files and documents retained pursuant to the Act or the rules in this
20 Subchapter are stored;
- 21 (i) the identity of the licensee's bonding company or carrier, and the bond number;
- 22 (j) for corporate licensees, the identity of any affiliated mortgage lender, mortgage broker,
23 mortgage servicer, or provider of settlement services; and
- 24 (k) for a corporate license, the identity of the licensee's owners, officers, directors, qualifying
25 individual, branch manager(s), or control persons.
- 26 (14) [(40)] (8) "Nationwide Mortgage Licensing System and Registry" or "NMLS&R" has the same
27 meaning as defined in the NC SAFE Act.
- 28 (15) [(11)] "Prelicensing Education" means a classroom or classroom equivalent education program
29 required by G.S. 53-244.070.
- 30 (16) "Program" means a prelicensing program.
- 31 (17) "Provider" means any person who provides a program.
- 32 (18) "Qualified Written Test" means the mortgage prelicensing qualified written test required by G.S.
33 53-244.080.
- 34 [(42)] (9) "Registration" means the approval granted to a mortgage origination support registrant to engage
35 exclusively in the processing or underwriting of residential mortgage loans but not the mortgage
36 business.

1 (19) [(13)] (10) "Settlement Services" has the same meaning as defined in federal Real Estate Procedures
2 Act (RESPA) 12 U.S.C. Sec. 2601 et. seq. Regulation X, 24 C.F.R. Part 3500 et. seq, which is
3 incorporated by reference and includes subsequent amendments. A copy of the regulation may be
4 obtained from the website free of charge U. S. Government Publications Office website at
5 <https://www.gpo.gov/fdsys/granule/CFR-2000-title24-vol5/CFR-2000-title24-vol5->
6 [part3500/content-detail.html.](https://www.gpo.gov/fdsys/granule/CFR-2000-title24-vol5/CFR-2000-title24-vol5-part3500/content-detail.html)

7 (20) "~~Testing Provider~~" means ~~an organization approved by the NMLS&R to administer the qualified~~
8 ~~written test.~~

9
10 *History Note:* *Authority G.S. 53-244.118;*
11 *Temporary Adoption Eff. July 1, 2002;*
12 *Eff. April 1, 2003;*
13 *Amended Eff. July 1, 2010; July 18, ~~2008.~~ 2008;*
14 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0102 is readopted as published in 32-19 NCR 1840 with changes as follows:
2

3 **04 NCAC 03M .0102 NOTICES**

4 (a) Except as otherwise required by G.S. 53-244.113(b), Article 3A, Chapter 150B of the General Statutes, or by the
5 rules of the ~~North Carolina~~ Office of Administrative Hearings, 26 NCAC 03, which are incorporated by reference,
6 including subsequent amendments and editions, any document, ~~decision~~ decision, or other communication required
7 or permitted to be given by the Commissioner to a ~~licensee, an applicant for a license or an exempt~~ person is
8 considered given when either:

9 (1) deposited in the United States mail with sufficient first class postage affixed, addressed to the
10 most recent principal office address provided by the addressee to the Office of the Commissioner
11 of Banks; or

12 (2) transmitted through electronic mail to the address provided by the addressee to the Office of the
13 Commissioner of Banks.

14 (b) Any application for licensure, report, annual statement, amendment to application, ~~notice~~ notice, or other
15 document ~~which that~~ is required or permitted by law or rule to be filed with the Commissioner shall be ~~in writing,~~
16 ~~and submitted in an electronic format~~ through the NMLS&R.

17 (c) Where the NMLS&R does not make available submission of any document required or permitted by law to be
18 filed with the Commissioner, ~~such a~~ the document may be filed by electronic submission through the Office of the
19 Commissioner of Bank's website (~~www.nccob.gov~~); https://www.nccob.gov if the Commissioner makes ~~such~~
20 electronic submission available.

21

22 *History Note: Authority G.S. 53-244.118; 53-244.119;*

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

24 *Eff. April 1, 2003;*

25 *Amended Eff. May 1, ~~2010~~; 2010;*

26 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0201 is readopted as published in 32-19 NCR 1840 with changes as follows:
2

3 **04 NCAC 03M .0201 APPLICATION**

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

7 ~~(b) (a) Each type of application required by the rules in this Subchapter or the Act shall be filed through the~~
8 ~~NMLS&R and shall be verified by the oath or affirmation of the applicant or a principal officer thereof. officer.~~

9 ~~(c) (b) In addition to the documents and information required by the rules in this Subchapter, the Commissioner or~~
10 ~~his or her staff may require additional information according to the Rules in order to enable the Commissioner to~~
11 ~~determine that the applicant meets or the licensee continues to meet the requirements of G.S. 53-244.040, 53-~~
12 ~~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, and~~
13 ~~53-244.105. the Act.~~

14 ~~(d) (c) Applications submitted without the required fees fees, or which are missing material information facts, or any~~
15 ~~information requested under Paragraph (b) of this Rule shall be held in pending status for a period of 30 calendar~~
16 ~~days after written notice notification through the NMLS&R to the applicant specifying the nature of the deficiency.~~
17 ~~If any such the deficiency remains outstanding for more than 30 days, the application shall automatically be~~
18 ~~considered withdrawn without further action by the Commissioner, and in order to become licensed, the applicant~~
19 ~~shall submit a new application and pay all fees associated therewith. fees.~~

20

21 *History Note: Authority G.S. 53-244.040, 53-244.050; 53-244.060; 53-244.070, 53-244.080, 53-244.080; 53-*
22 *244.100; 53-244.101; 53-244.102; 53-244.103; 53-244.104; 53-244.115; 53-244.118;*

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

24 *Eff. April 1, 2003;*

25 *Amended Eff. May 1, 2010; 2010;*

26 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0202 is readopted as published in 32-19 NCR 1840 with changes as follows:

2

3 **04 NCAC 03M .0202 NONTRANSFERABILITY**

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

6 (1) be ineffective; and

7 (2) be grounds for summary suspension, ~~or~~ revocation of the license or registration, or other remedies
8 available to the ~~Commissioner~~; and Commissioner.

9 ~~(3) render the licensee jointly and severally liable with the assignee for any actions or omissions of its~~
10 ~~assignee which occur while acting under the apparent authority of the license.~~

11 (b) A change in the identity of a licensee's ~~controlling~~ control person or any material change in the licensee's
12 organizational structure shall be considered a transfer or assignment of the ~~license~~. license or registration. ~~However,~~
13 ~~the Commissioner shall permit the change without requiring the licensee to apply for a new license, provided: A~~
14 licensee or registrant may transfer a license or registration without submission of an application by providing the
15 following to the Commissioner:

16 (1) the licensee or registrant gives notice to the Commissioner at least 60 days in advance of the
17 effective date of the proposed change; and

18 (2) the Commissioner determines that permitting the licensee or registrant to continue to operate
19 under its existing license or registration would not be inconsistent with the purposes of the Act.

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

22 (d) The Commissioner shall waive or reduce the advance notice requirement of Subparagraph (b)(1) of this Rule if
23 the Commissioner determines that:

24 (1) circumstances beyond the ~~licensee's~~ licensee or registrant's ~~reasonable~~ control would make
25 compliance ~~therewith~~ unduly burdensome to the ~~licensee~~; licensee or registrant;

26 (2) consumers would not be harmed by such a waiver or reduction of the advance notice requirement;

27 (3) the licensee or registrant has otherwise satisfied the requirements of this Rule; and

28 (4) waiver of the requirement of Subparagraph (b)(1) is in the public interest.

29

30 *History Note: Authority G.S. 53-244.050; 53-244.060; 53-244.100; 53-244.118;*

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

32 *Eff. April 1, 2003;*

33 *Amended Eff. August 1, 2018; May 1, ~~2010~~; 2010;*

34 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0203 is readopted as published in 32-19 NCR 1840 with changes as follows:

2

3 **04 NCAC 03M .0203 NAME CHANGES**

4 A licensee or registrant ~~may, with the prior approval of the Commissioner, may~~ change its corporate name or the
5 name under which it operates, provided:

6 (1) the licensee or registrant and the proposed new name satisfies all applicable laws pertaining to
7 ~~corporate, fictitious and trade names (including, but not limited to, G.S. 53-127);~~ assumed
8 business names;

9 (2) the licensee or registrant has given the Commissioner at least 30 days prior notice of the proposed
10 new name; and

11 (3) the Commissioner determines that the new name ~~is~~ will ~~not likely to~~ result in confusion among the
12 general ~~banking~~ public regarding the ~~licensee's~~ licensee or registrant's identity or ~~powers.~~ powers
13 in accordance with G.S. 53C-1-3.

14

15 *History Note: Authority G.S. 53-244.118; 53C-1-3;*

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

17 *Eff. April 1, 2003-2003;*

18 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0205 is readopted as published in 32-19 NCR 1840 as follows:
2

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 the~~
5 ~~community and to warrant belief that the business will be operated honestly and fairly under G.S. 53-244.60(4), the~~
6 ~~applicant shall:~~

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

8 (A) ~~provide an audited statement of financial condition that demonstrates a net worth of at least~~
9 ~~\$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 outstanding judgments or tax liens against~~
14 ~~applicant, its officers or directors, by creditors; and~~

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

17 (2) ~~If a mortgage broker:~~

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

20 (B) ~~demonstrate a history of satisfying debt obligations, as indicated by a trade or personal~~
21 ~~credit report(s) that does not contain evidence of outstanding judgments or tax liens against~~
22 ~~applicant, its officers or directors, by creditors; and~~

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

27 (3) ~~If a mortgage loan originator:~~

28 (A) ~~have a credit score from any of the three major credit rating agencies (Experian,~~
29 ~~TransUnion or Equifax) of 600 or greater;~~

30 (B) ~~demonstrate a history of satisfying debt obligations, as indicated by an absence of~~
31 ~~outstanding tax liens, other government liens or filings, outstanding judgments, except~~
32 ~~judgments resulting solely from medical expenses, by creditors; and~~

33 (C) ~~not have any foreclosures or accounts delinquent in excess of 90 days within the past three~~
34 ~~years.~~

35 (4) ~~If a mortgage servicer:~~

36 (A) ~~provide an audited statement of financial condition that demonstrates a net worth of at least~~
37 ~~\$100,000.00;~~

1 (B) ~~demonstrate a history of satisfying debt obligations, as indicated by a trade or personal~~
2 ~~credit report(s) that does not contain evidence of outstanding judgments or tax liens against~~
3 ~~applicant, its officers or directors, by creditors; and~~

4 (C) ~~provide an explanation of the corporate or ownership structure of the applicant, including~~
5 ~~information regarding any required distributions to investors or owners.~~

6 ~~(b) The Commissioner shall not waive any requirement listed in Paragraph (a) of this Rule unless he believes the~~
7 ~~predominant weight of the evidence supports a determination that the applicant has the financial responsibility~~
8 ~~necessary to command the confidence of the community and to warrant belief that the business will be operated~~
9 ~~honestly and fairly.~~

10 ~~(e) Financial Responsibility is an ongoing requirement and upon issuance of a license, a licensee must continue to~~
11 ~~meet the requirements of Paragraph (a) of this Rule. G.S. 53-244.060(4).~~

12
13 *History Note:* ~~Authority G.S. 53-92; 53-104; 53-244.060(4); 53-244.104; 53-244.118;~~
14 ~~Eff. July 18, 2008;~~
15 ~~Amended Eff. July 1, 2010. 2010;~~
16 ~~Readopted Eff. August 1, 2018.~~

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0401 is readopted as published in 32-19 NCR 1841 with changes as follows:
2

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

4 (a) No later than 90 days after the end of the calendar year, mortgage lenders, mortgage ~~servicers~~ servicers, and
5 mortgage brokers shall file an annual report in ~~a format required by the NMLS&R unless the Commissioner~~
6 ~~determines that the report is not in the public interest.~~ NMLS&R. The annual report shall be supplemented with
7 additional information about operations, characteristics of loans made, or other similar composite data if the
8 Commissioner determines that this additional information is necessary ~~in order~~ to safeguard the interests of the
9 borrowing ~~public~~ (See N.C. Gen. Stat. 53-244.118). public. Mortgage brokers shall as a part of the annual report
10 provide certification from ~~the insured financial institution holding the account required under 04 NCAC 03M~~
11 ~~.0205(a)(2)(C) that the account exists and that the account has contained an average daily balance, for the previous~~
12 ~~year covered by the annual report of ten thousand dollars \$10,000 or more.~~ an insured depository institution that the
13 broker has for the year of the current annual report owned and held on a continual basis cash or other liquid
14 assets of at least ten thousand dollars (\$10,000) in a deposit account under the firm's name. Failure to ~~timely~~ submit
15 an annual report within 90 days after the end of the calendar year is grounds for summary suspension pursuant to
16 G.S. 53-244.114.

17 (b) Mortgage lenders, mortgage servicers, and mortgage brokers shall provide an audited statement of financial
18 condition or a certified statement of financial condition as required by ~~04 NCAC 03M.0205(a)~~ 53-244.104 within 90
19 days of the end of the licensee's fiscal year. If not shown in the audited statement of financial condition, mortgage
20 lenders shall provide evidence of available warehouse lines of credit or other funding facilities.

21 (c) ~~Beginning on January 1, 2011, mortgage~~ Mortgage lenders and mortgage brokers shall provide information on
22 the characteristics of loan originations in an electronic format prescribed by the Commissioner on a quarterly basis
23 within 45 days after the close of the calendar quarter. Mortgage lenders shall provide:

- 24 (1) ~~Information~~ information sufficient to identify the mortgage loan and the unique identifier of the
25 mortgage loan originator, mortgage broker (if applicable), and mortgage lender for the loan;
- 26 (2) ~~Information~~ information sufficient to enable a computation of ~~key items~~ applicable loan terms in
27 the ~~federal~~ Federal Truth in Lending disclosures, including the annual percentage rate, finance
28 charge, and a schedule of payments, and any deviations between the final disclosures and the most
29 recent disclosures issued prior to the final disclosures;
- 30 (3) ~~Information~~ information included in the "Loan Estimate" (LE) or "Good Faith Estimate" (GFE)
31 disclosure required under the ~~federal~~ Federal Real Estate Settlement Procedures Act including the
32 rate, the date of any interest rate lock, itemization of settlement ~~charges~~ charges, and all broker
33 compensation;
- 34 (4) ~~Information~~ information included in the final Closing Disclosure or HUD-1 Settlement Statement,
35 if maintained by the mortgage lender in an electronic format;
- 36 (5) ~~Information~~ information related to the terms of the loans, including adjustable rate loan features
37 (including timing of adjustments, indices used in setting rates, maximum and minimum
38 adjustments, and floors and ceilings of adjustments), the undiscounted interest rate (if maintained

1 by the mortgage lender in an electronic format), penalties for late payments, and penalties for
2 prepayment (including computation of the penalty amount, duration of prepayment penalty, and
3 the maximum amount of penalty);

4 (6) ~~Information~~ information typically used in underwriting, [~~underwriting information~~] including the
5 appraised value of the property, sales price of the property (if a purchase loan), borrowers' income,
6 monthly payment amount, housing debt-to-income ratio, total debt-to-income ratio, and credit
7 score(s) of ~~borrowers~~; borrower(s); and

8 (7) ~~Information~~ information included in a Loan Application Register for mortgage lenders required to
9 submit information pursuant to the ~~federal~~ Federal Home Mortgage Disclosure ~~Act~~, Act.

10 Mortgage brokers shall provide information identified ~~above~~ in this Paragraph unless such information is not
11 prepared or known by the mortgage broker and the mortgage broker does not reasonably have access to the
12 information in an electronic format. ~~The Commissioner shall permit mortgage lenders and mortgage brokers to~~
13 ~~utilize compatible third party software to provide information required under this Paragraph.~~

14 (d) On a quarterly basis, mortgage lenders and mortgage brokers shall provide call reports containing financial and
15 loan activity information in an electronic format through the NMLS&R.

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

22 (f) ~~Mortgage lenders, mortgage servicers, mortgage brokers, exclusive mortgage broker, and mortgage loan~~
23 ~~originators~~ A licensee or registrant shall report within 30 days the name of any person suspected of making a
24 ~~material~~ misstatement of material facts or material borrower information in connection with an inquiry,
25 investigation, or examination to the Commissioner.

26
27 *History Note:* Authority G.S. 53-244.104; 53-244.108; 53-244.115; 53-244.118;
28 Eff. April 1, 2003;
29 Amended Eff. July 1, 2010; July 3, 2008; 2008;
30 Readopted August 1, 2018.

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0402 is readopted as published in 32-19 NCR 1841 with changes as follows:
2

3 **04 NCAC 03M .0402 ~~AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER~~**
4 **~~[INFORMATION]~~ SECURITY BREACHES**

5 (a) ~~A licensee shall notify the Commissioner within 30 days of any material change in any document or information~~
6 ~~previously submitted to, or otherwise filed with, the Commissioner.~~

7 ~~(b) (a) Upon a licensee's discovery of an information a security breach as defined in G.S. 75-61(14), the licensee or~~
8 ~~registrant shall within one business day provide to the Commissioner a copy of any notification which the licensee~~
9 ~~that is required to give under pursuant to G.S. 75-65.~~

10 ~~(c) (b) Notification by the licensee or registrant shall be in accordance with Rule .0102 of this Subchapter.~~

11

12 *History Note: Authority G.S. 53-244.105(b); 53-244.118;*

13 *Eff. April 1, 2003;*

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

15 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0403 is readopted as published in 32-19 NCR 1841 as follows:
2

3 **04 NCAC 03M .0403 TERMINATION OF OPERATIONS OR EMPLOYMENT**

4 (a) A licensee or registrant shall notify the Commissioner in writing of its decision to cease operations ~~as a~~
5 ~~mortgage lender, mortgage servicer, or mortgage broker~~ in this State, and the anticipated effective date of the
6 cessation of operations, at least 15 days before the cessation.

7 (b) A mortgage lender, mortgage servicer, or mortgage broker that has not originated or serviced a mortgage loan
8 within a ~~12-month~~ 12-month period is considered to have ceased operations. A mortgage origination support
9 registrant that has not processed or underwritten a mortgage loan within a 12-month period is considered to have
10 ceased operations. Cessation of operations is grounds for summary suspension pursuant to G.S. ~~53-244.114(b);~~
11 ~~provided, however, 53-244.114(b).~~ However, that suspension for cessation of operations shall not extend or revive
12 any license that would otherwise terminate on December 31st based on the ~~licensee's~~ person's failure to renew its
13 license or registration or the Commissioner's refusal to renew the ~~licensee's license.~~ license or registration.

14 (c) A mortgage broker, mortgage lender, mortgage servicer, or mortgage origination support registrant shall not
15 sponsor a mortgage loan originator who is not an employee of the person and shall notify the Commissioner within
16 30 days of the termination of the individual mortgage loan originator's employment and sponsorship.
17

18 *History Note:* Authority G.S. [~~53-100.53; 53-244.114(b);~~ 53-244.100; 53-244.114(b); 53-244.118;
19 *Eff. April 1, 2003;*
20 *Amended Eff. May 1, 2010; April 1, ~~2008.~~ 2008;*
21 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0501 is readopted as published in 32-19 NCR 1842 with changes 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~~ checks, or other monetary
5 instruments received in connection with each mortgage loan application showing the identity of the payor, date
6 received, 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, relates.~~ relates. The licensee shall
10 reconcile the bank accounts monthly. Financial records ~~must~~ shall be kept in a manner to permit ~~efficient~~
11 examiners.

12 (c) A licensed mortgage lender or mortgage broker shall maintain a current listing of all mortgage loan applications
13 in an electronic, ~~searchable~~ searchable, and sortable format that permits a ~~timely~~
14 Commissioner.

15 (d) A licensed mortgage lender or mortgage broker shall create and retain a file for each mortgage loan application
16 that contains ~~as applicable;~~ the following, as applicable:

- 17 (1) the applicant's name;
- 18 (2) date the application was taken;
- 19 (3) name of the person taking the application;
- 20 (4) the ~~fully~~ executed application itself; and
- 21 (5) if the loan was ~~closed;~~ closed:
 - 22 (A) the Closing Disclosure or HUD-1 Settlement Statement; Settlement Statement;
 - 23 (B) the loan note;
 - 24 (C) the deed of trust;
 - 25 (D) all agreements or contracts with the applicant, including any commitment and lock-in
26 agreements, and other information utilized in the origination of the mortgage loan; and
 - 27 (E) all disclosures required by State or Federal law.

28 (e) A licensed mortgage servicer shall create and retain a file for each mortgage loan ~~which that it services, which~~
29 ~~shall contain, as applicable;~~ services that contains the following:

- 30 (1) the borrower or borrowers names;
- 31 (2) a copy of the original note and ~~Deed deed of Trust;~~ trust;
- 32 (3) a copy of any disclosures or notifications provided to the borrower required by State or Federal
33 law;
- 34 (4) a copy of all written requests for information received from the borrower and the servicer's
35 response to ~~such~~ the requests as required by State or Federal law;
- 36 (5) a record of all payments received from the borrower ~~which that~~ contains all information required
37 to be provided to a borrower upon request under G.S. ~~45-92(2)b;~~ 45-93(2)b;

- 1 (6) a copy of any bankruptcy plan approved in a proceeding filed by the borrower or a co-owner of the
2 property subject to the mortgage;
- 3 (7) a communications log, if maintained by the servicer, ~~which~~ that documents all verbal
4 communication with the borrower or the borrower's representative;
- 5 (8) a record of all efforts by the servicer to comply with the duties required under G.S. 53-244.110(7)
6 including all information utilized in the servicer's determination regarding loss mitigation
7 proposals offered to the borrower;
- 8 (9) a copy of all notices sent to the borrower related to any foreclosure proceeding filed against the
9 encumbered property; and
- 10 (10) records regarding the final disposition of the loan including a copy of any collateral release
11 document, records of servicing transfers, charge-off information, or ~~REO~~ real estate owned
12 disposition.

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

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

19

20 *History Note: Authority G.S. 53-244.105; 53-244.115; 53-244.118;*

21 *Eff. April 1, 2003;*

22 *Amended Eff. May 1, 2010; April 1, ~~2008~~. 2008;*

23 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0502 is readopted as published in 32-19 NCR 1842 with changes 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(f), 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)~~ ~~(a)~~ The records may be maintained in the any 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. documents
10 by the licensee.

11 ~~(e)~~ ~~(b)~~ All records required by this Rule Section shall be prepared in accordance with generally accepted accounting
12 principles, where applicable.

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

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

20 (2) ~~The the~~ licensee or registrant agrees in writing to make available at its expense for inspection and
21 copying upon request by the Commissioner copies of all requested records in a form ~~which that~~
22 satisfies the requirements of Paragraph ~~(b)~~ ~~(a)~~ of this Rule.

23 ~~(e)~~ ~~(d)~~ If the Commissioner ~~subsequently~~ has reason to believe that records are not or will not be ~~adequately~~
24 against unauthorized access or damage, the Commissioner shall summarily revoke any approval ~~previously~~ granted
25 under Paragraph ~~(d)~~ ~~(c)~~ of this Rule.

26 ~~(f)~~ ~~(e)~~ A licensee or registrant shall notify the Commissioner of any change in the location of its books and records
27 within ~~10~~ 15 days following such change.

28

29 *History Note: Authority G.S. 53-244.105; 53-244.115; 53-244.118;*

30 *Eff. April 1, 2003;*

31 *Amended Eff. May 1, ~~2010~~, 2010;*

32 *Readopted Eff. August 1, 2018.*

33

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0602 is readopted as published in 32-19 NCR 1842 with changes as follows:

2

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

5 (a) A mortgage lender or mortgage broker shall not 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 from a seller affiliated with
7 the mortgage lender or mortgage broker, unless:

8 (1) the discount conditioned on the use of the mortgage lender or mortgage broker is disclosed
9 ~~separately~~ on a separate document from any other discount provided by the seller in a written
10 document that informs the borrower that the choice of a lender not affiliated with the seller will
11 not affect any other concessions or discounts ~~separately~~ offered to the borrower for the purchase of
12 the home, other than the incentive offered for the use of the affiliated lender;

13 (2) the discount conditioned on the use of the mortgage lender or mortgage broker may be used to pay
14 only the following:

15 (A) bona fide and reasonable closing costs associated with the loan as permitted under G.S.
16 24-8(d); and

17 (B) bona fide discount points, ~~which that~~ are knowingly paid by the borrower for the purpose
18 of reducing the interest rate below the market rate for that loan product and which in fact
19 reduces the interest rate below the market rate for that loan product; and

20 (3) the discount does not exceed three percent of the final sales price.

21 (b) For any discount used as described in Part (a)(2)(B) of this Rule, the following documents ~~must~~ shall be
22 maintained in the individual loan file:

23 (1) the disclosure required under Subparagraph (a)(1) of this Rule;

24 (2) the rate sheet used by the mortgage lender or mortgage broker to inform the borrower of the
25 available interest rate of the loan; and

26 (3) the signed lock-in agreement that demonstrates the below-market rate chosen by the borrower.

27 (c) For any discount used as described in Part (a)(2)(B) of this Rule, the mortgage lender ~~must~~ shall maintain
28 written policies and procedures related to the charging of discount points, which include the method of informing
29 borrowers of the benefits and costs of discount points and a ~~commercially reasonable~~ commercially reasonable
30 method for determining the amount by which the interest rate will be reduced for the payment of a discount point.

31 (d) The discount provided ~~for~~ in Paragraph (a) of this Rule shall not be applied in a manner that would exceed
32 amounts ~~which that~~ may be directly imposed under North Carolina or Federal ~~law~~; law related to mortgage lending
33 or mortgage servicing regardless of whether a party affiliated with the lender directly or indirectly pays for any
34 portion of such charges.

35

36 *History Note: Authority G.S. 53-244.111(1); 53-244.111(8); 53-244.118(a);*

37 *Eff. April 1, ~~2011~~ 2011;*

38 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0702 is readopted as published in 32-19 NCR 1842 with changes as follows:
2

3 **04 NCAC 03M .0702 REQUIREMENTS FOR MORTGAGE SERVICERS TO COMMUNICATE**
4 **EFFECTIVELY WITH BORROWERS REGARDING LOSS MITIGATION**

5 (a) A mortgage servicer shall ~~acknowledge, acknowledge in writing, writing~~ a borrower's loss mitigation request no
6 later than 10 business days after the request. The acknowledgement ~~must shall~~ identify ~~any~~ information needed
7 from the borrower in order for the mortgage servicer to consider the borrower's loss mitigation request. For
8 purposes of this Rule and Rule .0703 of this Subchapter, a loss mitigation request is considered received by a
9 servicer upon the borrower or the borrower's agent by contacting the servicer at the address, ~~phone~~ phone, or other
10 contact information required to be provided to borrowers in a notice complying with G.S. 53-244.111(22).

11 (b) A mortgage servicer shall respond to a loss mitigation request from a borrower no later than 30 business days
12 after the receipt of all information necessary from the borrower to assess whether or not a borrower qualifies for any
13 loss mitigation programs offered by the mortgage servicer.

14 (c) A mortgage servicer shall include in a final response denying a loss mitigation request the reason for the denial
15 and contact information for a person at the mortgage servicer with authority to reconsider the denial. In addition, the
16 denial shall also include the following statement, in a boldface type and in a print no smaller than the largest print
17 used elsewhere in the main body of the denial: "If you believe the loss mitigation request has been wrongly denied,
18 you may file a complaint with the North Carolina Office of the Commissioner of Banks website, www.nccob.gov."
19

20 *History Note: Authority G.S. 53-244.110(7); 53-244.118(a);*

21 *Eff. June 1, 2010; 2010;*

22 *Readopted Eff. August 1, 2018.*

Permanent Amendment for Publication in the NCAC

1 04 NCAC 03M .0703 is readopted as published in 32-19 NCR 1842 with changes as follows:
2

3 **04 NCAC 03M .0703 CESSATION OF FORECLOSURE ACTIVITY DURING PENDENCY OF LOSS**
4 **MITIGATION REQUEST**

5 (a) A mortgage servicer shall not initiate or further a foreclosure proceeding or impose a charge incident to a
6 foreclosure proceeding during the pendency of a loss mitigation request; ~~provided however, that this request.~~ This
7 requirement does not apply if:

8 (1) the borrower has failed to comply with the terms of a loss mitigation plan within the previous 12
9 months, if the loss mitigation plan:

10 (A) was implemented pursuant to a ~~federal~~ Federal or ~~state~~ State foreclosure prevention
11 program, including the Home Affordable Modification Program; or

12 (B) reduced the monthly payment of loan by six percent from the scheduled monthly
13 payment and resulted in a monthly payment of principal, interest, taxes, and insurance of
14 less than 31 percent of the borrower's household income;

15 (2) the mortgage servicer has provided a final response regarding a loss mitigation request within the
16 last 12 months and ~~reasonably~~ believes that the current loss mitigation request was not made in
17 good faith;

18 (3) the borrower has failed to comply with a Chapter 13 bankruptcy repayment plan or has had any
19 bankruptcy proceedings dismissed for abuse of process within the last 12 months;

20 (4) the loss mitigation request is received by the servicer after the time for appealing an order granting
21 foreclosure of the secured residential real estate has passed in accordance with Article 2A of
22 Chapter 45; or

23 (5) the servicing contract or the terms of the mortgage loan, entered into prior to October 1, 2009,
24 prohibits such a delay.

25 (b) Nothing in this Rule shall prevent a mortgage servicer, in order to avoid dismissal or any other adverse order in
26 a foreclosure proceeding ~~which that~~ was initiated prior to the loss mitigation request being received, from filing or
27 causing to be filed any pleading or notice ~~which that~~ is required under Article 2A of Chapter 45, the Rules of Civil
28 Procedure, or the Local Rules of Court to continue or delay further proceedings.
29

30 *History Note:* Authority G.S. 53-244.110(7); 53-244.118(a);
31 *Eff. June 1, 2010, 2010;*
32 *Readopted Eff. August 1, 2018.*