

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, NOVEMBER 7, 2016

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

*Ex Parte:* In re: Rules Governing Mortgage  
Lenders and Brokers, and Mortgage Loan  
Originators

SCC-CLERK'S OFFICE  
DOCUMENT CONTROL CENTER

2016 NOV -7 A 11: 36

CASE NO. BFI-2016-00048

161120048

ORDER TO TAKE NOTICE

Sections 6.2-1613 and 6.2-1720 of the Code of Virginia ("Code") provide that the State Corporation Commission ("Commission") shall adopt such regulations as it deems appropriate to effect the purposes of Chapter 16 (§ 6.2-1600 *et seq.*) and Chapter 17 (§ 6.2-1700 *et seq.*) of Title 6.2 of the Code. The Commission's rules governing Mortgage Lenders and Brokers are set forth in Chapter 160 ("Chapter 160") and its rules governing Mortgage Loan Originators are found in Chapter 161 ("Chapter 161") of Title 10 of the Virginia Administrative Code.

The Bureau of Financial Institutions ("Bureau") has submitted to the Commission proposed amendments to Chapter 160. The proposed regulations capture changes made to §§ 6.2-1607 and 6.2-1610 of the Code in the 2016 session of the General Assembly, including requiring that mortgage lenders and brokers ("licensees") file quarterly mortgage call reports through the Nationwide Mortgage Licensing System and Registry ("Registry") instead of an annual report, and clarifying the annual license renewal requirements for licensees. The proposed regulations also define, among other things, "bona fide employee," "lead generator," and "mortgage broker;" require that approved office locations be renewed each calendar year; require licensees to maintain a transaction journal; and clarify that licensees will receive from the

Bureau a single license instead of a license for each approved location. In addition, various technical amendments have been proposed.

The Bureau has also submitted to the Commission proposed amendments to 10 VAC 5-161-60 in Chapter 161. The proposed regulation replaces the annual report and reports of condition filings with a requirement that quarterly mortgage call reports be filed through the Registry.

NOW THE COMMISSION, based on the information supplied by the Bureau, is of the opinion and finds that the proposed regulations should be considered for adoption with a proposed effective date of May 1, 2017.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed regulations are appended hereto and made a part of the record herein.
- (2) Comments or requests for a hearing on the proposed regulations must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 31, 2017. Requests for a hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain a reference to Case No. BFI-2016-00048. Interested persons desiring to submit comments or request a hearing electronically may do so by following the instructions available at the Commission's website:

<http://www.scc.virginia.gov/case>.

- (3) This Order and the attached proposed regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(4) The Commission's Division of Information Resources shall provide a copy of this Order, including a copy of the attached proposed regulations, to the Virginia Registrar of Regulations for publication in the *Virginia Register of Regulations*.

AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall forthwith send by e-mail or U.S. mail a copy of this Order, together with a copy of the proposed regulations, to all licensed mortgage lenders, mortgage brokers, and mortgage loan originators, and such other interested parties as he may designate.

STATE CORPORATION COMMISSION

160 Rules Governing Mortgage Lenders and Mortgage Brokers

**10VAC5-160-10. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of § 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Bona fide employee" for purposes of Chapter 16 and this chapter means an individual (i) whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and (ii) whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person. However, the term shall not include an individual who is concurrently employed by two or more persons that are engaged in business as a mortgage lender or mortgage broker.

"Bureau," "commission," and "commissioner" shall have the meanings ascribed to them in § 6.2-100 of the Code of Virginia.

"Chapter 16" means Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2 of the Code of Virginia.

"Chapter 17" means Chapter 17 (§ 6.2-1700 et seq.) of Title 6.2 of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include fees paid to third persons or interest.

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Lead generator" means a person who engages in a form of marketing activity in which the person collects and transmits a prospective borrower's contact information and minimal information pertaining to potential mortgage loans. A person shall not be considered a lead generator if the person collects a prospective borrower's social security number or sufficient personal information to enable a mortgage lender or mortgage broker to evaluate, in whole or in part, the prospective borrower's creditworthiness.

"Licensee" means a person licensed under Chapter 16.

"Loan processor or underwriter" means a person who, with respect to the origination of a residential mortgage loan, performs the following duties at the direction of and subject to the supervision and instruction of a licensed or exempt mortgage lender or mortgage broker: (i) receiving, collecting, distributing, or analyzing information common for the processing or underwriting of a residential mortgage loan or (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a residential mortgage loan. A loan processor or underwriter does not include a person who (i) communicates with a consumer regarding a prospective residential mortgage loan prior to the consumer submitting a residential mortgage loan application, (ii) takes an application for or offers or negotiates the terms of a residential mortgage loan, or (iii) counsels consumers about residential mortgage loan terms. For purposes of this definition, the phrase "takes an application for or offers or negotiates the terms of a residential mortgage loan" shall be construed in accordance with subdivisions B 1 and 2 of 10VAC5-161-20.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. ~~A lock-in agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval.~~ A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" and "person" shall have the meanings ascribed to them in § 6.2-1600 of the Code of Virginia. For purposes of Chapter 16 and this chapter, the term "mortgage broker" does not include the following, provided that they are not also engaged in any activities for which a mortgage broker license is required: (i) a person engaged in the business of a loan processor or underwriter provided that such person is not engaged in any other activities for which a mortgage broker license is required, (ii) a lead generator, and (iii) a noteholder, or servicer acting on behalf of a noteholder, that negotiates the modification of a mortgage loan in its portfolio. The payee named in a mortgage loan note shall be deemed to be the mortgage lender for purposes of Chapter 16 and this chapter.

"Mortgage loan originator," "Nationwide Mortgage Licensing System and Registry," "Registry," and "residential mortgage loan" shall have the meanings ascribed to them in § 6.2-1700 of the Code of Virginia.

"Personal, family or household purposes" for purposes of § 6.2-1600 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and circumstances known to it, within which the mortgage loan will be closed.

"Refinancing" for purposes of Chapter 16 and this chapter means an exchange of an old debt for a new debt, as by negotiating a different interest rate or term or by repaying an existing loan with money acquired from a new loan. "Refinancing" includes any loan modification.

"Senior officer" for purposes of §§ 6.2-1605, 6.2-1606, 6.2-1607, and 6.2-1608 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Stockholder" for purposes of § 6.2-1616 of the Code of Virginia includes a member of a limited liability company.

"Subsidiary" for purposes of subdivision 3 of § 6.2-1602 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

**10VAC5-160-15. Surety bond; required funds.**

A. As required by § 6.2-1604 of the Code of Virginia, a surety bond shall be filed with the commissioner and continuously maintained thereafter in full force by each licensee. The minimum bond amount required for a mortgage broker shall be \$25,000 and the minimum amount required for a mortgage lender or for a mortgage company with dual authority as both a mortgage lender and mortgage broker shall be \$50,000. The bond amount shall be adjusted annually in accordance with the following scale based upon residential mortgage loans originated during the preceding calendar year:

| <u>LOANS</u>                        | <u>BOND AMOUNT</u> |
|-------------------------------------|--------------------|
| <u>\$0 - \$5,000,000</u>            | <u>\$25,000</u>    |
| <u>\$5,000,001 - \$20,000,000</u>   | <u>\$50,000</u>    |
| <u>\$20,000,001 - \$50,000,000</u>  | <u>\$75,000</u>    |
| <u>\$50,000,001 - \$100,000,000</u> | <u>\$100,000</u>   |
| <u>over \$100,000,000</u>           | <u>\$150,000</u>   |

B. If a person has been or is engaged in business as a mortgage lender or mortgage broker and has filed a bond with the commissioner, the bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:

1. The person's application for a license is withdrawn or denied;
2. The person's license is surrendered, suspended, or revoked; or
3. The person ceases engaging in business as a mortgage lender or mortgage broker.

C. As required by § 6.2-1606 of the Code of Virginia, a mortgage lender shall maintain at least \$200,000 in funds available for the operation of its business. To comply with this requirement, a mortgage lender shall maintain documentation of one of the following: (i) ownership of funds on deposit in a bank or other depository institution, (ii) an established line of credit from a bank or other depository institution or (iii) a combination of (i) and (ii). Neither letters of credit nor lines of credit from sources other than a bank or other depository institution shall satisfy this requirement.

**10VAC5-160-20. Operating rules requirements.**

A licensee shall conduct its business in accordance with the following rules requirements:

1. No licensee shall (i) misrepresent the qualification requirements for a mortgage loan or any material loan terms; (ii) make false or misleading statements to induce an applicant to apply for a mortgage loan, enter into any commitment agreement or lock-in agreement, or pay any commitment fee or lock-in fee in connection therewith; or (iii) provide any other information to a borrower or prospective borrower that is false, misleading, or deceptive. A "material loan term" means the loan terms required to be disclosed to a consumer pursuant to (i) the Truth in Lending Act (TILA) (15 USC § 1601 et seq.), and the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC § 2601 et seq.), and regulations and official commentary issued thereunder, as amended from time to time, (ii) § 6.2-406 of the Code of Virginia, and (iii) 10VAC5-160-30. A misrepresentation or false or misleading statement resulting directly from incorrect information furnished to a licensee by a third party, or a good-faith misunderstanding of information furnished by a third party, shall not be considered a violation of this section if the licensee has supporting documentation thereof and the licensee's reliance thereon was reasonable.

2. No licensee shall retain any portion of any fees or charges imposed upon consumers for goods or services provided by third parties. All moneys received by a licensee from an applicant for fees paid to third persons shall be accounted for separately, and all disbursements for fees paid to third persons shall be supported by adequate documentation of the services for which such fees were or are to be paid. All such moneys shall be deposited in an escrow account in a bank, savings institution, or credit union segregated from other funds of the licensee.

3. The mortgagor who obtains a mortgage loan shall be entitled to continue to make payments to the transferor of the servicing rights under a mortgage loan until the mortgagor is given written notice of the transfer of the servicing rights by the transferor.

~~The notice shall specify the name and address to which future payments are to be made and shall be mailed or delivered to the mortgagor at least 10 calendar days before the first payment affected by the notice pursuant to the requirements set forth in the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 USC § 2601 et seq.).~~

~~4. If a person has been or is engaged in business as a mortgage lender or mortgage broker and has filed a bond with the commissioner, as required by § 6.2-1604 of the Code of Virginia, such bond shall be retained by the commissioner notwithstanding the occurrence of any of the following events:~~

- ~~a. The person's application for a license is withdrawn or denied;~~
- ~~b. The person's license is surrendered, suspended, or revoked; or~~
- ~~c. The person ceases engaging in business as a mortgage lender or mortgage broker.~~

~~5. Pursuant to § 6.2-1621 of the Code of Virginia, within 15 days of becoming aware of the occurrence of any of the events enumerated in this subdivision, a licensed mortgage lender or mortgage broker shall file a written report with the commissioner describing such event and its expected impact, if any, on the activities of the licensee in the Commonwealth. If the Registry enables licensees to submit the information required by this subdivision, then submission of this information through the Registry shall satisfy the requirement for a written report:~~

- ~~a. The licensee files for bankruptcy or reorganization.~~
- ~~b. Any governmental authority institutes revocation or suspension proceedings against the licensee, or revokes or suspends a mortgage-related license held or formerly held by the licensee.~~

c. Any governmental authority takes (i) formal regulatory or enforcement action against the licensee relating to its mortgage business or (ii) any other action against the licensee relating to its mortgage business where the total amount of restitution or other payment from the licensee exceeds \$20,000. A licensee shall not be required to provide the commissioner with information about such event to the extent that such disclosure is prohibited by the laws of another state.

d. Based on allegations by any governmental authority that the licensee violated any law or regulation applicable to the conduct of its licensed mortgage business, the licensee enters into, or otherwise agrees to the entry of, a settlement or consent order, decree, or agreement with or by such governmental authority.

e. The licensee surrenders its license to engage in any mortgage-related business in another state in lieu of threatened or pending license revocation, license suspension, or other regulatory or enforcement action.

f. The licensee is denied a license to engage in any mortgage-related business in another state.

g. The licensee or any of its employees, officers, directors, principals, or exclusive agents is indicted for a felony.

h. The licensee or any of its employees, officers, directors, principals, or exclusive agents is convicted of a felony.

i. The licensee or any of its employees, officers, directors, principals, or exclusive agents is convicted of a misdemeanor involving fraud, misrepresentation, or deceit.

6. 5. No licensee shall inform a consumer that such consumer has been or will be "preapproved" or "pre-approved" for a mortgage loan unless the licensee contemporaneously provides the consumer with a ~~separate~~ written disclosure (in at least

10-point type) that (i) explains what preapproved means; (ii) informs the consumer that the consumer's loan application has not yet been approved; (iii) states that a written commitment to make a mortgage loan has not yet been issued; and (iv) advises the consumer what needs to occur before the consumer's loan application can be approved. This provision shall not apply to advertisements subject to 10VAC5-160-60. In the case of a preapproval initially communicated to a consumer by telephone, the licensee shall provide the written disclosure to the consumer within three business days.

~~7.~~ 6. A licensee shall not permit any individual to take an application for or offer or negotiate the terms of a residential mortgage loan on behalf of the licensee unless: (i) the individual is licensed as a mortgage loan originator pursuant to Chapter 17; (ii) the individual is covered by the licensee's surety bond; (iii) the licensee has submitted a sponsorship request for such individual through the Registry; and (iv) the individual is either (a) a bona fide employee of the licensee, or (b) an exclusive agent of the licensee pursuant to a written agreement with the licensee and the licensee has agreed to such conditions relating to its use of exclusive agents as may be prescribed by the bureau. The phrase "take an application for or offer or negotiate the terms of a residential mortgage loan" shall be construed in accordance with subdivisions B 1 and 2 of 10VAC5-161-20.

~~8.~~ 7. Every licensee shall disclose on any application provided to the borrower associated with a Virginia residential mortgage loan: (i) the unique identifier assigned by the Registry to the licensed mortgage lender or mortgage broker that took the initial mortgage loan application; and (ii) the unique identifier assigned by the Registry to the licensed mortgage loan originator who took the initial mortgage loan application.

~~9.~~ 8. A licensee may outsource its loan processing or underwriting activities to a third party loan processor or underwriter pursuant to a written agreement with the loan

processor or underwriter. Prior to entering into an agreement, the licensee shall conduct a due diligence review of the third party loan processor or underwriter. The agreement shall (i) require the loan processor or underwriter to comply with all applicable state and federal laws and regulations; (ii) require the loan processor or underwriter to permit the commission to investigate or examine its business pursuant to § 6.2-1611 of the Code of Virginia; and (iii) prohibit the loan processor or underwriter from subcontracting to another person, other than its bona fide employees, any of the services specified in the agreement to be performed on behalf of the licensee. A copy of the written agreement shall be retained by the licensee for at least three years after the agreement has been terminated by either party. The licensee shall be responsible for implementing and maintaining a reasonable program to monitor any third party loan processor or underwriter performing services on its behalf.

~~10. If a licensee disposes of records containing a consumer's personal financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.~~

~~44. 9.~~ Every licensee shall comply with Chapter 16, this chapter, and all other state and federal laws and regulations applicable to the conduct of its business.

10. A licensee shall continuously (i) maintain the requirements and standards for licensure prescribed in § 6.2-1606 of the Code of Virginia and (ii) remain authorized to transact business in the Commonwealth pursuant to Title 13.1 of the Code of Virginia.

**10VAC5-160-25. Books, accounts, and records.**

A. A licensee shall maintain in its licensed offices all books, accounts, and records required by Chapter 16 and this chapter.

B. A licensee may maintain records electronically provided (i) the records are readily available for examination by the bureau, and (ii) the licensee complies with the Uniform Electronic Transactions Act (UETA) (§ 59.1-479 et seq. of the Code of Virginia) and the Electronic Signatures in Global and National Commerce Act (ESIGN) (15 USC § 7001 et seq.). However, the written agreement specified in § 6.2-1616 B 4 of the Code of Virginia shall be maintained in the form in which it was originally provided and executed.

C. A licensee shall continuously maintain a mortgage loan transaction journal that includes the following information for each application received:

1. Applicant's name
2. Application date
3. Property address
4. Loan amount
5. Lien position
6. Mortgage loan originator (licensed name)
7. Mortgage loan originator (license or Registry number)
8. Address of originating office
9. Name of lender (if applicable)
10. Application status (e.g., in process, withdrawn, denied, closed)
11. Any other information reasonably required by the Commissioner.

D. If a licensee disposes of records containing a consumer's personal or financial information following the expiration of any applicable record retention periods, such records shall be shredded, incinerated, or otherwise disposed of in a secure manner. Licensees may arrange for service from a business record destruction vendor.



~~9.~~ 10. Any other terms and conditions of the commitment agreement required by the lender.

B. If a lock-in agreement is issued to a consumer by a mortgage lender, or a mortgage broker ~~to a consumer~~ acting on behalf of the mortgage lender, it shall be signed by a representative of the mortgage lender or mortgage broker and include the following:

1. The name of the mortgage lender or mortgage broker issuing the lock-in agreement;

2. The interest rate and points for the mortgage loan, and if the rate is an adjustable rate, the initial interest rate and a brief description of the method of determining the rate (such as the index and the margin);

~~2.~~ 3. The amount of any lock-in fee and the time within which the lock-in fee must be paid;

~~3.~~ 4. The length of the lock-in period;

~~4.~~ 5. A statement that if the loan is not closed within the lock-in period, the mortgage lender is no longer obligated by the lock-in agreement and any lock-in fee paid by the applicant will be refunded only under the circumstances set forth in subsection D of this section and such other circumstances as are set forth in the lock-in agreement;

~~5.~~ 6. A statement that any terms not ~~locked in~~ locked in by the lock-in agreement are subject to change until ~~the loan is closed at~~ three days prior to settlement; and

~~6.~~ 7. Any other terms and conditions of the lock-in agreement required by the mortgage lender or mortgage broker acting on behalf of a mortgage lender.

C. If an applicant has paid any commitment fee, and the mortgage loan is not closed due to any of the following, such commitment fee shall be refunded:

1. The commitment period was not a reasonable period of time given the prevailing market conditions at the time the commitment agreement was entered into;
2. The mortgage loan is turned down because of the applicant's lack of creditworthiness; or
3. The mortgage loan is turned down because of the appraised value of the property intended to secure the mortgage loan.

D. If an applicant has paid any lock-in fee and the loan is not closed because the lock-in period was not a reasonable period of time given the prevailing market conditions at the time the lock-in agreement was entered into, such lock-in fee shall be refunded.

E. A mortgage broker shall not issue a lock-in agreement to a consumer unless the mortgage broker has actually locked in the mortgage loan, including the applicable interest rate, points, and other terms, with a mortgage lender. A mortgage broker shall maintain supporting written documentation from the mortgage lender of all lock-in information for at least three years from the date the lock-in expires.

**10VAC5-160-40. Schedule of annual fees for the examination, supervision, and regulation of mortgage lenders and mortgage brokers.**

Pursuant to § 6.2-1612 of the Code of Virginia, the Commission sets the following schedule of annual fees to be paid by mortgage lenders and mortgage brokers required to be licensed under Chapter 16. Such fees are to defray the costs of examination, supervision and regulation of such lenders and brokers by the Bureau of Financial Institutions. The fees are related to the actual costs of the Bureau, to the volume of business of the lenders and brokers, and to other factors relating to supervision and regulation.

**SCHEDULE**

**LENDER LICENSEE: Minimum fee -- \$800, plus \$6.60 per loan**

BROKER LICENSEE: Minimum fee -- \$400, plus \$6.60 per loan

DUAL AUTHORITY (LENDER/BROKER): Minimum fee -- \$1,200, plus \$6.60 per loan

The annual fee for each mortgage lender shall be computed on the basis of the number of mortgage loans, as defined in § 6.2-1600 of the Code of Virginia, made or originated during the calendar year preceding the year of assessment. The annual fee for each mortgage broker shall be based on the number of such loans brokered. The annual fee for each mortgage lender/broker shall be based on the total number of mortgage loans made or originated and mortgage loans brokered. The annual fee computed using the above schedule shall be rounded down to the nearest whole dollar.

Fees shall be assessed on or before April 25 for the current calendar year. By law the fee must be paid on or before May 25.

The ~~annual report of~~ quarterly mortgage call reports filed through the Registry by each licensee ~~shall be due March 1 of each year and~~ shall provide the basis for licensee assessment, i.e., the number of loans made or brokered. If the ~~annual report~~ required quarterly mortgage call reports of a licensee ~~has~~ have not been filed by the assessment date, a provisional fee, subject to adjustment when the report is filed, shall be assessed. In cases where a license or additional authority has been granted between January 1 and March 31, one of the following fees or additional fee shall be assessed: lender -- \$400; broker -- \$200; lender/broker -- \$600.

Fees prescribed and assessed by this schedule are apart from, and do not include, the reimbursement for expenses permitted by subsection C of § 6.2-1612 of the Code of Virginia.

**10VAC5-160-50. Responding to requests from Bureau of Financial Institutions; providing false, misleading, or deceptive information; ~~record retention.~~**

A. If the bureau requests information from an applicant to complete a deficient application filed under §§ 6.2-1603, 6.2-1607, or 6.2-1608 of the Code of Virginia and the information is not received within 60 days of the request, the application shall be deemed abandoned unless a

request for an extension of time is received and approved by the bureau prior to the expiration of the 60-day period.

B. When the bureau requests a written response, books, records, documentation, or other information from a licensee in connection with the bureau's investigation, enforcement, or examination of compliance with applicable laws, the licensee shall deliver a written response as well as any requested books, records, documentation, or information within the time period specified in the bureau's request. If no time period is specified, a written response as well as any requested books, records, documentation, or information shall be delivered by the licensee to the bureau not later than 30 days from the date of such request. In determining the specified time period for responding to the bureau and when considering a request for an extension of time to respond, the bureau shall take into consideration the volume and complexity of the requested written response, books, records, documentation or information and such other factors as the bureau determines to be relevant under the circumstances.

Requests made by the bureau pursuant to this subsection are deemed to be in furtherance of the bureau's investigation and examination authority provided for in § 6.2-1611 of the Code of Virginia.

C. A licensee shall not provide any information to the bureau, either directly or through the Registry, that is false, misleading, or deceptive.

~~D. A licensee shall maintain in its licensed offices all books, accounts, and records required by Chapter 16 and this chapter.~~

**10VAC5-160-60. Advertising.**

A. Every advertisement used by, or published on behalf of, a licensed mortgage lender or mortgage broker shall clearly and conspicuously disclose the following information:

1. The name of the mortgage lender or mortgage broker as set forth in the license issued by the commission.
2. The abbreviation "NMLS ID #" followed immediately by ~~both~~ the unique identifier assigned by the Registry to the mortgage lender or mortgage broker and along with the address for the NMLS Consumer Access website ~~in parenthesis~~. For example: NMLS ID # 999999 (www.nmlsconsumeraccess.org). In a radio or television advertisement, this disclosure shall be provided after the name of the mortgage lender or mortgage broker.
3. If an advertisement contains a rate of interest, a statement that the stated rate may change or not be available at the time of loan commitment or lock-in.
4. If an advertisement contains specific information about a consumer's existing mortgage loan and such information was not obtained from the consumer, a statement identifying the source of such information (e.g., public court records, credit reporting agency, etc.).

B. No mortgage lender or mortgage broker shall deceptively advertise a mortgage loan, make false or misleading statements or representations, or misrepresent the terms, conditions, or charges incident to obtaining a mortgage loan.

C. No mortgage lender or mortgage broker shall use or cause to be published an advertisement that states or implies the following:

1. The mortgage lender or mortgage broker is affiliated with, or an agent or division of, a governmental agency, depository institution, or other entity with which no such relationship exists; or
2. A consumer has been or will be "preapproved " or "pre-approved" for a mortgage loan, unless the mortgage lender or mortgage broker (i) discloses on the face of the advertisement in at least 14-point bold type that "THIS IS NOT A LOAN APPROVAL"

and (ii) clearly and conspicuously discloses the conditions and/or qualifications associated with such preapproval. This provision is intended to supplement the requirements of the Fair Credit Reporting Act, (FCRA) (15 USC § 1681 et seq.), relating to firm offers of credit.

D. A mortgage lender or mortgage broker shall not use or cause to be published any advertisement that gives a consumer the false impression that the advertisement is being sent by the consumer's current noteholder or lienholder. If an advertisement contains the name of the consumer's current noteholder or lienholder, it shall not be more conspicuous than the name of the mortgage lender or mortgage broker using the advertisement.

E. A mortgage lender or mortgage broker shall not deliver or cause to be delivered to a consumer any envelope or other written material that gives the false impression that the mailing or written material is an official communication from a governmental entity, unless required by the United States Postal Service.

F. If an advertisement states or implies that a consumer can reduce his monthly payment by refinancing his current mortgage loan, ~~but as a result of such refinancing, the consumer's total finance charges may be higher over the life of the loan,~~ a mortgage lender or mortgage broker shall clearly and conspicuously disclose to the consumer that by refinancing the consumer's existing loan, the consumer's total finance charges may be higher over the life of the loan.

G. Every advertisement used by, or published on behalf of, a mortgage lender or mortgage broker shall comply with 12 CFR Part 1014 (Regulation N) and the disclosure requirements for advertisements contained in ~~the Truth in Lending Act and Regulation Z,~~ 12 CFR Part 226 1026 (Regulation Z).

H. For purposes of this section, the term "clearly and conspicuously" means that a required disclosure is reasonably understandable, prominently located, and readily noticeable by a potential borrower of ordinary intelligence.

I. Every mortgage lender and mortgage broker shall retain for at least three years after it is last published, delivered, transmitted, or made available, an example of every advertisement used, including but not limited to solicitation letters, commercial scripts, and recordings of all radio and television broadcasts, but excluding copies of Internet web pages.

**10VAC5-160-90. Nationwide Mortgage Licensing System and Registry.**

A. Applications for a mortgage lender or mortgage broker license shall be made through the Registry in accordance with instructions provided by the commissioner. The commissioner may provide these instructions through the Registry, on the commission's Internet website, or by any other means the commissioner deems appropriate.

~~B. The commissioner shall notify all licensees no later than January 1 of each calendar year of the information required to be included in the annual report to be submitted by each licensee pursuant to § 6.2-1610 of the Code of Virginia.~~ Pursuant to § 6.2-1610 of the Code of Virginia, every licensee shall file quarterly mortgage call reports through the Registry as well as such other information pertaining to the licensee's financial condition as may be required by the Registry. Reports shall be in such form, contain such information, and be submitted with such frequency and by such dates as the Registry may require.

C. Entities exempt from the requirement for licensure under Chapter 16 that supervise mortgage loan originators licensed pursuant to Chapter 17 may obtain a unique identifier through the Registry.

D. Every licensee shall maintain current information in its records with the Registry. Except as provided in subsection E of this section, changes to the licensee's address, principal officers,

or any other information in the Registry shall be updated by the licensee as soon as is practicable, but in no event later than five business days from when the change takes effect.

E. A licensee shall update its sponsorship information in the Registry within five days after the occurrence of either of the following events: (i) a mortgage loan originator becomes a bona fide employee or exclusive agent of the licensee or (ii) a mortgage loan originator ceases to be a bona fide employee or exclusive agent of the licensee.

F. If (i) any provision of Chapter 16 or this chapter requires a licensee to provide the bureau or commissioner with a written notice and (ii) the Registry enables licensees to submit such notice through the Registry, then a licensee shall be deemed to have complied with the written notice requirement if the licensee timely submits the required notice through the Registry.

G. A mortgage lender or mortgage broker license shall expire at the end of each calendar year unless it is renewed by a licensee on or after November 1 of the same year. However, licenses that are granted between November 1 and December 31 shall not expire until the end of the following calendar year. A license shall be renewed upon the commission finding that the licensee has (i) requested license renewal through the Registry and (ii) complied with any requirements associated with such renewal request that are imposed by the Registry.

H. A licensee's approved office locations shall be subject to renewal each calendar year. However, office locations that are approved by the commission between November 1 and December 31 shall not be subject to renewal until the end of the following calendar year. An approved office location shall be renewed upon the commission finding that the licensee has (i) requested renewal for the location through the Registry and (ii) complied with any requirements associated with such renewal request that are imposed by the Registry.

I. If a licensee fails to timely meet the requirements specified in subsections G or H of this section, but meets such requirements before March 1 of the following calendar year, the license

or approved office location shall be reinstated and renewed. If an approved office location is not renewed on or before March 1, the office location shall be deemed to be closed as of the preceding January 1 by the licensee.

J. A licensee shall not engage in business as a mortgage lender or mortgage broker from an office location that has not been (i) approved by the Commission and (ii) renewed by the licensee as required by subsection H of this section. Any mortgage loan made or brokered by a licensee in violation of this subsection shall constitute a separate violation of Chapter 16.

K. Each licensee shall receive a single license from the Commission that states the full legal name of the licensee as well as any fictitious names under which the licensee is conducting business under Chapter 16. The license issued by the Commission shall identify the addresses of the offices at which the business is authorized to be conducted under Chapter 16 by referencing the approved office locations of the licensee as set forth in the Registry.

**10VAC5-161-60. Required reports and notices; information in registry.**

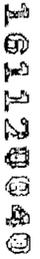
A. Each person for whom an individual described in 10VAC5-161-20 A 1 or 2 engages in the business of a mortgage loan originator shall file, ~~on or before March 1 of each year, an annual report with the bureau~~ quarterly mortgage call reports through the registry stating the amount of residential mortgage loans made or brokered during the preceding ~~calendar year~~ quarter, identifying all licensees performing services for that person, and providing such additional information as the bureau may require. Call reports shall be in such form, contain such information, and be submitted with such frequency and by such dates as the registry may require. Timely filing of the ~~annual report~~ reports required by Chapter 16 by a person licensed under that chapter shall constitute compliance with this subsection by that person if the ~~annual report contains~~ reports contain the information specified in this subsection.

B. Each licensee who is an individual described in 10VAC5-161-20 A 3 shall file, ~~on or before March 1 of each year, an annual report with the bureau~~ quarterly mortgage call reports through the registry stating the amount of residential mortgage loans originated during the preceding ~~calendar year~~ quarter and providing such additional information as the bureau may require. Call reports shall be in such form, contain such information, and be submitted with such frequency and by such dates as the registry may require.

C. Each licensee shall give notice to the bureau through the registry within five days after the occurrence of either of the following events:

1. Termination of, or separation from, employment or exclusive agency as a mortgage loan originator for a person licensed or exempt from licensing under Chapter 16. A licensee who is no longer an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 shall not engage in activities requiring licensure under Chapter 16 until such time as (i) the individual obtains a mortgage broker license under Chapter 16 or (ii) the individual becomes a bona fide employee or exclusive agent of a person who is licensed or exempt from licensing under Chapter 16 and the requirements set forth in (i) and (ii) of subdivision 2 of this subsection have been satisfied.

2. Commencement of employment or exclusive agency as a mortgage loan originator for a person licensed or exempt from licensing under Chapter 16. A licensee who becomes an employee or exclusive agent of a person licensed or exempt from licensing under Chapter 16 shall not engage in activities requiring licensure under Chapter 16 until (i) the person licensed or exempt from licensing under Chapter 16 has complied with the surety bond filing requirements of § 6.2-1703 of the Code of Virginia, 10VAC5-161-30 B, and 10VAC5-161-50 and (ii) the bureau has received a sponsorship request through the registry.



D. Pursuant to subsection B of § 6.2-1711 of the Code of Virginia, each licensee shall notify the commissioner through the registry within 10 days of any change of residential or business address. A licensee described in 10VAC5-161-20 A 1 or 2 shall be deemed to have complied with this requirement if a person licensed or exempt from licensing under Chapter 16 timely submits such notice on behalf of its employee or exclusive agent.

E. Each licensee shall ensure that all residential mortgage loans that close as a result of the licensee engaging in the business of a mortgage loan originator are included in quarterly mortgage call reports of condition submitted to the registry. ~~Reports of condition shall be in such form, contain such information, and be submitted with such frequency and by such dates as the registry may require.~~

F. The commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the registry by the bureau.