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-	06/04/2015	Approved by: Expiration Date		
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Document No. 4549
DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 28
Statutory Authority: 1976 Code Sections 40-58-10 et seq.,
Particularly Section 40-58-100

28-400. Licensing of Mortgage Brokers

Synopsis:

The Department proposes to amend and modify Regulation 28-400. The purpose of the proposed amendments is to revise and edit regulatory language to conform to changes of state and federal law and delete the previous regulation.

Section 40-58-100 authorizes the department to promulgate regulations necessary to effectuate the purposes of the chapter.

Notice of Drafting for the proposed regulation was published in the *State Register* on September 26, 2014. Comments were solicited for consideration in drafting the proposed regulation. Proposed regulation was published in the *State Register* on December 26, 2014.

Instructions:

Replace Regulation 28-400 as printed below.

Text:

28-400.
Licensing of Mortgage Brokers.

(Statutory Authority: 1976 Code Section 40-58-100 (as amended), 12 USC 5101 et seq., and
12 CFR Part 1008)

A. Definitions – Definitions shall be those contained in the Licensing of Mortgage Brokers Act, S.C. Code Ann. Section 40-58-10 et seq.; Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USC 5101 et seq.; S.A.F.E. Mortgage Licensing Act, 12 CFR Part 1008 and the following:

- (1) Act – means the Licensing of Mortgage Brokers Act, S.C. Code Ann. Section 40-58-10 et seq.
- (2) Co-brokering – means any sharing, regardless of percentage, of mortgage broker services or fees by two or more licensed mortgage brokers on behalf of a borrower.
- (3) Day – means all calendar days including Saturdays, Sundays and legal public holidays.
- (4) Employee for purposes of compliance with the federal income tax laws – means a natural person whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person, and whose compensation for Federal income tax purposes is reported, or required to be reported, on a W-2 form issued by the controlling person. (See IRS Publication 1779 and Form SS-8).
- (5) Loan correspondent – means a person engaged in the business of making mortgage loans as a third party originator and who does not engage in all three of the following activities with respect to each

mortgage loan: underwrite the mortgage loan by their employees, approve the mortgage loan, and fund the mortgage loan utilizing an unrestricted warehouse or credit line. A loan correspondent is not a mortgage lender for purposes of compliance with S.C. Code Section 37-22-110 et seq.

(6) Loss mitigation – means the practice of offering to provide or providing, in a for profit context, a service, plan, or program that is represented expressly or by implication to assist the borrower to prevent, delay, or otherwise avoid foreclosure, including, but not limited to, loan modifications, short sales, and deeds in lieu of foreclosure. This definition does not include persons acting exclusively for or as a bona fide nonprofit organization as determined by the Department or mortgage lenders/servicers licensed pursuant to S.C. Code Section 37-22-110 et seq., when acting for mortgage loans they own or service.

B. Licensing of Independent Contractor Processors or Underwriters

(1) Independent contractor processors or underwriters, including those currently licensed as mortgage lenders/servicers pursuant to S.C. Code Section 37-22-110 et seq., shall comply with the Act, except for the following provisions:

(a) Section 40-58-65(A) maintaining a mortgage log;

(b) Section 40-58-65(B) maintaining an in-state office;

(c) Section 40-58-75 completing a mortgage broker fee agreement;

(d) Section 40-58-78 additional disclosures on mortgage broker fee agreement;

(e) Sections 40-58-120(A), (B) and (C) annual report for loans originated, however an annual report for gross revenue is required.

(2) Independent Contractor Processors or Underwriters shall not originate mortgage loans.

C. All South Carolina mortgage loans are subject to the provisions of all South Carolina and federal law related to mortgage loans, including, but not limited to, the Real Estate Settlement Procedures Act of 1974 (RESPA) 12 USC Section 2601 et seq.

D. Reports

(1) Mortgage log required pursuant to Section 40-58-65(A) shall:

(a) be completed electronically as required by the Department. The licensee is responsible for all costs associated with the electronic filing, and

(b) include all mortgage loans or applications where a credit report is requested, regardless of whether a mortgage loan is originated or modified.

(2) Annual report required by Section 40-58-120 shall be:

(a) completed as a mortgage call report (MCR) (See Secure and Fair Enforcement for Mortgage Licensing Act of 2008, 12 USC 5101 et seq.; Safe Mortgage Licensing Act, 24 CFR Part 3400 and Staff Commentary), and

(b) submitted electronically on a quarterly basis as required by the Nationwide Mortgage Licensing System and Registry (NMLS&R) by the mortgage broker for all locations and loan originators.

(3) The Department at its discretion may require or accept an Expanded Mortgage Call Report filed through the Nationwide Mortgage Licensing System & Registry (NMLS&R) or similar filing in lieu of the annual report required by Section 40-58-120.

E. Licensing for loss mitigation activities. Persons providing or offering to provide loss mitigation shall comply with the Act unless the Department has determined the person is exempt pursuant to Section 40-58-20(16) and Sections (A)(6) and (F) herein.

F. Bona fide Nonprofit Organizations (12 CFR 1008.103(e)(7)).

(1) The Department may consider an organization a bona fide nonprofit organization based on but not limited to the following minimum criteria:

(a) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986;

(b) Promotes affordable housing or provides homeownership education, or similar services;

(c) Conducts its activities in a manner that serves public or charitable purposes, rather than commercial purposes;

(d) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients;

(e) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients; and

(f) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(2) Bona fide nonprofit organizations must file for an initial determination and annually for renewal of this determination by the Department. Annual renewals must be filed by December 31st using forms and procedures as required by the Department.

(3) Bona fide nonprofit organizations may use the Nationwide Mortgage Licensing System for initial and renewal filings; however, they will be required to pay any associated processing fees.

Fiscal Impact Statement:

The department estimates the costs incurred by the State in complying with the proposed regulation will be approximately \$0.

Statement of Rationale:

The South Carolina *Licensing of Mortgage Brokers Act* specifically provides for the department to promulgate regulations necessary to effectuate the purposes of the Act. The Act also permits and/or contemplates the drafting of licensing requirements for independent contractor processors and

underwriters and reporting requirements. Such modifications and additions are necessary to effectuate the consumer protection purpose of the Act and to guide businesses with compliance.