

“Secure and Fair Enforcement for
Mortgage Licensing Act of
2008”
or
“S.A.F.E. Mortgage Licensing
Act of 2008”

SEC. 1502- PURPOSES

- (1) Provides ***uniform license applications and reporting requirements*** for State-licensed loan originators.
- (2) Provides a comprehensive ***licensing and supervisory database***.
- (3) Aggregates and improves the flow of information to and between regulators.
- (4) Provides increased accountability and tracking of loan originators.
- (5) Streamlines the licensing process and reduces the regulatory burden.



SEC. 1502 - PURPOSES

- (6) Enhances **consumer protections** and supports **anti-fraud measures**.
- (7) **Provides consumers** with easily accessible **information**, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.
- (8) Establishes a means by which residential mortgage loan originators would, to the greatest extent possible, be **required to act in the best interests of the consumer**.
- (9) Facilitates responsible behavior in the subprime mortgage market place and provides **comprehensive training and examination requirements** related to subprime mortgage lending.
- (10) **Facilitates** the **collection and disbursement of consumer complaints** on behalf of State and Federal mortgage regulators.



Important Points

- Sets minimum standards
- States can do more or less
- If less than minimum, then HUD is mandated to enforce minimum standards



SEC. 1503 - DEFINITIONS

- LOAN ORIGINATOR.—
- The term “loan originator”—
- means an individual who—
- takes a residential mortgage loan application; and
- offers or negotiates terms of a residential mortgage loan for compensation or gain.



NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (NMLSR)

...means a mortgage licensing system developed and maintained by the **Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators** for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary of HUD.



The **Conference of State Bank Supervisors (CSBS)** is the nationwide organization for state banking, representing the bank regulators of the 50 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands, and approximately 6,200 state-chartered financial institutions.



The **American Association of Residential Mortgage Regulators (AARMR)** is the national organization representing state residential mortgage regulators, which promotes the exchange of information between and among the executives and employees of the various states who are charged with the responsibility for the administration and regulation of residential mortgage lending, servicing and brokering.



REGISTERED LOAN ORIGINATOR.—

The term “registered loan originator” means any individual who—

- meets the definition of loan originator and is an employee of—
- a depository institution;
- a subsidiary that is—
- owned and controlled by a depository institution; and regulated by a Federal banking agency; or
- an institution regulated by the *Farm Credit Administration*; and
- is registered with, and maintains a **unique identifier (not SS#)** through, the Nationwide Mortgage Licensing System and Registry (NMLSR).

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- The Farm Credit Administration is an independent Federal agency responsible for examining and regulating the Farm Credit System (FCS).
 - The FCS is a nationwide network of borrower-owned lending institutions and specialized service organizations that provide credit and related services to farmers, ranchers, agricultural cooperatives, and other eligible borrowers.



STATE-LICENSED LOAN ORIGINATOR.—

The term “State-licensed loan originator” means any individual who—

- is a loan originator;
- is not an employee of—
 - a depository institution;
 - a subsidiary that is owned and controlled by a depository institution; and regulated by a Federal banking agency; or
 - an institution regulated by the Farm Credit Administration; and
- is licensed by a State or by the Secretary under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.



SEC. 1504 LICENSE OR REGISTRATION REQUIRED

An individual may not engage in the business of a loan originator without first—

- obtaining, and maintaining annually—
 - a registration as a registered loan originator; or
 - a license and registration as a State licensed loan originator; and
- obtaining a unique identifier.



An individual “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan

SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.—

- A loan processor or underwriter who **does not represent to the public**, through advertising or other means of communicating or providing information (including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items), that such individual can or will perform any of the activities of a loan originator **shall not be required to be a State-licensed loan originator**.



INDEPENDENT CONTRACTORS.—

An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor is a State-licensed loan originator.



SEC. 1505. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.

- BACKGROUND CHECKS.—In connection with an application to any State for licensing and registration as a State-licensed loan originator, the **applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry** information concerning the applicant's identity, including—
 - **fingerprints** for submission to the Federal Bureau of Investigation,
 - **personal history and experience**, including authorization for the System to obtain—
 - an independent **credit report** obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - information related to any **administrative, civil or criminal findings** by any governmental jurisdiction.

ISSUANCE OF LICENSE.—The *minimum standards for licensing and registration* as a State-licensed loan originator shall include the following:

- The applicant has *never had a loan originator license revoked* in any governmental jurisdiction.
- The applicant has *not been convicted of, or pled guilty or nolo contendere to, a felony* in a domestic, foreign, or military court—
 - (A) *during the 7-year period* preceding the date of the application for licensing and registration; or
 - (B) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.
- The applicant has *demonstrated financial responsibility, character, and general fitness* such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this title.
- The applicant has *completed the pre-licensing education requirement*.
- The applicant has *passed a written test* that meets the test requirement.
- The applicant has *met either a net worth or surety bond requirement*, or paid into a State fund, as required by the State.

PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.—

- **MINIMUM EDUCATIONAL REQUIREMENTS.**— a person shall *complete at least 20 hours of education*, which shall include at least—
 - 3 hours of Federal law and regulations;
 - 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
 - 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- **APPROVED EDUCATIONAL COURSES.**—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, and *approved by the Nationwide Mortgage Licensing System and Registry*.
- **LIMITATION AND STANDARDS.**—
 - **LIMITATION.**—To maintain the independence of the approval process, the *Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer pre-licensure educational courses* for loan originators.
 - **STANDARDS.**—In approving courses under this section, the *Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses*.



TESTING OF LOAN ORIGINATORS.—

- **IN GENERAL.**—In order to meet the written test requirement, an *individual shall pass, in accordance with the standards, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry* and administered by an approved test provider.
- **QUALIFIED TEST.**—A written test shall not be treated as a qualified written test unless the *test adequately measures the applicant's knowledge and comprehension* in appropriate subject areas, including—
 - (A) ethics;
 - (B) Federal law and regulation pertaining to mortgage origination;
 - (C) State law and regulation pertaining to mortgage origination;
 - (D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
- **MINIMUM COMPETENCE.**—
 - (A) **PASSING SCORE.**— *not less than 75 percent correct answers to at least 100 questions.*
 - (B) **INITIAL RETESTS.**—*An individual may retake a test 3 consecutive times* with each consecutive taking occurring at least 30 days after the preceding test.
 - (C) **SUBSEQUENT RETESTS.**—*After failing 3 consecutive tests, an individual shall wait at least 6 months* before taking the test again.
 - (D) **RETEST AFTER LAPSE OF LICENSE.**—A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.



MORTGAGE CALL REPORTS.—

Each mortgage licensee shall submit to the Nationwide Mortgage Licensing System and Registry *reports of condition*, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.



SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.

- IN GENERAL.—The *minimum standards* for license renewal for State-licensed loan originators shall include the following:
- The loan originator *continues to meet the minimum standards for license issuance.*
- The loan originator *has satisfied the annual continuing education requirements.*



CONTINUING EDUCATION FOR STATE-LICENSED LOAN ORIGINATORS.—

- IN GENERAL.—In order to meet the annual continuing education requirements, a State-licensed loan originator *shall complete at least 8 hours of approved education*—
- 3 hours of Federal law and regulations;
- 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.
- APPROVED EDUCATIONAL COURSES.—Continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

SEC. 1507. SYSTEM OF REGISTRATION
ADMINISTRATION BY FEDERAL AGENCIES.

- IN GENERAL.—The Federal banking agencies shall jointly, through the **Federal Financial Institutions Examination Council (FFIEC)**, and together with the Farm Credit Administration, **develop and maintain a system for registering employees of a depository institution, employees of a subsidiary that is owned and controlled by a depository institution and regulated by a Federal banking agency, or employee of an institution regulated by the Farm Credit Administration**, as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of enactment of this title.

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- The **Federal Financial Institutions Examination Council (FFIEC)** was established on March 10, 1979.
 - The Council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Office of Thrift Supervision (OTS) and to make recommendations to promote uniformity in the supervision of financial institutions.



REGISTRATION REQUIREMENTS.—

- The appropriate **Federal banking agency** and the Farm Credit Administration shall, at a minimum, **furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry** information concerning the employees' identity, including—
- **fingerprints** for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and
- **personal history and experience**, including authorization for the Nationwide Mortgage Licensing System and Registry to obtain information related to any administrative, civil or criminal findings by any governmental jurisdiction.



NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY DEVELOPMENT.—

To facilitate the transfer of required information, the Nationwide Mortgage Licensing System and Registry shall coordinate with the Federal banking agencies, through the *FFIEC*, and the FCA concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.

- ***BACKUP LICENSING SYSTEM.***—If, by the end of the ***1-year period***, or the 2-year period in the case of a State whose legislature meets only biennially, the Secretary (***HUD***) ***determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the minimum requirements, or does not participate in the Nationwide Mortgage Licensing System and Registry***, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

STATE LICENSING LAW REQUIREMENTS.—

The law in effect in a State meets the requirements if the Secretary determines the law satisfies the following minimum requirements:

- A State loan originator supervisory authority is ***maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.***
- The State loan originator supervisory authority ***ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.***
- The State loan originator supervisory authority ***is required to regularly report violations of such law, as well as enforcement actions and other relevant information***, to the Nationwide Mortgage Licensing System and Registry.
- The State loan originator supervisory authority ***has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.***
- The State loan originator supervisory authority ***has established a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.***
- The State loan originator supervisory authority ***has established minimum net worth or surety bonding requirements*** that reflect the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.



TEMPORARY EXTENSION OF PERIOD.—

- The **Secretary may extend, by not more than 24 months**, the 1-year or 2-year period, as the case may be, for the licensing of loan originators in any State under a State licensing law that meets the requirements if the Secretary determines that such **State is making a good faith effort** to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.



SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.

- If at any time the **Secretary determines that the NMLSR is failing to meet the requirements and purposes** for a comprehensive licensing, supervisory, and tracking system for loan originators, the **Secretary shall establish and maintain such a system** to carry out the purposes of this title and the effective registration and regulation of loan originators.



SEC. 1510. FEES.

- The Federal banking agencies, the Farm Credit Administration, the Secretary, and the Nationwide Mortgage Licensing System and Registry ***may charge reasonable fees to cover the costs of maintaining and providing access to information*** from the Nationwide Mortgage Licensing System and Registry, to the extent that such fees are not charged to consumers for access to such system and registry.



SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.

- SUMMONS AUTHORITY
- EXAMINATION AUTHORITY
- CEASE AND DESIST PROCEEDING.—
- AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS
- AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—
- CIVIL MONEY PENALTIES
- MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission shall be \$25,000.



SEC. 1515. STATE EXAMINATION AUTHORITY.

- In addition to any authority allowed under State law a **State licensing agency shall have the authority to conduct investigations and examinations as follows:**
- **investigating violations or complaints** arising under this title, or for the purposes of examination, the State licensing agency may review, investigate, or examine any loan originator licensed or required to be licensed under this title.
- each such loan originator shall **make available upon request to the State licensing agency the books and records** relating to the operations of such originator.
- the authority of this section shall remain in effect, whether such a loan originator acts or claims to act under any licensing or registration law of such State, or claims to act without such authority.
- no person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.



SEC. 1516. REPORTS AND RECOMMENDATIONS TO CONGRESS.

- ANNUAL REPORTS.—**Not later than 1 year** after the date of enactment of this title, and annually thereafter, the **Secretary shall submit a report to Congress on the effectiveness of the provisions of this title.**
- LEGISLATIVE RECOMMENDATIONS.—**Not later than 6 months** after the date of enactment of this title, the **Secretary shall make recommendations to Congress on legislative reforms.**

SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.

- STUDY REQUIRED.—The **Secretary shall conduct an extensive study of the root causes of default and foreclosure.**
- PRELIMINARY REPORT TO CONGRESS.—**Not later than 6 months** after the date of enactment of this title, the **Secretary shall submit to Congress a preliminary report** regarding the study required by this section.
- FINAL REPORT TO CONGRESS.—**Not later than 12 months** after the date of enactment of this title, the **Secretary shall submit to Congress a final report** regarding the results of the study required by this section.