

Summary of Title V of the Housing and Economic Recovery Act of 2008
The Secure and Fair Enforcement for Mortgage Licensing Act of 2008
(to be called the S.A.F.E. Mortgage Licensing Act of 2008)
AS PASSED BY THE HOUSE July 23, 2008

H.R. 3221 Title V

Sec. 1501. Title and Table of Contents

Sec. 1502. Purposes and methods for establishing a mortgage licensing system and registry.

Sets forth objectives for a Nationwide Mortgage Licensing System and Registry (NMLSR) for the residential mortgage industry and encourages the States through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to set up such a system. Creates as one of the objective for the system that residential mortgage originators would be required to act in the best interests of the consumer to the greatest extent possible and that the system facilitate the collection and distribution of consumer complaints to both state and federal regulators.

Sec. 1503. Definitions.

Establishes definitions for various terms for this subtitle, including: “loan originator,” “loan processor or underwriter,” “nationwide mortgage licensing system and registry,” “registered loan originator,” “residential mortgage loan,” “State,” “State-licensed loan originator,” “Nationwide Mortgage Licensing System and Registry,” “Registered Loan Originator” and “unique identifier.”

Sec. 1504. License or registration required.

Subject to the existence of a licensing or registration regime, as the case may be, provides that an individual may not engage in the business of a loan originator without obtaining and maintaining registration as a registered loan originator (for employees of insured depositories and their subsidiaries) or a license and registration as a State-licensed loan originator, and obtaining a unique identifier. Makes clarifications concerning loan processors, underwriters and independent contractors. (NOTE: If a state does not provide the appropriate licensing regime, HUD is mandated to do it after one year (for states in which their legislatures meet annually) or in two years (for states whose legislatures meet biannually) subject to a two year extension for states that are making progress toward creating the called for regime).

Sec. 1505. State license and registration application and issuance. The applicant to any State for licensing and registration as a State-licensed loan originator has the obligation to furnish certain information to the NMLSR, including fingerprints for a criminal background check and personal history and experience. Minimum standards for license issuance includes never having had a revocation of loan originator license, never having had a felony conviction involving an act of fraud, dishonesty, or a breach of trust, or money laundering (no other types of felonies seven years prior to application), demonstration of financial responsibility, completing pre-licensing education reviewed, and approved by the NMLSR (at least 20 hours), and passing a written test developed the NMLSR (at least 75% correct answers out of minimum 100 questions) and administered by an NMLSR approved test provider. Mandates States include a minimum net worth requirement or surety bond requirement for applicants, or have had the applicant pay into a State fund.

Provides for a Mortgage Call Report by each mortgage licensee to the NMLSR in such form and with such information required by the NMLSR.

Sec. 1506. Standards for Annual State license Renewal.

Minimum standards for license renewal include the State-licensed loan originator continuing to meet the minimum standards for license issuance and satisfying continuing education requirements.

Sec. 1507. System of registration administration by Federal banking agencies.

Within one year of the enactment, the Federal banking agencies (through the FFIEC) together with the Farm Credit Administration will jointly develop and maintain a system for registering the employees of depository institutions, the subsidiaries that the depository institutions “own and control” and institutions regulated by the Farm Credit Administration, as registered loan originators with the NMLSR, and will furnish or cause to be furnished to the NMLSR certain information including fingerprints and personal history and experience. The Federal banking agencies, through the FFIEC together with the Farm Credit Administration, will coordinate with the NMLSR to establish a unique identifier for all registered loan originators and data and functionality requirements for registration through the system.

Sec. 1508. Secretary of housing and urban development backup authority to establish a loan originator licensing system.

If a State does not have in place a system that meets the minimum standards set forth in sections 1505, 1506 and this section for State-licensed loan originators or does not participate in the NMLSR within 1 year of enactment (2 years for those States with legislatures that meet biennially) or any time thereafter, a HUD backup licensing system will be established where HUD will maintain and administer a system of licensing and registering loan originators operating in such a State as State-licensed loan originators. HUD may grant an extension up to 24 months to those States making a good faith effort to meet the minimum standards. The HUD license can only be used in the State for which it was granted.

Minimum state requirements in Section 1508 a State loan originator supervisory authority must:

- 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.
- ensure that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.
- regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.
- have due process in place for regulatory actions that were taken by the State and submitted to the Nationwide Mortgage Licensing System and Registry.
- establish a mechanism to assess civil money penalties for individuals acting as mortgage originators in their State without a valid license or registration.
- establish a minimum net worth or surety bonding requirement that reflects the dollar amount of loans originated by a residential mortgage loan originator, or has established a recovery fund paid into by the loan originators.

Sec. 1509. Backup authority to establish a nationwide mortgage licensing and registry system.
If HUD determines that the NMLSR is failing to meet the requirements of the legislation, HUD will develop and maintain system for registration and regulation of mortgage originators.

Sec. 1510. Fees.

The Federal banking agencies, HUD, the Farm Credit Administration and the NMLSR may charge reasonable fees to cover costs for maintaining and providing access to the NMLSR, to the extent such fees are not charged to the consumers for accessing the information.

Sec. 1511. Background checks of loan originators.

The Attorney General will provide access to all criminal history information to States for regulating State-licensed loan originators to the extent criminal background checks are required under State law for licensing loan originators.

CSBS or a wholly owned subsidiary may be used as channeling agent of States for requesting and distributing information between the Department of Justice and the State agencies.

Sec. 1512. Confidentiality of information.

Except as otherwise provided, requirements under Federal or State privacy or confidentiality laws, and any privilege arising under Federal or State law, will continue to apply after information has been disclosed to the NMLSR or the HUD system. Such information may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without loss of privilege or loss of confidentiality protections provided by such laws.

Sec. 1513. Liability provisions.

HUD or any State official or agency, or organization serving as the administrator of the NMLSR or the HUD system, or any officer or employee thereof, will not be subject to any civil action for monetary damages for good-faith action or omission while acting within the scope of office or employment.

Sec. 1514. HUD Enforcement

If HUD sets up a backup licensing system pursuant to section 8, then HUD will have regulatory authority over the licensees of such backup licensing system similar to banking regulators (e.g., summons authority, examination authority, and other enforcement authority including the ability to issue cease and desist orders and to assess civil money penalties).

Sec. 1515. State Examination Authority

In addition to any authority allowed under State law a State licensing agency is given the authority under Federal law to conduct investigations and examinations of loan originators.

Sec. 1516. Reports and Recommendations to Congress

The Secretary of HUD shall submit an annual report to Congress on the effectiveness of the provisions of the Act.

Sec. 1517. Study and Reports on Defaults and Foreclosures

The Secretary of HUD shall conduct an extensive study of the root causes of default and foreclosure of home loans.