

CHAPTER 51—SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING

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§ 5101. Purposes and methods for establishing a mortgage licensing system and registry

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (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.
- (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.

(Pub. L. 110-289, div. A, title V, §1502, July 30, 2008, 122 Stat. 2810.)

Statutory Notes and Related Subsidiaries

SHORT TITLE OF 2015 AMENDMENT

Pub. L. 114-94, div. G, title LXXXVIII, §88001, Dec. 4, 2015, 129 Stat. 1799, provided that: “This title [amending section 5110 of this title] may be cited as the ‘State Licensing Efficiency Act of 2015’.”

SHORT TITLE

Pub. L. 110-289, div. A, title V, §1501, July 30, 2008, 122 Stat. 2810, provided that: “This title [enacting this chapter] may be cited as the ‘Secure and Fair Enforcement for Mortgage Licensing Act of 2008’ or ‘S.A.F.E. Mortgage Licensing Act of 2008’.”

§ 5102. Definitions

For purposes of this chapter, the following definitions shall apply:

(1) Bureau

The term “Bureau” means the Bureau of Consumer Financial Protection.

(2) Federal banking agency

The term “Federal banking agency” means the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(3) Depository institution

The term “depository institution” has the same meaning as in section 1813 of this title, and includes any credit union.

(4) Loan originator

(A) In general

The term “loan originator”—

(i) means an individual who—

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;

(ii) does not include any individual who is not otherwise described in clause (i) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such clause;

(iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator; and

(iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11.

(B) Other definitions relating to loan originator

For purposes of this subsection, 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 con-

sumer with regard to a residential mortgage loan.

(C) Administrative or clerical tasks

The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) Real estate brokerage activity defined

The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

- (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).

(5) Loan processor or underwriter

(A) In general

The term “loan processor or underwriter” means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

- (i) a State-licensed loan originator; or
- (ii) a registered loan originator.

(B) Clerical or support duties

For purposes of subparagraph (A), the term “clerical or support duties” may include—

- (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(6) Nationwide mortgage licensing system and registry

The term “Nationwide Mortgage Licensing System and Registry” 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 Director under section 5108 of this title.

(7) Nontraditional mortgage product

The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.

(8) Registered loan originator

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

(A) meets the definition of loan originator and is an employee of—

- (i) a depository institution;
- (ii) a subsidiary that is—
 - (I) owned and controlled by a depository institution; and
 - (II) regulated by a Federal banking agency; or
- (iii) an institution regulated by the Farm Credit Administration; and

(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(9) Residential mortgage loan

The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 1602(v)¹ of title 15) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(10) Director

The term “Director” means the Director of the Bureau of Consumer Financial Protection.

(11) State

The term “State” means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

(12) State-licensed loan originator

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

- (A) is a loan originator;
- (B) is not an employee of—
 - (i) a depository institution;
 - (ii) a subsidiary that is—
 - (I) owned and controlled by a depository institution; and
 - (II) regulated by a Federal banking agency; or
 - (iii) an institution regulated by the Farm Credit Administration; and

(C) is licensed by a State or by the Director under section 5107 of this title and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

¹ See References in Text note below.

(13) Unique identifier**(A) In general**

The term “unique identifier” means a number or other identifier that—

- (i) permanently identifies a loan originator;
- (ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Bureau to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators; and
- (iii) shall not be used for purposes other than those set forth under this chapter.

(B) Responsibility of States

To the greatest extent possible and to accomplish the purpose of this chapter, States shall use unique identifiers in lieu of social security numbers.

(Pub. L. 110–289, div. A, title V, §1503, July 30, 2008, 122 Stat. 2811; Pub. L. 111–203, title X, §1100(2)–(4), July 21, 2010, 124 Stat. 2106.)

Editorial Notes**REFERENCES IN TEXT**

Section 1602(v) of title 15, referred to in par. (9), was redesignated section 1602(w) of title 15 by Pub. L. 111–203, title X, §1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Pub. L. 111–203, §1100(4)(A), redesignated pars. (2) to (12) as (3) to (13), respectively.

Par. (1). Pub. L. 111–203, §1100(4)(B), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: “The term ‘Federal banking agencies’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.”

Par. (2). Pub. L. 111–203, §1100(4)(B), added par. (2). Former par. (2) redesignated (3).

Par. (5). Pub. L. 111–203, §1100(3), substituted “Director” for “Secretary”.

Par. (10). Pub. L. 111–203, §1100(4)(C), added par. (10) and struck out former par. (10). Prior to amendment, text read as follows: “The term ‘Secretary’ means the Secretary of Housing and Urban Development.”

Par. (11)(C). Pub. L. 111–203, §1100(3), substituted “Director” for “Secretary”.

Par. (12)(A)(ii). Pub. L. 111–203, §1100(2), substituted “Bureau” for “Federal banking agencies”.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE OF 2010 AMENDMENT**

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Executive Documents**TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS**

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

§ 5103. License or registration required**(a) In general**

Subject to the existence of a licensing or registration regime, as the case may be, an individual may not engage in the business of a loan originator without first—

- (1) obtaining, and maintaining annually—
 - (A) a registration as a registered loan originator; or
 - (B) a license and registration as a State-licensed loan originator; and
- (2) obtaining a unique identifier.

(b) Loan processors and underwriters**(1) 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.

(2) 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.

(Pub. L. 110–289, div. A, title V, §1504, July 30, 2008, 122 Stat. 2814.)

§ 5104. State license and registration application and issuance**(a) 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—

- (1) 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
- (2) personal history and experience, including authorization for the System to obtain—

- (A) an independent credit report obtained from a consumer reporting agency described in section 1681a(p) of title 15; and
- (B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) Issuance of license

The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

- (1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.
- (2) 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