

12 USC Ch. 51: SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING

From Title 12—BANKS AND BANKING

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 consumer 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.

(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.

¹ See References in Text note below.

§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
 - (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.
- (3) 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 chapter.
- (4) The applicant has completed the pre-licensing education requirement described in subsection (c).
- (5) The applicant has passed a written test that meets the test requirement described in subsection (d).
- (6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the State pursuant to section 5107(d)(6) of this title.

(c) Pre-licensing education of loan originators

(1) Minimum educational requirements

In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—

- (A) 3 hours of Federal law and regulations;
- (B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) 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.

(3) Limitation and standards

(A) 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.

(B) 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.

(d) Testing of loan originators

(1) In general

In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed by the Nationwide Mortgage Licensing System and Registry and administered by an approved test provider.

(2) Qualified test

A written test shall not be treated as a qualified written test for purposes of paragraph (1) 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.

(3) Minimum competence

(A) Passing score

An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to 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.

(e) 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.

(Pub. L. 110–289, div. A, title V, §1505, July 30, 2008, 122 Stat. 2814.)

§5105. Standards for State license renewal

(a) In general

The minimum standards for license renewal for State-licensed loan originators shall include the following:

- (1) The loan originator continues to meet the minimum standards for license issuance.
- (2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) Continuing education for State-licensed loan originators

(1) In general

In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least—

- (A) 3 hours of Federal law and regulations;
- (B) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- (C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.

(2) Approved educational courses

For purposes of paragraph (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) Calculation of continuing education credits

A State-licensed loan originator—

- (A) may only receive credit for a continuing education course in the year in which the course is taken; and
- (B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) Instructor credit

A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(5) Limitation and standards

(A) Limitation

To maintain the independence of the approval process, the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer any continuing education courses for loan originators.

(B) 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.

(Pub. L. 110–289, div. A, title V, §1506, July 30, 2008, 122 Stat. 2816.)

§5106. System of registration administration by Federal agencies

(a) Development

(1) In general

The Bureau shall 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 employees 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 July 21, 2010.

(2) Registration requirements

In connection with the registration of any loan originator under this subsection, the Bureau shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the identity of the employee, including—

(A) 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

(B) 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.

(b) Coordination

(1) Unique identifier

The Bureau,¹ and the Bureau of Consumer Financial Protection shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(2) Nationwide Mortgage Licensing System and Registry development

To facilitate the transfer of information required by subsection (a)(2), the Nationwide Mortgage Licensing System and Registry shall coordinate with the Bureau,¹ and the Bureau of Consumer Financial Protection concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.

(c) Consideration of factors and procedures

In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Bureau shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 5103(a) of this title, shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this chapter.

(Pub. L. 110–289, div. A, title V, §1507, July 30, 2008, 122 Stat. 2817; Pub. L. 111–203, title X, §1100(2), (5), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Subsec. (a)(1). Pub. L. 111–203, §1100(5)(A)(i), added par. (1) and struck out former par. (1). Prior to amendment, text read as follows: "The Federal banking agencies shall jointly, through the Federal Financial Institutions Examination Council, 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 employees 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 July 30, 2008."

Subsec. (a)(2). Pub. L. 111–203, §1100(5)(A)(ii), in introductory provisions, substituted "Bureau" for "appropriate Federal banking agency and the Farm Credit Administration" and "identity of the employee" for "employees's identity".

Subsec. (b). Pub. L. 111–203, §1100(5)(B), which directed substitution of "and the Bureau of Consumer Financial Protection" for "through the Financial Institutions Examination Council, and the Farm Credit Administration", was executed in both places those words appeared, to reflect the probable intent of Congress.

Subsecs. (b)(1), (2), (c). 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.

¹ *So in original. The comma probably should not appear.*

§5107. Bureau of Consumer Financial Protection backup authority to establish loan originator licensing system

(a) 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, beginning on July 30, 2008, or at any time thereafter, the Director determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 5104 and 5105 of this title and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Director shall provide for the establishment and maintenance of a system for the licensing and registration by the Director of loan originators operating in such State as State-licensed loan originators.

(b) Licensing and registration requirements

The system established by the Director under subsection (a) for any State shall meet the requirements of sections 5104 and 5105 of this title for State-licensed loan originators.

(c) Unique identifier

The Director shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Director as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) State licensing law requirements

For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Director determines the law satisfies the following minimum requirements:

- (1) 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.
- (2) 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.
- (3) 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.
- (4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.
- (5) 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.
- (6) 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.

(e) Temporary extension of period

The Director may extend, by not more than 24 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 5104 and 5105 of this title and subsection (d) if the Director 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.

(f) Regulation authority

(1) In general

The Bureau is authorized to promulgate regulations setting minimum net worth or surety bond requirements for residential mortgage loan originators and minimum requirements for recovery funds paid into by loan originators.

(2) Considerations

In issuing regulations under paragraph (1), the Bureau shall take into account the need to provide originators adequate incentives to originate affordable and sustainable mortgage loans, as well as the need to ensure a competitive origination market that maximizes consumer access to affordable and sustainable mortgage loans.

(Pub. L. 110–289, div. A, title V, §1508, July 30, 2008, 122 Stat. 2818; Pub. L. 111–203, title X, §1100(3), (6), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203, §1100(3), (6)(A), inserted section catchline, struck out former section catchline which read "Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system", and substituted "Director" for "Secretary" wherever appearing in text.

Subsec. (f). Pub. L. 111–203, §1100(6)(B), added subsec. (f).

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.

§5108. Backup authority to establish a nationwide mortgage licensing and registry system

If at any time the Director determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this chapter for a comprehensive licensing, supervisory, and tracking system for loan originators, the Director shall establish and maintain such a system to carry out the purposes of this chapter and the effective registration and regulation of loan originators.

(Pub. L. 110–289, div. A, title V, §1509, July 30, 2008, 122 Stat. 2819; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" in two places.

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.

§5109. Fees

The Bureau, the Farm Credit Administration, 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.

(Pub. L. 110–289, div. A, title V, §1510, as added Pub. L. 111–203, title X, §1100(7), July 21, 2010, 124 Stat. 2107.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5109, Pub. L. 110–289, div. A, title V, §1510, July 30, 2008, 122 Stat. 2819, which related to fees, was repealed by Pub. L. 111–203, title X, §1100(7), July 21, 2010, 124 Stat. 2107.

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§5110. Background checks of loan originators

(a) Access to records

Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators and other financial service providers to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators or other financial service providers.

(b) Agent

For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing information between the Department of Justice and the appropriate State agencies .

(Pub. L. 110–289, div. A, title V, §1511, July 30, 2008, 122 Stat. 2819; Pub. L. 114–94, div. G, title LXXXVIII, §88002, Dec. 4, 2015, 129 Stat. 1799.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–94 inserted "and other financial service providers" after "State-licensed loan originators" and "or other financial service providers" before period at end.

§5111. Confidentiality of information

(a) System confidentiality

Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage or financial services industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) Nonapplicability of certain requirements

Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Director with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) Coordination with other law

Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) Public access to information

This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

(Pub. L. 110–289, div. A, title V, §1512, July 30, 2008, 122 Stat. 2820; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106; Pub. L. 114–113, div. O, title VII, §703, Dec. 18, 2015, 129 Stat. 3025.)

EDITORIAL NOTES

AMENDMENTS

2015—Subsec. (a). Pub. L. 114–113 inserted "or financial services" before "industry".
2010—Subsecs. (a), (b)(2). Pub. L. 111–203 substituted "Director" for "Secretary".

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.

§5112. Liability provisions

The Bureau, any State official or agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Director under section 5108 of this title, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who—

(1) have applied, are applying, or are licensed or registered through the Nationwide Mortgage Licensing System and Registry; and

(2) work in an industry with respect to which persons were licensed or registered through the Nationwide Mortgage Licensing System and Registry on May 24, 2018.

(Pub. L. 110–289, div. A, title V, §1513, as added Pub. L. 111–203, title X, §1100(8), July 21, 2010, 124 Stat. 2107; amended Pub. L. 115–174, title I, §106(c), May 24, 2018, 132 Stat. 1304.)

EDITORIAL NOTES

PRIOR PROVISIONS

A prior section 5112, Pub. L. 110–289, div. A, title V, §1513, July 30, 2008, 122 Stat. 2820, which barred liability for good faith actions or omissions by certain entities' officers or employees, was repealed by Pub. L. 111–203, title X, §1100(8), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2018—Pub. L. 115–174 substituted "persons who—" for "persons who are loan originators or are applying for licensing or registration as loan originators." and added pars. (1) and (2).

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–174, title I, §106(d), May 24, 2018, 132 Stat. 1304, provided that: "This section [enacting section 5117 of this title and amending this section] and the amendments made by this section shall take effect on the date that is 18 months after the date of enactment of this Act [May 24, 2018]."

EFFECTIVE DATE

Section effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as an Effective Date of 2010 Amendment note under section 552a of Title 5, Government Organization and Employees.

§5113. Enforcement by the Bureau

(a) Summons authority

The Director may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Director or any delegate of the Director at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this chapter.

(b) Examination authority

(1) In general

If the Director establishes a licensing system under section 5107 of this title for any State, the Director shall appoint examiners for the purposes of administering such section.

(2) Power to examine

Any examiner appointed under paragraph (1) shall have power, on behalf of the Director, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title whenever the Director determines an examination of any loan originator is necessary to determine the compliance by the originator with this chapter.

(3) Report of examination

Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Director.

(4) Administration of oaths and affirmations; evidence

In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Director under section 5107 of this title, or with other types of investigations to determine compliance with applicable law and regulations, the Director and examiners appointed by the Director may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) Assessments

The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title shall be assessed by the Director against the loan originator to meet the Secretary's ¹ expenses in carrying out such examination.

(c) Cease and desist proceeding

(1) Authority of Director

If the Director finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this chapter, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Director under section 5107 of this title, the Director may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Director may specify in such order. Any such order may, as the Director deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Director may specify, with such provision or regulation with respect to any loan originator.

(2) Hearing

The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Director with the consent of any respondent so served.

(3) Temporary order

Whenever the Director determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Director may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened

violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Director deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Director determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Director or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) Review of temporary orders

(A) Review by Director

At any time after the respondent has been served with a temporary cease and desist order pursuant to paragraph (3), the respondent may apply to the Director to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease and desist order entered without a prior hearing before the Director, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Director shall hold a hearing and render a decision on such application at the earliest possible time.

(B) Judicial review

Within—

- (i) 10 days after the date the respondent was served with a temporary cease and desist order entered with a prior hearing before the Director; or
- (ii) 10 days after the Director renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease and desist order entered without a prior hearing before the Director,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease and desist order entered without a prior hearing before the Director may not apply to the court except after hearing and decision by the Director on the respondent's application under subparagraph (A).

(C) No automatic stay of temporary order

The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's ¹ order.

(5) Authority of the Director to prohibit persons from serving as loan originators

In any cease and desist proceeding under paragraph (1), the Director may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Director shall determine, any person who has violated this chapter or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) Authority of the Director to assess money penalties

(1) In general

The Director may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Director under section 5107 of this title, if the Director finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the Director under this chapter or order issued under subsection (c).

(2) Maximum amount of penalty

The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.

(Pub. L. 110–289, div. A, title V, §1514, July 30, 2008, 122 Stat. 2821; Pub. L. 111–203, title X, §1100(3), (9), July 21, 2010, 124 Stat. 2106, 2107.)

EDITORIAL NOTES

AMENDMENTS

Pub. L. 111–203 substituted "by the Bureau" for "under HUD backup licensing system" in section catchline and "Director" for "Secretary" wherever appearing in text.

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.

¹ *So in original. Probably should be "Director's".*

§5114. 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:

(1) For the purposes of investigating violations or complaints arising under this chapter, 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 chapter, as often as necessary in order to carry out the purposes of this chapter.

(2) 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 State licensing agency may have access to such books and records and interview the officers, principals, loan originators, employees, independent contractors, agents, and customers of the licensee concerning their business.

(3) 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.

(4) 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.

(Pub. L. 110–289, div. A, title V, §1515, July 30, 2008, 122 Stat. 2823.)

§5115. Reports and recommendations to Congress

(a) Annual reports

Not later than 1 year after July 30, 2008, and annually thereafter, the Director shall submit a report to Congress on the effectiveness of the provisions of this chapter, including legislative recommendations, if any, for strengthening consumer protections, enhancing examination standards, streamlining communication between all stakeholders involved in residential mortgage loan origination and processing, and establishing performance based bonding requirements for mortgage originators or institutions that employ such brokers.

(b) Legislative recommendations

Not later than 6 months after July 30, 2008, the Director shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974 [12 U.S.C. 2601 et seq.], that the Director deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.

(Pub. L. 110–289, div. A, title V, §1516, July 30, 2008, 122 Stat. 2824; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act of 1974, referred to in subsec. (b), is Pub. L. 93–533, Dec. 22, 1974, 88 Stat. 1724, which is classified principally to chapter 27 (§2601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of this title and Tables.

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

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.

§5116. Study and reports on defaults and foreclosures

(a) Study required

The Director shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.

(b) Preliminary report to Congress

Not later than 6 months after July 30, 2008, the Director shall submit to Congress a preliminary report regarding the study required by this section.

(c) Final report to Congress

Not later than 12 months after July 30, 2008, the Director shall submit to Congress a final report regarding the results of the study required by this section, which shall include any recommended legislation relating to the study, and recommendations for best practices and for a process to provide targeted assistance to populations with the highest risk of potential default or foreclosure.

(Pub. L. 110–289, div. A, title V, §1517, July 30, 2008, 122 Stat. 2824; Pub. L. 111–203, title X, §1100(3), July 21, 2010, 124 Stat. 2106.)

EDITORIAL NOTES

AMENDMENTS

2010—Pub. L. 111–203 substituted "Director" for "Secretary" wherever appearing.

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.

§5117. Employment transition of loan originators

(a) Definitions

In this section:

(1) Application State

The term "application State" means a State in which a registered loan originator or a State-licensed loan originator seeks to be licensed.

(2) State-licensed mortgage company

The term "State-licensed mortgage company" means an entity that is licensed or registered under the law of any State to engage in residential mortgage loan origination and processing activities.

(b) Temporary authority to originate loans for loan originators moving from a depository institution to a non-depository institution

(1) In general

Upon becoming employed by a State-licensed mortgage company, an individual who is a registered loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the individual—

(A) has not had—

- (i) an application for a loan originator license denied; or
- (ii) a loan originator license revoked or suspended in any governmental jurisdiction;

(B) has not been subject to, or served with, a cease and desist order—

- (i) in any governmental jurisdiction; or
- (ii) under section 5113(c) of this title;

(C) has not been convicted of a misdemeanor or felony that would preclude licensure under the law of the application State;

(D) has submitted an application to be a State-licensed loan originator in the application State; and

(E) was registered in the Nationwide Mortgage Licensing System and Registry as a loan originator during the 1-year period preceding the date on which the information required under section 5104(a) of this title is submitted.

(2) Period

The period described in this paragraph shall begin on the date on which an individual described in paragraph (1) submits the information required under section 5104(a) of this title and shall end on the earliest of the date—

(A) on which the individual withdraws the application to be a State-licensed loan originator in the application State;

- (B) on which the application State denies, or issues a notice of intent to deny, the application;
- (C) on which the application State grants a State license; or
- (D) that is 120 days after the date on which the individual submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(c) Temporary authority to originate loans for State-licensed loan originators moving interstate

(1) In general

A State-licensed loan originator shall be deemed to have temporary authority to act as a loan originator in an application State for the period described in paragraph (2) if the State-licensed loan originator—

- (A) meets the requirements of subparagraphs (A), (B), (C), and (D) of subsection (b)(1);
- (B) is employed by a State-licensed mortgage company in the application State; and
- (C) was licensed in a State that is not the application State during the 30-day period preceding the date on which the information required under section 5104(a) of this title was submitted in connection with the application submitted to the application State.

(2) Period

The period described in this paragraph shall begin on the date on which the State-licensed loan originator submits the information required under section 5104(a) of this title in connection with the application submitted to the application State and end on the earliest of the date—

- (A) on which the State-licensed loan originator withdraws the application to be a State-licensed loan originator in the application State;
- (B) on which the application State denies, or issues a notice of intent to deny, the application;
- (C) on which the application State grants a State license; or
- (D) that is 120 days after the date on which the State-licensed loan originator submits the application, if the application is listed on the Nationwide Mortgage Licensing System and Registry as incomplete.

(d) Applicability

(1) Employer of loan originators

Any person employing an individual who is deemed to have temporary authority to act as a loan originator in an application State under this section shall be subject to the requirements of this chapter and to applicable State law to the same extent as if that individual was a State-licensed loan originator licensed by the application State.

(2) Engaging in mortgage loan activities

Any individual who is deemed to have temporary authority to act as a loan originator in an application State under this section and who engages in residential mortgage loan origination activities shall be subject to the requirements of this chapter and to applicable State law to the same extent as if that individual was a State-licensed loan originator licensed by the application State.

(Pub. L. 110–289, div. A, title V, §1518, as added Pub. L. 115–174, title I, §106(a), May 24, 2018, 132 Stat. 1302.)

STATUTORY NOTES AND RELATED SUBSIDIARIES

EFFECTIVE DATE

Section effective 18 months after May 24, 2018, see section 106(d) of Pub. L. 115–174, set out as an Effective Date of 2018 Amendment note under section 5112 of this title.