

110TH CONGRESS
2D SESSION

S. 2595

To create a national licensing system for residential mortgage loan originators, to develop minimum standards of conduct to be enforced by State regulators, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 6, 2008

Mrs. FEINSTEIN (for herself and Mr. MARTINEZ) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To create a national licensing system for residential mortgage loan originators, to develop minimum standards of conduct to be enforced by State regulators, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Secure and Fair Enforcement for Mortgage Licensing
6 Act of 2008” or “S.A.F.E. Mortgage Licensing Act of
7 2008”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Purposes and methods for establishing a mortgage licensing system and registry.
- Sec. 3. Definitions.
- Sec. 4. License or registration required.
- Sec. 5. State license and registration application and issuance.
- Sec. 6. Standards for State license renewal.
- Sec. 7. System of registration administration by Federal banking agencies.
- Sec. 8. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
- Sec. 9. Backup authority to establish a nationwide mortgage licensing and registry system.
- Sec. 10. Fees.
- Sec. 11. Background checks of loan originators.
- Sec. 12. Confidentiality of information.
- Sec. 13. Liability provisions.
- Sec. 14. Enforcement under HUD backup licensing system.
- Sec. 15. Preemption of State law.
- Sec. 16. Reports and recommendations to Congress.
- Sec. 17. Study and reports on defaults and foreclosures

3 **SEC. 2. PURPOSES AND METHODS FOR ESTABLISHING A**
 4 **MORTGAGE LICENSING SYSTEM AND REG-**
 5 **ISTRY.**

6 In order to increase uniformity, reduce regulatory
 7 burden, enhance consumer protection, and reduce fraud,
 8 the States, through the Conference of State Bank Super-
 9 visors and the American Association of Residential Mort-
 10 gage Regulators, are hereby encouraged to establish a Na-
 11 tionwide Mortgage Licensing System and Registry for the
 12 residential mortgage industry that accomplishes all of the
 13 following objectives:

- 14 (1) Provides uniform license applications and
 15 reporting requirements for State-licensed loan origi-
 16 nators.

1 (2) Provides a comprehensive licensing and su-
2 pervisory database.

3 (3) Aggregates and improves the flow of infor-
4 mation to and between regulators.

5 (4) Provides increased accountability and track-
6 ing of loan originators.

7 (5) Streamlines the licensing process and re-
8 duces the regulatory burden.

9 (6) Enhances consumer protections and sup-
10 ports anti-fraud measures.

11 (7) Provides consumers with easily accessible
12 information, offered at no charge, utilizing electronic
13 media, including the Internet, regarding the employ-
14 ment history of, and publicly adjudicated discipli-
15 nary and enforcement actions against, loan origina-
16 tors.

17 **SEC. 3. DEFINITIONS.**

18 For purposes of this Act, the following definitions
19 shall apply:

20 (1) **FEDERAL BANKING AGENCIES.**—The term
21 “Federal banking agencies” means the Board of
22 Governors of the Federal Reserve System, the
23 Comptroller of the Currency, the Director of the Of-
24 fice of Thrift Supervision, the National Credit Union

1 Administration, and the Federal Deposit Insurance
2 Corporation.

3 (2) DEPOSITORY INSTITUTION.—The term “de-
4 pository institution” has the same meaning as in
5 section 3 of the Federal Deposit Insurance Act, and
6 includes any credit union.

7 (3) LOAN ORIGINATOR.—

8 (A) IN GENERAL.—The term “loan origi-
9 nator”—

10 (i) means an individual who—

11 (I) takes a residential mortgage
12 loan application;

13 (II) assists a consumer in obtain-
14 ing or applying to obtain a residential
15 mortgage loan; or

16 (III) offers or negotiates terms of
17 a residential mortgage loan, for direct
18 or indirect compensation or gain, or in
19 the expectation of direct or indirect
20 compensation or gain;

21 (ii) includes any individual who rep-
22 resents to the public, through advertising
23 or other means of communicating or pro-
24 viding information (including the use of
25 business cards, stationery, brochures,

1 signs, rate lists, or other promotional
2 items), that such individual can or will pro-
3 vide or perform any of the activities de-
4 scribed in clause (i);

5 (iii) does not include any individual
6 who is not otherwise described in clause (i)
7 or (ii) and who performs purely adminis-
8 trative or clerical tasks on behalf of a per-
9 son who is described in any such clause;
10 and

11 (iv) does not include a person or enti-
12 ty that only performs real estate brokerage
13 activities and is licensed or registered in
14 accordance with applicable State law, un-
15 less the person or entity is compensated by
16 a lender, a mortgage broker, or other loan
17 originator or by any agent of such lender,
18 mortgage broker, or other loan originator.

19 (B) OTHER DEFINITIONS RELATING TO
20 LOAN ORIGINATOR.—For purposes of this sub-
21 section, an individual “assists a consumer in
22 obtaining or applying to obtain a residential
23 mortgage loan” by, among other things, advis-
24 ing on loan terms (including rates, fees, other
25 costs), preparing loan packages, or collecting in-

1 formation on behalf of the consumer with re-
2 gard to a residential mortgage loan.

3 (C) ADMINISTRATIVE OR CLERICAL
4 TASKS.—The term “administrative or clerical
5 tasks” means the receipt, collection, and dis-
6 tribution of information common for the proc-
7 essing or underwriting of a loan in the mort-
8 gage industry and communication with a con-
9 sumer to obtain information necessary for the
10 processing or underwriting of a residential
11 mortgage loan.

12 (D) REAL ESTATE BROKERAGE ACTIVITY
13 DEFINED.—The term “real estate brokerage ac-
14 tivity” means any activity that involves offering
15 or providing real estate brokerage services to
16 the public, including—

17 (i) acting as a real estate agent or
18 real estate broker for a buyer, seller, les-
19 sor, or lessee of real property;

20 (ii) listing or advertising real property
21 for sale, purchase, lease, rental, or ex-
22 change;

23 (iii) providing advice in connection
24 with sale, purchase, lease, rental, or ex-
25 change of real property;

1 (iv) bringing together parties inter-
 2 ested in the sale, purchase, lease, rental, or
 3 exchange of real property;

4 (v) negotiating, on behalf of any
 5 party, any portion of a contract relating to
 6 the sale, purchase, lease, rental, or ex-
 7 change of real property (other than in con-
 8 nection with providing financing with re-
 9 spect to any such transaction);

10 (vi) engaging in any activity for which
 11 a person engaged in the activity is required
 12 to be registered or licensed as a real estate
 13 agent or real estate broker under any ap-
 14 plicable law; and

15 (vii) offering to engage in any activity,
 16 or act in any capacity, described in clause
 17 (i), (ii), (iii), (iv), (v), or (vi).

18 (4) LOAN PROCESSOR OR UNDERWRITER.—

19 (A) IN GENERAL.—The term “loan proc-
 20 essor or underwriter” means an individual who
 21 performs clerical or support duties at the direc-
 22 tion of and subject to the supervision and in-
 23 struction of—

24 (i) a State-licensed loan originator; or

25 (ii) a registered loan originator.

1 (B) CLERICAL OR SUPPORT DUTIES.—For
2 purposes of subparagraph (A), the term “cler-
3 ical or support duties” may include—

4 (i) the receipt, collection, distribution,
5 and analysis of information common for
6 the processing or underwriting of a resi-
7 dential mortgage loan; and

8 (ii) communicating with a consumer
9 to obtain the information necessary for the
10 processing or underwriting of a loan, to the
11 extent that such communication does not
12 include offering or negotiating loan rates
13 or terms, or counseling consumers about
14 residential mortgage loan rates or terms.

15 (5) NATIONWIDE MORTGAGE LICENSING SYS-
16 TEM AND REGISTRY.—The term “Nationwide Mort-
17 gage Licensing System and Registry” means a mort-
18 gage licensing system developed and maintained by
19 the Conference of State Bank Supervisors and the
20 American Association of Residential Mortgage Regu-
21 lators for the State licensing and registration of
22 State-licensed loan originators and the registration
23 of registered loan originators or any system estab-
24 lished by the Secretary under section 9.

1 (6) REGISTERED LOAN ORIGINATOR.—The term
2 “registered loan originator” means any individual
3 who—

4 (A) meets the definition of loan originator
5 and is an employee of a depository institution
6 or a wholly-owned subsidiary of a depository in-
7 stitution; and

8 (B) is registered with, and maintains a
9 unique identifier through, the Nationwide Mort-
10 gage Licensing System and Registry.

11 (7) RESIDENTIAL MORTGAGE LOAN.—The term
12 “residential mortgage loan” means any loan pri-
13 marily for personal, family, or household use that is
14 secured by a mortgage, deed of trust, or other equiv-
15 alent consensual security interest on a dwelling (as
16 defined in section 103(v) of the Truth in Lending
17 Act) or residential real estate upon which is con-
18 structed or intended to be constructed a dwelling (as
19 so defined).

20 (8) SECRETARY.—The term “Secretary” means
21 the Secretary of Housing and Urban Development.

22 (9) STATE-LICENSED LOAN ORIGINATOR.—The
23 term “State-licensed loan originator” means any in-
24 dividual who—

25 (A) is a loan originator;

1 (B) is not an employee of a depository in-
2 stitution or any wholly-owned subsidiary of a
3 depository institution; and

4 (C) is licensed by a State or by the Sec-
5 retary under section 8 and registered as a loan
6 originator with, and maintains a unique identi-
7 fier through, the Nationwide Mortgage Licens-
8 ing System and Registry.

9 (10) SUBPRIME MORTGAGE.—The term
10 “subprime mortgage” means a residential mortgage
11 loan—

12 (A) that is secured by real property that is
13 used or intended to be used as a principal
14 dwelling;

15 (B) that is typically offered to borrowers
16 having weakened credit histories and reduced
17 repayment capacity, as measured by lower cred-
18 it scores, debt-to-income ratios, and other rel-
19 evant criteria; and

20 (C) the characteristics of which may in-
21 clude—

22 (i) low initial payments based on a
23 fixed introductory rate that expires after a
24 short period and then adjusts to a variable

1 index rate plus a margin for the remaining
2 term of the loan;

3 (ii) very high or no limits on how
4 much the payment amount or the interest
5 rate may increase (referred to as “payment
6 caps” or “rate caps”) on reset dates;

7 (iii) limited or no documentation of
8 the income of the borrower;

9 (iv) product features likely to result in
10 frequent refinancing to maintain an afford-
11 able monthly payment; and

12 (v) substantial prepayment penalties
13 or prepayment penalties that extend be-
14 yond the initial fixed interest rate period.

15 (11) UNIQUE IDENTIFIER.—The term “unique
16 identifier” means a number or other identifier
17 that—

18 (A) permanently identifies a loan origi-
19 nator; and

20 (B) is assigned by protocols established by
21 the Nationwide Mortgage Licensing System and
22 Registry and the Federal banking agencies to
23 facilitate electronic tracking of loan originators
24 and uniform identification of, and public access
25 to, the employment history of and the publicly

1 adjudicated disciplinary and enforcement ac-
2 tions against loan originators.

3 **SEC. 4. LICENSE OR REGISTRATION REQUIRED.**

4 (a) IN GENERAL.—An individual may not engage in
5 the business of a loan originator without first—

6 (1) obtaining and maintaining, through an an-
7 nual renewal—

8 (A) a registration as a registered loan
9 originator; or

10 (B) a license and registration as a State-
11 licensed loan originator; and

12 (2) obtaining a unique identifier.

13 (b) LOAN PROCESSORS AND UNDERWRITERS.—

14 (1) SUPERVISED LOAN PROCESSORS AND UN-
15 DERWRITERS.—A loan processor or underwriter who
16 does not represent to the public, through advertising
17 or other means of communicating or providing infor-
18 mation (including the use of business cards, sta-
19 tionery, brochures, signs, rate lists, or other pro-
20 motional items), that such individual can or will per-
21 form any of the activities of a loan originator shall
22 not be required to be a State-licensed loan originator
23 or a registered loan originator.

24 (2) INDEPENDENT CONTRACTORS.—A loan
25 processor or underwriter may not work as an inde-

1 pendent contractor unless such processor or under-
2 writer is a State-licensed loan originator or a reg-
3 istered loan originator.

4 **SEC. 5. STATE LICENSE AND REGISTRATION APPLICATION**
5 **AND ISSUANCE.**

6 (a) BACKGROUND CHECKS.—In connection with an
7 application to any State for licensing and registration as
8 a State-licensed loan originator, the applicant shall, at a
9 minimum, furnish to the Nationwide Mortgage Licensing
10 System and Registry information concerning the appli-
11 cant’s identity, including—

12 (1) fingerprints for submission to the Federal
13 Bureau of Investigation, and any governmental
14 agency or entity authorized to receive such informa-
15 tion for a State and national criminal history back-
16 ground check; and

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

19 (A) an independent credit report obtained
20 from a consumer reporting agency described in
21 section 603(p) of the Fair Credit Reporting
22 Act; and

23 (B) information related to any administra-
24 tive, civil or criminal findings by any govern-
25 mental jurisdiction.

1 (b) ISSUANCE OF LICENSE.—The minimum stand-
2 ards for licensing and registration as a State-licensed loan
3 originator shall include the following:

4 (1) The applicant has never had a loan origi-
5 nator or similar license revoked in any governmental
6 jurisdiction.

7 (2) The applicant has never been convicted of,
8 or pled guilty or nolo contendere to, a felony in a do-
9 mestic, foreign, or military court.

10 (3) The applicant has demonstrated financial
11 responsibility, character, and general fitness such as
12 to command the confidence of the community and to
13 warrant a determination that the loan originator will
14 operate honestly, fairly, and efficiently within the
15 purposes of this Act.

16 (4) The applicant has completed the pre-licens-
17 ing education requirement described in subsection
18 (c).

19 (5) The applicant has passed a written test that
20 meets the test requirement described in subsection
21 (d).

22 (c) PRE-LICENSING EDUCATION OF LOAN ORIGINA-
23 TORS.—

24 (1) MINIMUM EDUCATIONAL REQUIREMENTS.—
25 In order to meet the pre-licensing education require-

1 ment referred to in subsection (b)(4), a person shall
2 complete at least 20 hours of education approved in
3 accordance with paragraph (2), which shall include
4 at least—

5 (A) 3 hours of Federal law and regula-
6 tions;

7 (B) 3 hours of ethics, which shall include
8 instruction on fraud, consumer protection, and
9 fair lending issues; and

10 (C) 2 hours of training related to lending
11 standards for the subprime mortgage market-
12 place.

13 (2) APPROVED EDUCATIONAL COURSES.—For
14 purposes of paragraph (1), pre-licensing education
15 courses shall be reviewed, and approved by the Na-
16 tionwide Mortgage Licensing System and Registry.

17 (3) LIMITATION AND STANDARDS.—

18 (A) LIMITATION.—To maintain the inde-
19 pendence of the approval process, the Nation-
20 wide Mortgage Licensing System and Registry
21 shall not directly or indirectly offer pre-licen-
22 sure educational courses for loan originators.

23 (B) STANDARDS.—In approving courses
24 under this section, the Nationwide Mortgage Li-
25 censing System and Registry shall apply rea-

1 sonable standards in the review and approval of
2 courses.

3 (d) TESTING OF LOAN ORIGINATORS.—

4 (1) IN GENERAL.—In order to meet the written
5 test requirement referred to in subsection (b)(5), an
6 individual shall pass, in accordance with the stand-
7 ards established under this subsection, a qualified
8 written test developed by the Nationwide Mortgage
9 Licensing System and Registry and administered by
10 an approved test provider.

11 (2) QUALIFIED TEST.—A written test shall not
12 be treated as a qualified written test for purposes of
13 paragraph (1) unless—

14 (A) the test consists of a minimum of 100
15 questions; and

16 (B) the test adequately measures the appli-
17 cant’s knowledge and comprehension in appro-
18 priate subject areas, including—

19 (i) ethics;

20 (ii) Federal law and regulation per-
21 taining to mortgage origination;

22 (iii) State law and regulation per-
23 taining to mortgage origination; and

24 (iv) Federal and State law and regula-
25 tion, including instruction on fraud, con-

1 consumer protection, subprime mortgage mar-
2 ketplace, and fair lending issues.

3 (3) MINIMUM COMPETENCE.—

4 (A) PASSING SCORE.—An individual shall
5 not be considered to have passed a qualified
6 written test unless the individual achieves a test
7 score of not less than 75 percent correct an-
8 swers to questions.

9 (B) INITIAL RETESTS.—An individual may
10 retake a test 3 consecutive times with each con-
11 secutive taking occurring in less than 14 days
12 after the preceding test.

13 (C) SUBSEQUENT RETESTS.—After 3 con-
14 secutive tests, an individual shall wait at least
15 14 days before taking the test again.

16 (D) RETEST AFTER LAPSE OF LICENSE.—
17 A State-licensed loan originator who fails to
18 maintain a valid license for a period of 5 years
19 or longer shall retake the test, not taking into
20 account any time during which such individual
21 is a registered loan originator.

22 (e) MORTGAGE CALL REPORTS.—Each mortgage li-
23 censee shall submit to the Nationwide Mortgage Licensing
24 System and Registry reports of condition, which shall be
25 in such form and shall contain such information as the

1 Nationwide Mortgage Licensing System and Registry may
2 require.

3 **SEC. 6. STANDARDS FOR STATE LICENSE RENEWAL.**

4 (a) IN GENERAL.—The minimum standards for li-
5 cense renewal for State-licensed loan originators shall in-
6 clude the following:

7 (1) The loan originator continues to meet the
8 minimum standards for license issuance.

9 (2) The loan originator has satisfied the annual
10 continuing education requirements described in sub-
11 section (b).

12 (b) CONTINUING EDUCATION FOR STATE-LICENSED
13 LOAN ORIGINATORS.—

14 (1) IN GENERAL.—In order to meet the annual
15 continuing education requirements referred to in
16 subsection (a)(2), a State-licensed loan originator
17 shall complete at least 8 hours of education ap-
18 proved in accordance with paragraph (2), which
19 shall include at least—

20 (A) 3 hours of Federal law and regula-
21 tions;

22 (B) 2 hours of ethics, which shall include
23 instruction on fraud, consumer protection, and
24 fair lending issues; and

1 (C) 2 hours of training related to lending
2 standards for the subprime mortgage market-
3 place.

4 (2) APPROVED EDUCATIONAL COURSES.—For
5 purposes of paragraph (1), continuing education
6 courses shall be reviewed, and approved by the Na-
7 tionwide Mortgage Licensing System and Registry.

8 (3) CALCULATION OF CONTINUING EDUCATION
9 CREDITS.—A State-licensed loan originator—

10 (A) may only receive credit for a con-
11 tinuing education course in the year in which
12 the course is taken; and

13 (B) may not take the same approved
14 course in the same or successive years to meet
15 the annual requirements for continuing edu-
16 cation.

17 (4) INSTRUCTOR CREDIT.—A State-licensed
18 loan originator who is approved as an instructor of
19 an approved continuing education course may receive
20 credit for the originator's own annual continuing
21 education requirement at the rate of 2 hours credit
22 for every 1 hour taught.

23 (5) LIMITATION AND STANDARDS.—

24 (A) LIMITATION.—To maintain the inde-
25 pendence of the approval process, the Nation-

1 wide Mortgage Licensing System and Registry
2 shall not directly or indirectly offer any con-
3 tinuing education courses for loan originators.

4 (B) STANDARDS.—In approving courses
5 under this section, the Nationwide Mortgage Li-
6 censing System and Registry shall apply rea-
7 sonable standards in the review and approval of
8 courses.

9 **SEC. 7. SYSTEM OF REGISTRATION ADMINISTRATION BY**
10 **FEDERAL BANKING AGENCIES.**

11 (a) DEVELOPMENT.—

12 (1) IN GENERAL.—The Federal banking agen-
13 cies shall jointly, through the Federal Financial In-
14 stitutions Examination Council, develop and main-
15 tain a system for registering employees of depository
16 institutions or subsidiaries of depository institutions
17 as registered loan originators with the Nationwide
18 Mortgage Licensing System and Registry. The sys-
19 tem shall be implemented before the end of the 1-
20 year period beginning on the date of the enactment
21 of this Act.

22 (2) REGISTRATION REQUIREMENTS.—In con-
23 nection with the registration of any loan originator
24 who is an employee of a depository institution or a
25 wholly-owned subsidiary of a depository institution

1 with the Nationwide Mortgage Licensing System and
2 Registry, the appropriate Federal banking agency
3 shall, at a minimum, furnish or cause to be fur-
4 nished to the Nationwide Mortgage Licensing Sys-
5 tem and Registry information concerning the
6 employees's identity, including—

7 (A) fingerprints for submission to the Fed-
8 eral Bureau of Investigation, and any govern-
9 mental agency or entity authorized to receive
10 such information for a State and national
11 criminal history background check; and

12 (B) personal history and experience, in-
13 cluding authorization for the Nationwide Mort-
14 gage Licensing System and Registry to obtain
15 information related to any administrative, civil
16 or criminal findings by any governmental juris-
17 diction.

18 (b) COORDINATION.—

19 (1) UNIQUE IDENTIFIER.—The Federal bank-
20 ing agencies, through the Financial Institutions Ex-
21 amination Council, shall coordinate with the Nation-
22 wide Mortgage Licensing System and Registry to es-
23 tablish protocols for assigning a unique identifier to
24 each registered loan originator that will facilitate
25 electronic tracking and uniform identification of, and

1 public access to, the employment history of and pub-
2 licly adjudicated disciplinary and enforcement ac-
3 tions against loan originators.

4 (2) NATIONWIDE MORTGAGE LICENSING SYS-
5 TEM AND REGISTRY DEVELOPMENT.—To facilitate
6 the transfer of information required by subsection
7 (a)(2), the Nationwide Mortgage Licensng System
8 and Registry shall coordinate with the Federal bank-
9 ing agencies, through the Financial Institutions Ex-
10 amination Council, concerning the development and
11 operation, by such System and Registry, of the reg-
12 istration functionality and data requirements for
13 loan originators.

14 (c) CONSIDERATION OF FACTORS AND PROCE-
15 DURES.—In establishing the registration procedures under
16 subsection (a) and the protocols for assigning a unique
17 identifier to a registered loan originator, the Federal bank-
18 ing agencies shall make such de minimis exceptions as
19 may be appropriate to paragraphs (1)(A) and (2) of sec-
20 tion 4(a), shall make reasonable efforts to utilize existing
21 information to minimize the burden of registering loan
22 originators, and shall consider methods for automating the
23 process to the greatest extent practicable consistent with
24 the purposes of this Act.

1 **SEC. 8. SECRETARY OF HOUSING AND URBAN DEVELOP-**
2 **MENT BACKUP AUTHORITY TO ESTABLISH A**
3 **LOAN ORIGINATOR LICENSING SYSTEM.**

4 (a) **BACK UP LICENSING SYSTEM.**—If, by the end of
5 the 1-year period, or the 2-year period in the case of a
6 State whose legislature meets only biennially, beginning
7 on the date of the enactment of this Act or at any time
8 thereafter, the Secretary determines that a State does not
9 have in place by law or regulation a system for licensing
10 and registering loan originators that meets the require-
11 ments of sections 5 and 6 and subsection (d) of this sec-
12 tion, or does not participate in the Nationwide Mortgage
13 Licensing System and Registry, the Secretary shall pro-
14 vide for the establishment and maintenance of a system
15 for the licensing and registration by the Secretary of loan
16 originators operating in such State as State-licensed loan
17 originators.

18 (b) **LICENSING AND REGISTRATION REQUIRE-**
19 **MENTS.**—The system established by the Secretary under
20 subsection (a) for any State shall meet the requirements
21 of sections 5 and 6 for State-licensed loan originators.

22 (c) **UNIQUE IDENTIFIER.**—The Secretary shall co-
23 ordinate with the Nationwide Mortgage Licensing System
24 and Registry to establish protocols for assigning a unique
25 identifier to each loan originator licensed by the Secretary
26 as a State-licensed loan originator that will facilitate elec-

1 tronic tracking and uniform identification of, and public
2 access to, the employment history of and the publicly adju-
3 dicated disciplinary and enforcement actions against loan
4 originators.

5 (d) STATE LICENSING LAW REQUIREMENTS.—For
6 purposes of this section, the law in effect in a State meets
7 the requirements of this subsection if the Secretary deter-
8 mines the law satisfies the following minimum require-
9 ments:

10 (1) A State loan originator supervisory author-
11 ity is maintained to provide effective supervision and
12 enforcement of such law, including the suspension,
13 termination, or nonrenewal of a license for a viola-
14 tion of State or Federal law.

15 (2) The State loan originator supervisory au-
16 thority ensures that all State-licensed loan origina-
17 tors operating in the State are registered with Na-
18 tionwide Mortgage Licensing System and Registry.

19 (3) The State loan originator supervisory au-
20 thority is required to regularly report violations of
21 such law, as well as enforcement actions and other
22 relevant information, to the Nationwide Mortgage
23 Licensing System and Registry.

24 (e) TEMPORARY EXTENSION OF PERIOD.—The Sec-
25 retary may extend, by not more than 12 months, the 1-

1 year or 2-year period, as the case may be, referred to in
2 subsection (a) for the licensing of loan originators in any
3 State under a State licensing law that meets the require-
4 ments of sections 5 and 6 and subsection (d) if the Sec-
5 retary determines that such State is making a good faith
6 effort to establish a State licensing law that meets such
7 requirements, license mortgage originators under such
8 law, and register such originators with the Nationwide
9 Mortgage Licensing System and Registry.

10 (f) **LIMITATION ON HUD-LICENSED LOAN ORIGINA-**
11 **TORS.**—Any loan originator who is licensed by the Sec-
12 retary under a system established under this section for
13 any State may not use such license to originate loans in
14 any other State.

15 (g) **CONTRACTING AUTHORITY.**—The Secretary may
16 enter into contracts with qualified independent parties, as
17 necessary to efficiently fulfill the obligations of the Sec-
18 retary under this Section.

19 **SEC. 9. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE**
20 **MORTGAGE LICENSING AND REGISTRY SYS-**
21 **TEM.**

22 If at any time the Secretary determines that the Na-
23 tionwide Mortgage Licensing System and Registry is fail-
24 ing to meet the requirements and purposes of this Act for
25 a comprehensive licensing, supervisory, and tracking sys-

1 tem for loan originators, the Secretary shall establish and
2 maintain such a system to carry out the purposes of this
3 Act and the effective registration and regulation of loan
4 originators.

5 **SEC. 10. FEES.**

6 The Federal banking agencies, the Secretary, and the
7 Nationwide Mortgage Licensing System and Registry may
8 charge reasonable fees to cover the costs of maintaining
9 and providing access to information from the Nationwide
10 Mortgage Licensing System and Registry, to the extent
11 that such fees are not charged to consumers for access
12 to such system and registry.

13 **SEC. 11. BACKGROUND CHECKS OF LOAN ORIGINATORS.**

14 (a) ACCESS TO RECORDS.—Notwithstanding any
15 other provision of law, in providing identification and
16 processing functions, the Attorney General shall provide
17 access to all criminal history information to the appro-
18 priate State officials responsible for regulating State-li-
19 censed loan originators to the extent criminal history
20 background checks are required under the laws of the
21 State for the licensing of such loan originators.

22 (b) AGENT.—For the purposes of this section and in
23 order to reduce the points of contact which the Federal
24 Bureau of Investigation may have to maintain for pur-
25 poses of subsection (a), the Conference of State Bank Su-

1 supervisors or a wholly owned subsidiary may be used as
2 a channeling agent of the States for requesting and dis-
3 tributing information between the Department of Justice
4 and the appropriate State agencies.

5 **SEC. 12. CONFIDENTIALITY OF INFORMATION.**

6 (a) SYSTEM CONFIDENTIALITY.—Except as other-
7 wise provided in this section, any requirement under Fed-
8 eral or State law regarding the privacy or confidentiality
9 of any information or material provided to the Nationwide
10 Mortgage Licensing System and Registry or a system es-
11 tablished by the Secretary under section 9, and any privi-
12 lege arising under Federal or State law (including the
13 rules of any Federal or State court) with respect to such
14 information or material, shall continue to apply to such
15 information or material after the information or material
16 has been disclosed to the system. Such information and
17 material may be shared with all State and Federal regu-
18 latory officials with mortgage industry oversight authority
19 without the loss of privilege or the loss of confidentiality
20 protections provided by Federal and State laws.

21 (b) NONAPPLICABILITY OF CERTAIN REQUIRE-
22 MENTS.—Information or material that is subject to a
23 privilege or confidentiality under subsection (a) shall not
24 be subject to—

1 (1) disclosure under any Federal or State law
2 governing the disclosure to the public of information
3 held by an officer or an agency of the Federal Gov-
4 ernment or the respective State; or

5 (2) subpoena or discovery, or admission into
6 evidence, in any private civil action or administrative
7 process, unless with respect to any privilege held by
8 the Nationwide Mortgage Licensing System and
9 Registry or the Secretary with respect to such infor-
10 mation or material, the person to whom such infor-
11 mation or material pertains waives, in whole or in
12 part, in the discretion of such person, that privilege.

13 (c) COORDINATION WITH OTHER LAW.—Any State
14 law, including any State open record law, relating to the
15 disclosure of confidential supervisory information or any
16 information or material described in subsection (a) that
17 is inconsistent with subsection (a) shall be superseded by
18 the requirements of such provision to the extent State law
19 provides less confidentiality or a weaker privilege.

20 (d) PUBLIC ACCESS TO INFORMATION.—This section
21 shall not apply with respect to the information or material
22 relating to the employment history of, and publicly adju-
23 dicated disciplinary and enforcement actions against, loan
24 originators that is included in Nationwide Mortgage Li-
25 censing System and Registry for access by the public.

1 **SEC. 13. LIABILITY PROVISIONS.**

2 The Secretary, any State official or agency, any Fed-
3 eral banking agency, or any organization serving as the
4 administrator of the Nationwide Mortgage Licensing Sys-
5 tem and Registry or a system established by the Secretary
6 under section 9, or any officer or employee of any such
7 entity, shall not be subject to any civil action or proceeding
8 for monetary damages by reason of the good-faith action
9 or omission of any officer or employee of any such entity,
10 while acting within the scope of office or employment, re-
11 lating to the collection, furnishing, or dissemination of in-
12 formation concerning persons who are loan originators or
13 are applying for licensing or registration as loan origina-
14 tors.

15 **SEC. 14. ENFORCEMENT UNDER HUD BACKUP LICENSING**
16 **SYSTEM.**

17 (a) **SUMMONS AUTHORITY.**—The Secretary may—

18 (1) examine any books, papers, records, or
19 other data of any loan originator operating in any
20 State which is subject to a licensing system estab-
21 lished by the Secretary under section 8; and

22 (2) summon any loan originator referred to in
23 paragraph (1) or any person having possession, cus-
24 tody, or care of the reports and records relating to
25 such loan originator, to appear before the Secretary
26 or any delegate of the Secretary at a time and place

1 named in the summons and to produce such books,
2 papers, records, or other data, and to give testi-
3 mony, under oath, as may be relevant or material to
4 an investigation of such loan originator for compli-
5 ance with the requirements of this Act.

6 (b) EXAMINATION AUTHORITY.—

7 (1) IN GENERAL.—If the Secretary establishes
8 a licensing system under section 8 for any State, the
9 Secretary shall appoint examiners for the purposes
10 of administering such section.

11 (2) POWER TO EXAMINE.—Any examiner ap-
12 pointed under paragraph (1) shall have power, on
13 behalf of the Secretary, to make any examination of
14 any loan originator operating in any State which is
15 subject to a licensing system established by the Sec-
16 retary under section 8 whenever the Secretary deter-
17 mines an examination of any loan originator is nec-
18 essary to determine the compliance by the originator
19 with this Act.

20 (3) REPORT OF EXAMINATION.—Each examiner
21 appointed under paragraph (1) shall make a full and
22 detailed report of examination of any loan originator
23 examined to the Secretary.

24 (4) ADMINISTRATION OF OATHS AND AFFIRMA-
25 TIONS; EVIDENCE.—In connection with examinations

1 of loan originators operating in any State which is
2 subject to a licensing system established by the Sec-
3 retary under section 8, or with other types of inves-
4 tigations to determine compliance with applicable
5 law and regulations, the Secretary and examiners
6 appointed by the Secretary may administer oaths
7 and affirmations and examine and take and preserve
8 testimony under oath as to any matter in respect to
9 the affairs of any such loan originator.

10 (5) ASSESSMENTS.—The cost of conducting any
11 examination of any loan originator operating in any
12 State which is subject to a licensing system estab-
13 lished by the Secretary under section 8 shall be as-
14 sessed by the Secretary against the loan originator
15 to meet the Secretary's expenses in carrying out
16 such examination.

17 (c) CEASE AND DESIST PROCEEDING.—

18 (1) AUTHORITY OF SECRETARY.—If the Sec-
19 retary finds, after notice and opportunity for hear-
20 ing, that any person is violating, has violated, or is
21 about to violate any provision of this Act, or any
22 regulation thereunder, with respect to a State which
23 is subject to a licensing system established by the
24 Secretary under section 8, the Secretary may publish
25 such findings and enter an order requiring such per-

1 son, and any other person that is, was, or would be
2 a cause of the violation, due to an act or omission
3 the person knew or should have known would con-
4 tribute to such violation, to cease and desist from
5 committing or causing such violation and any future
6 violation of the same provision, rule, or regulation.
7 Such order may, in addition to requiring a person to
8 cease and desist from committing or causing a viola-
9 tion, require such person to comply, or to take steps
10 to effect compliance, with such provision or regula-
11 tion, upon such terms and conditions and within
12 such time as the Secretary may specify in such
13 order. Any such order may, as the Secretary deems
14 appropriate, require future compliance or steps to
15 effect future compliance, either permanently or for
16 such period of time as the Secretary may specify,
17 with such provision or regulation with respect to any
18 loan originator.

19 (2) HEARING.—The notice instituting pro-
20 ceedings pursuant to paragraph (1) shall fix a hear-
21 ing date not earlier than 30 days nor later than 60
22 days after service of the notice unless an earlier or
23 a later date is set by the Secretary with the consent
24 of any respondent so served.

1 (3) TEMPORARY ORDER.—Whenever the Sec-
2 retary determines that the alleged violation or
3 threatened violation specified in the notice insti-
4 tuting proceedings pursuant to paragraph (1), or the
5 continuation thereof, is likely to result in significant
6 dissipation or conversion of assets, significant harm
7 to consumers, or substantial harm to the public in-
8 terest prior to the completion of the proceedings, the
9 Secretary may enter a temporary order requiring the
10 respondent to cease and desist from the violation or
11 threatened violation and to take such action to pre-
12 vent the violation or threatened violation and to pre-
13 vent dissipation or conversion of assets, significant
14 harm to consumers, or substantial harm to the pub-
15 lic interest as the Secretary deems appropriate pend-
16 ing completion of such proceedings. Such an order
17 shall be entered only after notice and opportunity for
18 a hearing, unless the Secretary determines that no-
19 tice and hearing prior to entry would be impracti-
20 cable or contrary to the public interest. A temporary
21 order shall become effective upon service upon the
22 respondent and, unless set aside, limited, or sus-
23 pended by the Secretary or a court of competent ju-
24 risdiction, shall remain effective and enforceable
25 pending the completion of the proceedings.

1 (4) REVIEW OF TEMPORARY ORDERS.—

2 (A) REVIEW BY SECRETARY.—At any time
3 after the respondent has been served with a
4 temporary cease-and-desist order pursuant to
5 paragraph (3), the respondent may apply to the
6 Secretary to have the order set aside, limited,
7 or suspended. If the respondent has been served
8 with a temporary cease-and-desist order entered
9 without a prior hearing before the Secretary,
10 the respondent may, within 10 days after the
11 date on which the order was served, request a
12 hearing on such application and the Secretary
13 shall hold a hearing and render a decision on
14 such application at the earliest possible time.

15 (B) JUDICIAL REVIEW.—Within—

16 (i) 10 days after the date the respond-
17 ent was served with a temporary cease-
18 and-desist order entered with a prior hear-
19 ing before the Secretary; or

20 (ii) 10 days after the Secretary ren-
21 ders a decision on an application and hear-
22 ing under paragraph (1), with respect to
23 any temporary cease-and-desist order en-
24 tered without a prior hearing before the
25 Secretary,

1 the respondent may apply to the United States
2 district court for the district in which the re-
3 spondent resides or has its principal place of
4 business, or for the District of Columbia, for an
5 order setting aside, limiting, or suspending the
6 effectiveness or enforcement of the order, and
7 the court shall have jurisdiction to enter such
8 an order. A respondent served with a temporary
9 cease-and-desist order entered without a prior
10 hearing before the Secretary may not apply to
11 the court except after hearing and decision by
12 the Secretary on the respondent's application
13 under subparagraph (A).

14 (C) NO AUTOMATIC STAY OF TEMPORARY
15 ORDER.—The commencement of proceedings
16 under subparagraph (B) shall not, unless spe-
17 cifically ordered by the court, operate as a stay
18 of the Secretary's order.

19 (5) AUTHORITY OF THE SECRETARY TO PRO-
20 HIBIT PERSONS FROM SERVING AS LOAN ORIGINA-
21 TORS.—In any cease-and-desist proceeding under
22 paragraph (1), the Secretary may issue an order to
23 prohibit, conditionally or unconditionally, and per-
24 manently or for such period of time as the Secretary
25 shall determine, any person who has violated this

1 Act or regulations thereunder, from acting as a loan
2 originator if the conduct of that person dem-
3 onstrates unfitness to serve as a loan originator.

4 (d) **AUTHORITY OF THE SECRETARY TO ASSESS**
5 **MONEY PENALTIES.**—

6 (1) **IN GENERAL.**—The Secretary may impose a
7 civil penalty on a loan originator operating in any
8 State which is subject to licensing system established
9 by the Secretary under section 8, if the Secretary
10 finds, on the record after notice and opportunity for
11 hearing, that such loan originator has violated or
12 failed to comply with any requirement of this Act or
13 any regulation prescribed by the Secretary under
14 this Act or order issued under subsection (c).

15 (2) **MAXIMUM AMOUNT OF PENALTY.**—The
16 maximum amount of penalty for each act or omis-
17 sion described in paragraph (1) shall be \$5,000 for
18 each day the violation continues.

19 **SEC. 15. PREEMPTION OF STATE LAW.**

20 Nothing in this Act may be construed to preempt the
21 law of any State, to the extent that such State law pro-
22 vides greater protection to consumers than is provided
23 under this Act.

1 **SEC. 16. REPORTS AND RECOMMENDATIONS TO CONGRESS.**

2 (a) ANNUAL REPORTS.—Not later than 1 year after
3 the date of enactment of this Act, and annually thereafter,
4 the Secretary shall submit a report to Congress on the
5 effectiveness of the provisions of this Act, including legis-
6 lative recommendations, if any, for strengthening con-
7 sumer protections, enhancing examination standards, and
8 streamlining communication between all stakeholders in-
9 volved in residential mortgage loan origination and proc-
10 essing.

11 (b) LEGISLATIVE RECOMMENDATIONS.—Not later
12 than 6 months after the date of enactment of this Act,
13 the Secretary shall make recommendations to Congress on
14 legislative reforms to the Real Estate Settlement Proce-
15 dures Act of 1974, that the Secretary deems appropriate
16 to promote more transparent disclosures, allowing con-
17 sumers to better shop and compare mortgage loan terms
18 and settlement costs.

19 **SEC. 17. STUDY AND REPORTS ON DEFAULTS AND FORE-**
20 **CLOSURES.**

21 (a) STUDY REQUIRED.—The Secretary shall conduct
22 an extensive study of the root causes of default and fore-
23 closure of home loans, using as much empirical data as
24 is available.

25 (b) PRELIMINARY REPORT TO CONGRESS.—Not later
26 than 6 months after the date of enactment of this Act,

1 the Secretary shall submit to Congress a preliminary re-
2 port regarding the study required by this section.

3 (c) FINAL REPORT TO CONGRESS.—Not later than
4 12 months after the date of enactment of this Act, the
5 Secretary shall submit to Congress a final report regard-
6 ing the results of the study required by this section, which
7 shall include any recommended legislation relating to the
8 study, and recommendations for best practices and for a
9 process to provide targeted assistance to populations with
10 the highest risk of potential default or foreclosure.

○