

111TH CONGRESS  
2D SESSION

# H. R. 5941

To reduce fraud and abusive practices in the origination of residential mortgages by establishing a clearinghouse of mortgage application information.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 29, 2010

Mr. TOWNS introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To reduce fraud and abusive practices in the origination of residential mortgages by establishing a clearinghouse of mortgage application information.

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.**

4       This Act may be cited as the “Anti-Redlining and  
5       Anti-Mortgage Fraud Act of 2010”.

6       **SEC. 2. RESIDENTIAL MORTGAGE APPLICATION RECORDA-**  
7       **TION REQUIREMENT.**

8       (a) RECORDATION REQUIREMENT.—It shall be un-  
9       lawful for any person or entity to extend credit (including

1 in connection with a lease-purchase transaction), or to  
2 provide funds or collect any payments in connection with  
3 such an extension of credit, that is secured by a single-  
4 family residence unless the originator has recorded the ap-  
5 plicant's application for such extension of credit with the  
6 clearinghouse established under subsection (b). The Sec-  
7 retary of the Treasury shall, by regulation, require origi-  
8 nators to record each application to enter into a trans-  
9 action covered by this subsection with the clearinghouse  
10 established under subsection (b), at the time that applica-  
11 tion is first received by the originator.

12 (b) MORTGAGE APPLICATION RECORDATION SYS-  
13 TEM.—

14 (1) ESTABLISHMENT.—The Secretary of the  
15 Treasury, acting through the Director of FinCEN,  
16 shall establish a system in accordance with this sub-  
17 section to record applications for extensions of credit  
18 that are subject to the requirement under subsection  
19 (a), which shall include the establishment of a clear-  
20 inghouse (in this section referred to as the “clearing-  
21 house”) for recording all such applications.

22 (2) CLEARINGHOUSE OPERATOR.—The clear-  
23 inghouse shall be established and managed by a pri-  
24 vate sector entity selected, in accordance with stand-

1       ards established by the Secretary, from applicants  
2       that—

3               (A) demonstrate the capacity to operate  
4               the clearinghouse in accordance with this sec-  
5               tion and provide technology sufficient to carry  
6               out all functions and activities of the clearing-  
7               house;

8               (B) meet such standards, as the Secretary  
9               shall establish, to ensure that the clearinghouse  
10              operator is independent of ownership of, by, or  
11              with, and affiliation of any kind with, any enti-  
12              ty that is engaged in the business of origi-  
13              nating, funding, guaranteeing, purchasing, sell-  
14              ing, securitizing, or assuming any risk related  
15              to residential mortgages other than from the  
16              operation of the clearinghouse; and

17              (C) are small business concerns, as such  
18              term is defined pursuant to section 3 of the  
19              Small Business Act (15 U.S.C. 632).

20       (3) COSTS.—

21              (A) RESPONSIBILITY.—All costs of the es-  
22              tablishment and operation of the clearinghouse  
23              shall be borne by the clearinghouse operator.

24              (B) FEES.—

1 (i) AUTHORITY.—The clearinghouse  
2 operator may assess and collect fees to  
3 cover the costs of the establishment and  
4 operation of the clearinghouse established  
5 under this subsection.

6 (ii) LIMITATION.—Such fees may be  
7 assessed and collected only in such manner  
8 as may reasonably be expected to result in  
9 an aggregate amount of fees collected that  
10 does not exceed the aggregate amount of  
11 the costs for establishment and operation  
12 of the clearinghouse, plus a market rate of  
13 return on the investment in establishing  
14 and operating costs of the clearinghouse,  
15 as determined by the Secretary.

16 (iii) PERSONS SUBJECT TO FEES.—  
17 Fees under this subparagraph shall be as-  
18 sessed against and collected from origina-  
19 tors, for each application for an extension  
20 of credit that is required to be recorded  
21 with the clearinghouse.

22 (C) GUARANTEE.—The Secretary may  
23 guarantee repayment of principal and interest  
24 on a loan to the clearinghouse operator in an  
25 amount sufficient to cover the costs of estab-

1           lishing, and operating, the clearinghouse estab-  
2           lished under this section and there is authorized  
3           to be appropriated such sums as may be nec-  
4           essary for costs (as such term is defined in sec-  
5           tion 502 of the Federal Credit Reform Act of  
6           1990 (2 U.S.C. 661a)) of such guarantee.

7           (c) COLLECTION OF INFORMATION.—For each appli-  
8           cation for an extension of credit recorded with the clear-  
9           inghouse, the clearinghouse shall, through an internet-  
10          based electronic system—

11               (1) provide a unique identifier that shall be per-  
12          manently assigned to the application; and

13               (2) collect and maintain—

14                       (A) the name, social security number, and  
15                       address of each applicant and co-applicant;

16                       (B) the address of the property or prop-  
17                       erties that provide security for the extension of  
18                       credit for which the application is filed;

19                       (C) the identity of the legal entity receiving  
20                       the application and the identity of the agent or  
21                       employee of that entity actually taking the ap-  
22                       plication;

23                       (D) the identity of any entity or individual  
24                       that enters any information into the clearing-  
25                       house system with respect to an application;

1 (E) identification of whether property se-  
2 curing the extension of credit is a principal resi-  
3 dence, an additional residence, or an investment  
4 property;

5 (F) identification of whether the extension  
6 of credit was secured by a first or subsequent  
7 lien on property and whether it was made for  
8 purchase, refinance, a home equity loan or line  
9 of credit, construction finance, home equity con-  
10 version, or lease-purchase, or such other cat-  
11 egory as the Secretary may provide;

12 (G) the name of each lender to which the  
13 application is submitted;

14 (H) the name of each lender that accepts  
15 the application;

16 (I) the date and type of transaction that  
17 results from the approval of the application or  
18 the date of termination of the application; and

19 (J) such other information as the Sec-  
20 retary may, by regulation, require that is con-  
21 sistent with the fraud prevention and detection  
22 purposes of the clearinghouse.

23 (d) USE AND PROTECTION OF INFORMATION.—

24 (1) IN GENERAL.—All information collected by  
25 the clearinghouse shall be the property of the Sec-

1       retary and access to and use of the information shall  
2       be limited as prescribed in this section and regula-  
3       tions issued under this section by the Secretary.

4               (2) DISCLOSURES TO APPLICANTS.—The Sec-  
5       retary shall require each originator accepting appli-  
6       cations for extensions of credit subject to the re-  
7       quirement under subsection (a) to provide to each  
8       applicant, at the time of application, a written dis-  
9       closure, in such form and containing such informa-  
10      tion as the Secretary shall require, sufficient to in-  
11      form the applicant of the existence and purpose of  
12      the clearinghouse, the information regarding the ap-  
13      plication to be collected by the clearinghouse, who  
14      has access to such information collected by the clear-  
15      inghouse, and the manner in which the information  
16      may be used.

17              (3) ACCESS.—Access to information collected  
18      by the clearinghouse shall be limited as follows:

19                      (A) An individual or entity that accepts  
20              applications for extensions of credit shall have  
21              access solely to information that was submitted  
22              to the clearinghouse by that individual or enti-  
23              ty.

24                      (B) An entity that considers an extension  
25              of credit based upon an application shall have

1 access solely to information associated with ap-  
2 plications submitted to such entity and to other  
3 currently or recently active applications involv-  
4 ing the same applicants or co-applicants or the  
5 same property or properties.

6 (C) A prospective purchaser or guarantor  
7 of any instrument related to an extension of  
8 credit for which application information was  
9 collected by the clearinghouse shall have access  
10 to the same information as the entity that ex-  
11 tended the credit.

12 (D) The Secretary and any other Federal  
13 and State regulatory or law enforcement agen-  
14 cies shall have access to all data collected by  
15 the clearinghouse to the extent and in the man-  
16 ner prescribed by the Secretary for the purpose  
17 of investigating fraudulent, discriminatory, or  
18 predatory activities and other activities that are  
19 potential violations of Federal or State law.

20 (4) PROTECTION OF INFORMATION.—The Sec-  
21 retary shall, by regulation pursuant to subsection  
22 (e), provide for the operation of the clearinghouse  
23 and establish guidelines and procedures necessary to  
24 ensure that the clearinghouse operates in a secure  
25 manner that protects the information collected from



1 unauthorized access or misuse by any individual or  
2 entity.

3 (e) DEFINITIONS.—For purposes of this section, the  
4 following definitions shall apply:

5 (1) APPLICATION.—The term “application”  
6 means, any writing whether or not in paper or elec-  
7 tronic form and whether or not signed by the appli-  
8 cant, that—

9 (A) is prepared or received by an origi-  
10 nator;

11 (B) is submitted or is intended to be sub-  
12 mitted for consideration by any creditor for an  
13 extension of credit to be secured by a single-  
14 family residence; and

15 (C) identifies the applicant and the secu-  
16 rity property.

17 (2) CREDIT; EXTENSION OF CREDIT.—The  
18 terms “credit” and “extension of credit” mean the  
19 provision of time for payment pursuant to contrac-  
20 tual terms, including lease-purchase contracts, home  
21 equity lines of credit, and home equity conversion  
22 transactions.

23 (3) FINCEN.—The term “FinCEN” means the  
24 Financial Crimes Enforcement Network of the De-  
25 partment of the Treasury.

1           (4) SECRETARY.—The term “Secretary” means  
2           the Secretary of the Treasury, acting through the  
3           Director of FinCEN.

4           (5) SINGLE FAMILY RESIDENCE.—The term  
5           “single-family residence” means residential real  
6           property that contains one to four dwelling units, or  
7           individual units of condominiums or cooperatives.

8           (6) ORIGINATOR.—The term “originator”  
9           means any entity that is in the business of receiving  
10          applications for extensions of credit.

11          (f) REGULATIONS.—The Secretary shall issue any  
12          regulations necessary to carry out this section.

13          (g) EFFECTIVE DATE.—The provisions of this sec-  
14          tion shall take effect with respect to extensions of credit  
15          entered into on and after January 1, 2011.

16          (h) CONFORMING AMENDMENT.—Paragraph (2) of  
17          section 310 of title 31, United States Code, is amended—

18                  (1) by redesignating subparagraph (J) as sub-  
19                  paragraph (K); and

20                  (2) by inserting after subparagraph (I) the fol-  
21                  lowing new subparagraph:

22                  “(J) Carry out the responsibilities of the Sec-  
23                  retary under section 2 of the Anti-Redlining and  
24                  Anti-Mortgage Fraud Act of 2010 (relating to resi-  
25                  dential mortgage application recordation require-

- 1 ment and establishment of a clearinghouse for such
- 2 recording).”.

