



**CSBS/AARMR MODEL STATE LAW  
For the Implementation of PL 110-286,  
Title V, The S.A.F.E. Act**

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**HOW TO USE THIS DOCUMENT:** This document is divided into three columnar sections. The left hand numbered column is for line reference only and does not correlate to any codification or section number. The second column is Title V, the S.A.F.E. Act as written, but placed into sequential sections for easy cross-reference to the state model language. The third column is the minimum draft state model language for the implementation of S.A.F.E. The section numbers (e.g. MSL XX.XXX.010) correlate to the Model State Law (MSL). These sections are aligned with the relevant S.A.F.E. section rather than MSL sequence to afford the reader the ability to read and compare the original to the draft model. Section notes are included for further clarification and are not part of the actual model language.

1	<b>TITLE V—S.A.F.E. MORTGAGE LICENSING ACT</b>	<b>STATE MODEL LANGUAGE FOR IMPLEMENTATION OF TITLE V—S.A.F.E. MORTGAGE LICENSING ACT</b>
2	<p><b>SEC. 1501. SHORT TITLE.</b></p> <p>This title 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”.</p>	<p><b>MSL XX.XXX.010 TITLE.</b> This Act may be cited as “The Model State Law for Implementation of Public Law 110-289, Title V., The S.A.F.E. Act.”</p> <p>Section notes:</p> <p>1. States should note that “this Act” as used throughout the MSL means either this law as a complete law, or a primary state mortgage law that this law has been merged into. When adopting the term “this Act,” states that intend to also mean other state mortgage laws must be careful to include the appropriate reference to those other laws.</p>
3	<p>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:</p> <p>(1) Provides uniform license applications and reporting requirements for State-licensed loan originators.</p> <p>(2) Provides a comprehensive licensing and supervisory database.</p> <p>(3) Aggregates and improves the flow of information to and between regulators.</p>	<p><b>MSL XX.XXX.020 PURPOSE OF THIS ACT</b> [Optional language for states that do not have language sufficiently covering PL 110-289, Sec. 1508(d)(1)]—The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon this State's consumers, this State's economy, the neighborhoods and communities of this State, and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state's citizens. The Legislature also finds that it is essential for the protection of the citizens of this State and the stability of the State's economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds</p>

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	<p>(4) Provides increased accountability and tracking of loan originators.</p> <p>(5) Streamlines the licensing process and reduces the regulatory burden.</p> <p>(6) Enhances consumer protections and supports anti-fraud measures.</p> <p>(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.</p> <p>(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.</p> <p>(9) Facilitates responsible behavior in the subprime mortgage market place and provides comprehensive training and examination requirements related to subprime mortgage lending.</p> <p>(10) Facilitates the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.</p> <p>that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this Act is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore the Legislature establishes within this Act:</p> <p>(1) <b>SYSTEM OF SUPERVISION AND ENFORCEMENT</b>—An effective system of supervision and enforcement of the mortgage lending industry, including:</p> <ul style="list-style-type: none"> <li>(a) The authority to issue licenses to conduct business under this Act, including the authority to write rules or adopt procedures necessary to the licensing of persons covered under this Act.</li> <li>(b) The authority to deny, suspend, condition or revoke licenses issued under this Act.</li> <li>(c) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Act, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.</li> </ul> <p>(2) <b>BROAD ADMINISTRATIVE AUTHORITY</b>—That the Commissioner shall have the broad administrative authority to administer, interpret and enforce this Act, and promulgate rules implementing this Act, in order to carry out the intentions of the Legislature.</p> <p>Section notes:</p> <p>1. Throughout this Act, each state will need to determine whether the language should read “Commissioner” only or when applicable some form of “Commissioner and designee.”</p>
<p>4 <b>SEC. 1503. DEFINITIONS.</b></p> <p>For purposes of this title, the following definitions shall apply:</p>	<p><b>MSL XX.XXX.030 DEFINITIONS</b>—For purposes of this title, the following definitions shall apply:</p>

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5	(1) FEDERAL BANKING AGENCIES.—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.	(1) FEDERAL BANKING AGENCIES—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.
6	(2) DEPOSITORY INSTITUTION.—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.	(2) DEPOSITORY INSTITUTION—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.
7	<p>(3) LOAN ORIGINATOR.—</p> <p>(A) IN GENERAL.—The term “loan originator”—</p> <p>(i) means an individual who—</p> <p>(I) takes a residential mortgage loan application; and</p> <p>(II) offers or negotiates terms of a residential mortgage loan for compensation or gain;</p> <p>(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;</p> <p>(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</p> <p>(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, United States Code.</p>	<p>(3) MORTGAGE LOAN ORIGINATOR—</p> <p>(a) IN GENERAL.—The term “mortgage loan originator”—</p> <p>(i) Means an individual who—</p> <p>(A) Takes a residential mortgage loan application; and</p> <p>(B) Offers or negotiates terms of a residential mortgage loan for compensation or gain;</p> <p>(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;</p> <p>(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 mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and</p> <p>(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, United States Code.</p> <p>(b) TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION—For purposes of this subsection, “takes a residential mortgage loan application” shall have the following meanings:</p>



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		<p>(i) Recording the borrower’s application information in any form for use in a credit decision; or</p> <p>(ii) Receiving the borrower’s application information in any form for use in a credit decision.</p> <p>(c) [Optional Language] RESIDENTIAL MORTGAGE LOAN APPLICATION—For purposes of this subsection, “residential mortgage loan application” shall have the same meaning as “application” under 24 CFR Part 3500.2 (Regulation X), which states—</p> <p>“Application means the submission of a borrower’s financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.”</p>
8	<p>(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.</p>	<p>No language needed.</p> <p>Section notes:</p> <p>1. This definition from SAFE does not support or connect to anything within the law. It is believed to be a definition that was intended to be removed during one of the rounds of amendment.</p>
9	<p>(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.</p>	<p>(d) 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.</p>
10	<p>(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—</p>	<p>(e) REAL ESTATE BROKERAGE ACTIVITY DEFINED—For purposes of this Act the term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—</p>

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	<p>(i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;</p> <p>(ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;</p> <p>(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);</p> <p>(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</p> <p>(v) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), or (iv).</p>	<p>(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;</p> <p>(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;</p> <p>(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);</p> <p>(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</p> <p>(v) Offering to engage in any activity, or act in any capacity, described in subsections (i), (ii), (iii), or (iv) of this section.</p>
11	<p>(4) LOAN PROCESSOR OR UNDERWRITER.—</p> <p>(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—</p> <p>(i) a State-licensed loan originator; or</p> <p>(ii) a registered loan originator.</p>	<p>Section notes:</p> <p>1. Minor change from SAFE in intro sentence.</p> <p>Definition amended and moved to line 23.</p>
12	<p>(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—</p> <p>(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and</p> <p>(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</p>	<p>Definition amended and moved to line 23.</p>

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	consumers about residential mortgage loan rates or terms.	
13	(5) 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 Secretary under section 1509.	<p>(4) 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 licensing and registration of licensed mortgage loan originators.</p> <p>Section notes: 1. Eliminated last part of last sentence.</p>
14	(6) NONTRADITIONAL MORTGAGE PRODUCT.—The term “nontraditional mortgage product” means any mortgage product other than a 30-year fixed rate mortgage.	<p>No language needed.</p> <p>Section notes: 1. Provided an education program covering nontraditional mortgage products exists for mortgage loan originators, there is no need for definition. Further, some states define this term, and provided the definition covers products other than 30-year fixed rate then that definition is sufficient.</p>
15		(5) PERSON—The term “person” means a natural person, corporation, company, limited liability corporation, partnership, or association.
16	<p>(7) REGISTERED LOAN ORIGINATOR.—The term “registered loan originator” means any individual who—</p> <p>(A) meets the definition of loan originator and is an employee of—</p> <p>(i) a depository institution;</p> <p>(ii) a subsidiary that is—</p> <p>(I) owned and controlled by a depository institution; and</p> <p>(II) regulated by a Federal banking agency; or</p> <p>(iii) an institution regulated by the Farm Credit Administration; and</p> <p>(B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.</p>	<p>(6) REGISTERED MORTGAGE LOAN ORIGINATOR—The term “registered mortgage loan originator” means any individual who—</p> <p>(a) Meets the definition of mortgage loan originator and is an employee of—</p> <p>(i) A depository institution;</p> <p>(ii) A subsidiary that is—</p> <p>(A) Owned and controlled by a depository institution; and</p> <p>(B) Regulated by a Federal banking agency; or</p> <p>(iii) An institution regulated by the Farm Credit Administration; and</p> <p>(b) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.</p> <p>Section notes:</p>

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		1 Added the word “mortgage” to the term.
17	(8) 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 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).	<p>(7) 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 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).</p> <p>Section notes:</p> <p>1. Pursuant to Regulation Z, §226.2(a)(19): Dwelling means a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, <i>mobile home</i>, and <i>trailer</i>, if it is used as a residence.</p>
18	(9) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.	No language needed.
19	(10) 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.	No language needed.
20	<p>(11) STATE-LICENSED LOAN ORIGINATOR.—The term “State-licensed loan originator” means any individual who—</p> <p>(A) is a loan originator;</p> <p>(B) is not an employee of—</p> <p>(i) a depository institution;</p> <p>(ii) a subsidiary that is—</p> <p>(I) owned and controlled by a depository institution; and</p> <p>(II) regulated by a Federal banking agency; or</p> <p>(iii) an institution regulated by the Farm Credit Administration; and</p> <p>(C) is licensed by a State or by the Secretary under section 1508 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage</p>	No language needed.

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	Licensing System and Registry.	
21	<p>(12) UNIQUE IDENTIFIER.—</p> <p>(A) IN GENERAL.—The term “unique identifier” means a number or other identifier that—</p> <ul style="list-style-type: none"> <li>(i) permanently identifies a loan originator;</li> <li>(ii) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies 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</li> <li>(iii) shall not be used for purposes other than those set forth under this title.</li> </ul> <p>(B) RESPONSIBILITY OF STATES.—To the greatest extent possible and to accomplish the purpose of this title, States shall use unique identifiers in lieu of social security numbers.</p>	<p>(8) UNIQUE IDENTIFIER—The term “unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.</p> <p>Section notes:</p> <ol style="list-style-type: none"> <li>1. NMLSR has established a unique identifier as contemplated in the SAFE definition. This definition accurately defines the term.</li> <li>2. Already established within NMLSR.</li> </ol>
22	<b>SEC. 1504. LICENSE OR REGISTRATION REQUIRED.</b>	<b>MSL XX.XXX.040 LICENSE AND REGISTRATION REQUIRED—</b>
23	<p>(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—</p> <ul style="list-style-type: none"> <li>(1) obtaining, and maintaining annually— <ul style="list-style-type: none"> <li>(A) a registration as a registered loan originator; or</li> <li>(B) a license and registration as a State licensed loan originator; and</li> </ul> </li> <li>(2) obtaining a unique identifier.</li> </ul>	<p>(1) IN GENERAL—An individual, unless specifically exempted from this Act under MSL XX.XXX.040(2), shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.</p> <p>(2) EXEMPTION FROM THIS ACT—Registered Mortgage Loan Originators, when acting for an entity described in MSL XX.XXX.030(6)(a)(i),(ii) or (iii) are exempt from this Act.</p> <p>Section notes:</p> <ol style="list-style-type: none"> <li>1. In (1), a state may wish to supplant “shall not” with “may not” or similar wording.</li> </ol>

		<p>2. It is imperative that states understand that existing exemptions from licensing will need to be scrutinized in each law. Any exemptions that conflict with SAFE may put the state in a position of non-compliance.</p> <p>3. References Registered Mortgage Loan Originator definition and makes it clear that RMLOs are exempt from this Act, but only when they are working for the exempt entity. In other words, dual employment with both a bank and a mortgage broker would require registering under the federal system and license under the state system.</p> <p>4. “Exemption from this Act” does not have the same meaning as “License Not Required.” The latter still may subject the person to certain coverage and enforcement authorities under the Act.</p>
24	<p>(b) LOAN PROCESSORS AND UNDERWRITERS.—</p> <p>(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.</p> <p>(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.</p>	<p>(3) LOAN PROCESSOR OR UNDERWRITER.—</p> <p>(a) IN GENERAL.—The term “loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under [reference appropriate state mortgage licensing laws here].</p> <p>(b) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—</p> <p>(i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and</p> <p>(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.</p> <p>(c) LICENSE NOT REQUIRED.—An individual engaging solely in loan processor or underwriter activities, 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 mortgage loan originator shall not be required to obtain and maintain a license under MSL</p>

		<p>XX.XXX.040(1).</p> <p>(d) INDEPENDENT CONTRACTORS—An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor obtains and maintains a license under MSL XX.XXX.040(1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.</p> <p>Section notes:</p> <p>1. The reference to “appropriate state mortgage licensing law” in (a) is because some states may have different statutes covering licensed activity.</p>
25	<b>SEC. 1505. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.</b>	<b>MSL XX.XXX.050 STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE—</b>
26		<p>(1) APPLICATION FORM—Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Act.</p> <p>(2) COMMISSIONER MAY ESTABLISH RELATIONSHIPS OR CONTRACTS—In order to fulfill the purposes of this Act, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.</p> <p>(3) WAIVE OR MODIFY REQUIREMENTS [Optional language if needed by a state.]—For the purpose of participating in the Nationwide Mortgage Licensing System &amp; Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide</p>

	Mortgage Licensing System & Registry.
27	<p>(a) <b>BACKGROUND CHECKS.</b>—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—</p> <ul style="list-style-type: none"> <li>(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</li> <li>(2) personal history and experience, including authorization for the System to obtain— <ul style="list-style-type: none"> <li>(A) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and</li> <li>(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.</li> </ul> </li> </ul>
	<p>(4) <b>BACKGROUND CHECKS</b>—In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—</p> <ul style="list-style-type: none"> <li>(a) Fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and</li> <li>(b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain— <ul style="list-style-type: none"> <li>(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and</li> <li>(ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.</li> </ul> </li> </ul> <p>(5) <b>AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING CRIMINAL INFORMATION</b>— 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 (4)(a) and (b)(ii) the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.</p> <p>(6) <b>AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING NON-CRIMINAL INFORMATION</b>— For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of subsection (4)(b)(i) and (ii) the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.</p>



		<p>Section notes:</p> <p>1. The NMLSR will process fingerprints through the FBI only. States desiring a criminal background check beyond the FBI (e.g. state police) are recommended to address this issue specifically in their laws.</p>
28	<p>(b) ISSUANCE OF LICENSE.—The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:</p> <p>(1) The applicant has never had a loan originator license revoked in any governmental jurisdiction.</p> <p>(2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—</p> <p>(A) during the 7-year period preceding the date of the application for licensing and registration; or</p> <p>(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.</p> <p>(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 title.</p> <p>(4) The applicant has completed the pre-licensing education requirement described in subsection (c).</p> <p>(5) The applicant has passed a written test that meets the test requirement described in subsection (d).</p> <p>(6) The applicant has met either a net worth or surety bond requirement, or paid into a State fund, as required by the</p>	<p><b>MSL XX.XXX.060 ISSUANCE OF LICENSE</b>—The Commissioner may not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:</p> <p>(1) <b>NO LICENSE REVOCATION</b>—The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction.</p> <p>(2) <b>NO FELONY CONVICTION</b>—The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court—</p> <p>(a) During the 7-year period preceding the date of the application for licensing and registration; or</p> <p>(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.</p> <p>(3) <b>CHARACTER AND FITNESS</b>—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 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.</p> <p>(4) <b>PRE-LICENSING EDUCATION</b>—The applicant has completed the pre-licensing education requirement described in subsection MSL XX.XXX.070.</p> <p>(5) <b>WRITTEN TEST</b>—The applicant has passed a written test that meets the test requirement described in subsection MSL XX.XXX.080.</p> <p>(6) <b>NET WORTH, SURETY BOND OR STATE FUND REQUIREMENT</b>—The applicant has met the [States must choose one:</p>

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	State pursuant to section 1508(d)(6).	<p>net worth, surety bond requirement, or paid into a State fund] as required pursuant to MSL XX.XXX.140.</p> <p>Section notes:</p> <ol style="list-style-type: none"> <li>1. The state at its option may choose to phrase the intro section as may not, or may, or will, as fits their statutory convention.</li> <li>2. (1) through (6) are the minimum requirements compliance with licensing provisions under SAFE.</li> </ol>
29	<p>(c) PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.—</p> <p>(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—</p> <ol style="list-style-type: none"> <li>(A) 3 hours of Federal law and regulations;</li> <li>(B) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and</li> <li>(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.</li> </ol>	<p><b>MSL XX.XXX.070 PRE-LICENSING EDUCATION OF LOAN ORIGINATORS—</b></p> <p>(1) MINIMUM EDUCATIONAL REQUIREMENTS—In order to meet the pre-licensing education requirement referred to in subsection MSL XX.XXX.060(4) of this section, a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least—</p> <ol style="list-style-type: none"> <li>(a) 3 hours of Federal law and regulations;</li> <li>(b) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and</li> <li>(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.</li> </ol>
30	<p>(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.</p>	<p>(2) APPROVED EDUCATIONAL COURSES.—For purposes of paragraph (1) of this section, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.</p>
31	<p>(3) LIMITATION AND STANDARDS.—</p> <p>(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.</p> <p>(B) STANDARDS.—In approving courses under this section, the Nationwide Mortgage Licensing System</p>	<p>No language needed.</p> <p>Section notes:</p> <ol style="list-style-type: none"> <li>1. These are NMLSR requirements not directly applicable under state statute.</li> </ol>

	and Registry shall apply reasonable standards in the review and approval of courses.	
32	<p>(d) TESTING OF LOAN ORIGINATORS.—</p> <p>(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.</p> <p>(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—</p> <ul style="list-style-type: none"> <li>(A) ethics;</li> <li>(B) Federal law and regulation pertaining to mortgage origination;</li> <li>(C) State law and regulation pertaining to mortgage origination;</li> <li>(D) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.</li> </ul> <p>(3) MINIMUM COMPETENCE.—</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(C) SUBSEQUENT RETESTS.—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.</li> <li>(D) RETEST AFTER LAPSE OF LICENSE.—A State-licensed loan originator who fails to maintain a</li> </ul>	<p><b>MSL XX.XXX.080 TESTING OF LOAN ORIGINATORS—</b></p> <p>(1) IN GENERAL.—In order to meet the written test requirement referred to in MSL XX.XXX.060(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 a test provider approved by the Nationwide Mortgage Licensing System and Registry.</p> <p>(2) QUALIFIED TEST.—A written test shall not be treated as a qualified written test for purposes of paragraph (1) of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—</p> <ul style="list-style-type: none"> <li>(a) Ethics;</li> <li>(b) Federal law and regulation pertaining to mortgage origination;</li> <li>(c) State law and regulation pertaining to mortgage origination;</li> <li>(d) Federal and State law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.</li> </ul> <p>(3) MINIMUM COMPETENCE.—</p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(c) SUBSEQUENT RETESTS.—After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.</li> <li>(d) RETEST AFTER LAPSE OF LICENSE.—A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into</li> </ul>

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	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.	account any time during which such individual is a registered mortgage loan originator.  Section notes: 1. Subsection (d) takes into consideration the time an originator spends as a depository institution originator. So, if a person leaves the state system and goes to work for a bank for 2 years, and then after a total of 6 years returns to the state system, the person is still within the 5 year period of time.
33	(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.	<b>MSL XX.XXX.180 MORTGAGE CALL REPORTS</b> —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.  Section notes: 1. This section is out of number sequence in relation to MSL.
34	<b>SEC. 1506. STANDARDS FOR STATE LICENSE RENEWAL.</b>	<b>MSL XX.XXX.090 STANDARDS FOR LICENSE RENEWAL—</b>
35	(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).	(1) IN GENERAL.—The minimum standards for license renewal for mortgage loan originators shall include the following: (a) The mortgage loan originator continues to meet the minimum standards for license issuance under MSL XX.XXX.060(1)-(5). (b) The mortgage loan originator has satisfied the annual continuing education requirements described in MSL XX.XXX.100.
36	(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	<b>MSL XX.XXX.100 CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS—</b>  (1) IN GENERAL.—In order to meet the annual continuing education requirements referred to in section XX.XXX.090(1)(b), a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2) of this section, which shall include at least— (a) 3 hours of Federal law and regulations; (b) 2 hours of ethics, which shall include instruction on fraud,

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	<p>on fraud, consumer protection, and fair lending issues; and</p> <p>(C) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.</p> <p>(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.</p> <p>(3) CALCULATION OF CONTINUING EDUCATION CREDITS.—A State-licensed loan originator—</p> <p>(A) may only receive credit for a continuing education course in the year in which the course is taken; and</p> <p>(B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.</p> <p>(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.</p> <p>(5) LIMITATION AND STANDARDS.—</p> <p>(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.</p> <p>(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.</p>	<p>consumer protection, and fair lending issues; and</p> <p>(c) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace.</p> <p>(2) APPROVED EDUCATIONAL COURSES—For purposes of paragraph (1) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.</p> <p>(3) CALCULATION OF CONTINUING EDUCATION CREDITS—A licensed mortgage loan originator—</p> <p>(a) May only receive credit for a continuing education course in the year in which the course is taken; and</p> <p>(b) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.</p> <p>(4) INSTRUCTOR CREDIT—A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.</p> <p>Section notes:</p> <p>1. No Limitation and Standards language needed. This is NMLSR requirement not directly applicable to state law.</p>
37	<b>SEC. 1507. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL AGENCIES.</b>	No language needed.
38	<p>(a) DEVELOPMENT.—</p> <p>(1) IN GENERAL.—The Federal banking agencies shall</p>	<p><b>MSL [For applicable states only.] XX.XXX.X0X PRIVATELY INSURED CREDIT UNIONS</b>—Privately insured credit unions must</p>

<p>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 employee 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 the date of enactment of this title.</p> <p>(2) REGISTRATION REQUIREMENTS.—In connection with the registration of any loan originator under this subsection, the appropriate Federal banking agency and the Farm Credit Administration shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees' identity, including—</p> <p style="padding-left: 40px;">(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</p> <p style="padding-left: 40px;">(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.</p> <p>(b) COORDINATION.—</p> <p style="padding-left: 20px;">(1) UNIQUE IDENTIFIER.—The Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration 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,</p>	<p>comply with the registration regulations or guidelines developed by the Federal Financial Institutions Examination Council under Title V of Public Law 110-289.</p>
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	<p>the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.</p> <p>(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 Federal banking agencies, through the Financial Institutions Examination Council, and the Farm Credit Administration concerning the development and operation, by such System and Registry, of the registration functionality and data requirements for loan originators.</p> <p>(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 Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 1504(a), 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 title.</p>	
39	<p><b>SEC. 1508. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.</b></p>	
40	<p>(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 the date of the enactment of this title or at any time thereafter, the Secretary 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 1505 and 1506 and subsection (d) of this section, or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-</p>	No language needed.

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	<p>licensed loan originators.</p> <p>(b) LICENSING AND REGISTRATION REQUIREMENTS.—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 1505 and 1506 for State-licensed loan originators.</p> <p>(c) UNIQUE IDENTIFIER.—The Secretary 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 Secretary 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.</p>	
41	<p>(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 Secretary determines the law satisfies the following minimum requirements:</p> <p>(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.</p>	<p>Section notes:</p> <p>1. No specific language is necessary for this section; however the Purpose language contained in line 3 supports this section.</p>
42	<p>(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.</p>	<p><b>MSL XX.XXX.110 AUTHORITY TO REQUIRE LICENSE</b>—In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the Commissioner is authorized to participate in the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish [by rule/regulation or order] requirements as necessary, including but not limited to:</p> <p>(1) BACKGROUND CHECKS—Background checks for:</p>



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		<p>(a) Criminal history through fingerprint or other databases;</p> <p>(b) Civil or administrative records;</p> <p>(c) Credit history; or</p> <p>(d) Any other information as deemed necessary by the Commissioner;</p> <p>(2) FEES—The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;</p> <p>(3) SETTING DATES—The setting or resetting as necessary of renewal or reporting dates; and</p> <p>(4) OTHER—Requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.</p>
43	(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.	<p><b>MSL XX.XXX.190 REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY</b>—[Notwithstanding or Subject to state privacy law] the Commissioner is required to report regularly violations of this act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in [MSL XX.XXX.150].</p> <p>Section notes:</p> <p>1. This section is out of order in relation to MSL.</p>
44	(4) The State loan originator supervisory authority has a process in place for challenging information contained in the Nationwide Mortgage Licensing System and Registry.	<p><b>MSL XX.XXX.120 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS</b>—The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.</p>
45	(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.	<p><b>MSL XX.XXX.130 [For states lacking sufficient enforcement authority for compliance with SAFE Sec. 1508(d)(1) &amp; (5).] ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES</b>—</p>

	<p>(1) In order to ensure the effective supervision and enforcement of this Act the Commissioner may:</p> <ul style="list-style-type: none"> <li>(a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this Act, rules issued under this Act or order or directive entered under this Act.</li> <li>(b) Order restitution against persons subject to this Act for violations of this Act.</li> <li>(c) Impose fines on persons subject to this Act pursuant to subsections (2), (3) and (4) of this section.</li> <li>(d) Issue orders or directives under this Act as follows: <ul style="list-style-type: none"> <li>(i) Order or direct persons subject to this Act to cease and desist from conducting business, including immediate temporary orders to cease and desist.</li> <li>(ii) Order or direct persons subject to this Act to cease any harmful activities or violations of this Act, including immediate temporary orders to cease and desist.</li> <li>(iii) Order or direct such other affirmative action as the Commissioner deems necessary.</li> <li>(iv) Remove or ban from office or employment, including license revocation, any person conducting business under this Act: <ul style="list-style-type: none"> <li>(A) For a violation of this Act; or</li> <li>(B) If the Commissioner determines that such person has been convicted of a felony that would preclude licensing under this Act; or</li> <li>(C) If by a preponderance of evidence the Commissioner determines that the person no longer demonstrates the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the person subject to the Act will operate honestly, fairly, and efficiently within the purposes of the Act.</li> </ul> </li> </ul> </li> </ul> <p>(2) The Commissioner may impose a civil penalty on a mortgage loan originator or person subject to this Act, if the Commissioner finds, on the record after notice and opportunity for hearing, that such mortgage</p>
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		<p>loan originator or person subject to this Act has violated or failed to comply with any requirement of this Act or any regulation prescribed by the Commissioner under this Act or order issued under authority of this Act.</p> <p>(3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be \$25,000.</p> <p>(4) Each violation or failure to comply with any directive or order of the Commissioner is a separate and distinct violation or failure.</p>
46	<p>(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.</p>	<p><b>MSL XX.XXX.140 [Pursuant to PL 110-285, Title V, Section 1508(d)(6), each state will choose one of the following options.]</b></p> <p><b>SURETY BOND REQUIRED—</b></p> <p>(1) <b>COVERAGE, FORM AND REGULATIONS—</b>Each mortgage loan originator shall be covered by a surety bond in accordance with this section as follows:</p> <ul style="list-style-type: none"> <li>(a) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (2) of this section.</li> <li>(b) The surety bond shall be in a form as prescribed by the Commissioner.</li> <li>(c) The Commissioner may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Act.</li> </ul> <p>(2) <b>PENAL SUM OF SURETY BOND—</b>The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.</p> <p>(3) <b>ACTION ON BOND—</b>When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.</p> <p>(4) <b>NEW BOND—</b>Immediately upon recovery upon any action on the bond the licensee shall file a new bond.</p>

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		<p>OR</p> <p><b>MINIMUM NET WORTH REQUIRED—</b></p> <p>(1) <b>MINIMUM NET WORTH</b>—A minimum net worth shall be continuously maintained for mortgage loan originators as follows:</p> <p>(a) Minimum net worth shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.</p> <p>(b) The Commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this Act.</p> <p>OR</p> <p><b>STATE FUND—</b>[Each state choosing this option will draft unique language establishing a fund.]</p>
47	<p>(e) <b>TEMPORARY EXTENSION OF PERIOD.</b>—The Secretary 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 1505 and 1506 and subsection (d) if the Secretary 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.</p>	No language needed.
48	<p><b>SEC. 1509. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.</b></p> <p>If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this title for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this title and the effective registration and regulation of loan originators.</p>	No language needed.

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49	<p><b>SEC. 1510. FEES.</b></p> <p>The Federal banking agencies, the Farm Credit Administration, the Secretary, 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.</p>	<p>Section notes:</p> <p>1. See lines 25 and 41. Additional language for state funding pending.</p>
50	<p><b>SEC. 1511. BACKGROUND CHECKS OF LOAN ORIGINATORS.</b></p> <p>(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 to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.</p> <p>(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.</p>	<p>Section notes:</p> <p>1. This language covered under MSL XX.XXX.050(4) Background Checks.</p> <p>2. This language covered under MSL XX.XXX.050(5) Background Checks.</p>
51	<p><b>SEC. 1512. CONFIDENTIALITY OF INFORMATION.</b></p> <p>(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 Secretary under section</p>	<p><b>MSL XX.XXX.150 CONFIDENTIALITY</b>—In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing—</p> <p>(1) PROTECTIONS—Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any Federal law or [state citation for public disclosure law] regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege</p>

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<p>1509, 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 industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.</p> <p>(b) NONAPPLICABILITY OF CERTAIN REQUIREMENTS.—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—</p> <p>(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</p> <p>(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 Secretary 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.</p> <p>(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.</p> <p>(d) PUBLIC ACCESS TO INFORMATION.—This section shall not apply with respect to the information or material relating to the</p>	<p>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 Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or [state citation of public disclosure law].</p> <p>(2) AGREEMENTS AND SHARING ARRANGEMENTS—For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies or associations representing governmental agencies.</p> <p>(3) NONAPPLICABILITY OF CERTAIN REQUIREMENTS—Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to—</p> <p>(a) 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</p> <p>(b) 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 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.</p> <p>(4) COORDINATION WITH [State citation of public disclosure law]—[State citation of public disclosure law] relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.</p> <p>(5) PUBLIC ACCESS TO INFORMATION—This section shall not apply with respect to the information or material relating to the</p>
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	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.	employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.
52	<p><b>SEC. 1513. LIABILITY PROVISIONS.</b></p> <p>The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 1509, 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 are loan originators or are applying for licensing or registration as loan originators.</p>	No language needed.
53	<p><b>SEC. 1514. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.</b></p> <p>(a) SUMMONS AUTHORITY.—The Secretary may—</p> <p>(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 Secretary under section 1508; and</p> <p>(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 Secretary or any delegate of the Secretary 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 title.</p>	No language needed.

(b) EXAMINATION AUTHORITY.—

(1) IN GENERAL.—If the Secretary establishes a licensing system under section 1508 for any State, the Secretary 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 Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this title.

(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 Secretary.

(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 Secretary under section 1508, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary 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 Secretary under section 1508 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—



(1) **AUTHORITY OF SECRETARY.**—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this title, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 1508, the Secretary 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 Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary 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 Secretary with the consent of any respondent so served.

(3) **TEMPORARY ORDER.**—Whenever the Secretary 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 Secretary 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 Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary 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 Secretary 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 SECRETARY.—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 Secretary 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 Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary 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 Secretary; or
- (ii) 10 days after the Secretary 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 Secretary, 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 Secretary may not apply to the court except after hearing and decision by the Secretary 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 order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease and desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this title 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 SECRETARY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to a licensing system established by the Secretary under section 1508, if the Secretary 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

	<p>title or any regulation prescribed by the Secretary under this title or order issued under subsection (c).</p> <p>(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$25,000.</p>	
54	<p><b>SEC. 1515. STATE EXAMINATION AUTHORITY.</b></p> <p>In addition to any authority allowed under State law a State licensing agency shall have the authority to conduct investigations and examinations as follows:</p> <p>(1) For the purposes of investigating violations or complaints arising under this title, 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 title, as often as necessary in order to carry out the purposes of this title.</p>	<p><b>MSL XX.XXX.160 [For states lacking sufficient investigation or examination authority for compliance with SAFE Sec. 1515.] INVESTIGATION AND EXAMINATION AUTHORITY</b>—In addition to any authority allowed under this Act the Commissioner shall have the authority to conduct investigations and examinations as follows:</p> <p>(1) <b>AUTHORITY TO ACCESS INFORMATION</b>—For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:</p> <ul style="list-style-type: none"> <li>(a) Criminal, civil and administrative history information, including nonconviction data as specified in [state criminal code citation]; and</li> <li>(b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and</li> <li>(c) Any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.</li> </ul> <p>(2) <b>INVESTIGATION, EXAMINATION, AND SUBPOENA AUTHORITY</b>—For the purposes of investigating violations or complaints arising under this Act, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual or person subject to this Act, as often as necessary in order to carry out the purposes of this Act. The Commissioner may direct,</p>

(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.

subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(3) **AVAILABILITY OF BOOKS AND RECORDS**—Each licensee, individual or person subject to this Act shall make available to the Commissioner upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The Commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.

(4) **REPORTS AND OTHER INFORMATION AS DIRECTED**—Each licensee, individual or person subject to this Act shall make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this section including but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the Commissioner; or
- (c) Such other information deemed necessary to carry out the purposes of this section.

(5) **CONTROL ACCESS TO RECORDS**—In making any examination or investigation authorized by this Act, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or

<p>(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.</p> <p>(4) No person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate,</p>	<p>records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.</p> <p>(6) <b>ADDITIONAL AUTHORITY</b>—In order to carry out the purposes of this section, the Commissioner may:</p> <ul style="list-style-type: none"> <li>(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;</li> <li>(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;</li> <li>(c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this Act;</li> <li>(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state;</li> <li>(e) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Commissioner; or</li> <li>(f) Assess the licensee, individual or person subject to this Act the cost of the services in subsections (a) of this section.</li> </ul> <p>(7) <b>EFFECT OF AUTHORITY</b>—The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this Act acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.</p> <p>(8) <b>WITHHOLD RECORDS</b>—No licensee, individual or person</p>
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	<p>destroy, or secrete any books, records, computer records, or other information.</p>	<p>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.</p> <p>Section notes: 1. Subsection (3). Although the authority to review records and “interview” in this subsection may seem redundant to the subpoena authority above, this subsection makes it clear that the Commissioner’s staff does not need a subpoena in order to look at records or interview the staff of a licensee or any “person subject to this Act.”</p>
55	<p><b>SEC. 1516. REPORTS AND RECOMMENDATIONS TO CONGRESS.</b></p> <p>(a) ANNUAL REPORTS.—Not later than 1 year after the date of enactment of this title, and annually thereafter, the Secretary shall submit a report to Congress on the effectiveness of the provisions of this title, 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.</p> <p>(b) LEGISLATIVE RECOMMENDATIONS.—Not later than 6 months after the date of enactment of this title, the Secretary shall make recommendations to Congress on legislative reforms to the Real Estate Settlement Procedures Act of 1974, that the Secretary deems appropriate to promote more transparent disclosures, allowing consumers to better shop and compare mortgage loan terms and settlement costs.</p>	<p>No language needed.</p>
56	<p><b>SEC. 1517. STUDY AND REPORTS ON DEFAULTS AND FORECLOSURES.</b></p> <p>(a) STUDY REQUIRED.—The Secretary shall conduct an extensive study of the root causes of default and foreclosure of home loans, using as much empirical data as is available.</p> <p>(b) PRELIMINARY REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of this title, the Secretary shall</p>	<p>No language needed.</p>

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	<p>submit to Congress a preliminary report regarding the study required by this section.</p> <p>(c) FINAL REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Secretary 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.</p>	
57	<p>Various sections of S.A.F.E.</p>	<p><b>MSL XX.XXX.170 [This language is optional for states with insufficient coverage of prohibited practices. Each state will provide its own intro and include the practices as necessary. Practices 6, 8 and 10 support requirements in the SAFE Act.] PROHIBITED ACTS AND PRACTICES</b>—It is a violation of this Act for a person or individual subject to this Act to:</p> <ul style="list-style-type: none"> <li>(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;</li> <li>(2) Engage in any unfair or deceptive practice toward any person;</li> <li>(3) Obtain property by fraud or misrepresentation;</li> <li>(4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject this Act may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;</li> <li>(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;</li> <li>(6) Conduct any business covered by this Act without holding a valid license as required under this Act, or assist or aide and abet any person in the conduct of business under this Act without a valid license as required under this Act ;</li> </ul>



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	<p>(7) Fail to make disclosures as required by this Act and any other applicable state or federal law including regulations thereunder;</p> <p>(8) Fail to comply with this Act or rules promulgated under this Act, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;</p> <p>(9) Make, in any manner, any false or deceptive statement or representation [optional add on: including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising];</p> <p>(10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;</p> <p>(11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;</p> <p>(12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Act;</p> <p>(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.</p> <p>(14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.</p>
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HOW TO USE THIS DOCUMENT: This document includes both the draft minimum Model State Law for Implementation of the S.A.F.E. Act, as well as *italicized* placeholders for language to be included in a more comprehensive uniform state law. The non-italicized sections of this document can be cross-referenced to relevant S.A.F.E. Act sections via the SAFE to State Cross-Reference Table for Implementation Language.

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## MODEL STATE LAW FOR IMPLEMENTATION OF PL 110-289, TITLE V

**MSL XX.XXX.010 TITLE.** This Act may be cited as “The Model State Law for Implementation of Public Law 110-289, Title V., The S.A.F.E. Act.”

**MSL XX.XXX.020 PURPOSE OF THIS ACT** [Optional language for states that do not have language sufficiently covering PL 110-289, Sec. 1508(d)(1)]—The activities of mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable and immediate impact upon this State’s consumers, this State’s economy, the neighborhoods and communities of this State, and the housing and real estate industry. The Legislature finds that accessibility to mortgage credit is vital to the state’s citizens. The Legislature also finds that it is essential for the protection of the citizens of this State and the stability of the State’s economy that reasonable standards for licensing and regulation of the business practices of mortgage loan originators be imposed. The Legislature further finds that the obligations of mortgage loan originators to consumers in connection with originating or making residential mortgage loans are such as to warrant the regulation of the mortgage lending process. The purpose of this Act is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators. Therefore the Legislature establishes within this Act:

- (1) **SYSTEM OF SUPERVISION AND ENFORCEMENT**—An effective system of supervision and enforcement of the mortgage lending industry, including:
- (a) The authority to issue licenses to conduct business under this Act, including the authority to write rules or adopt procedures necessary to the licensing of persons covered under this Act.
  - (b) The authority to deny, suspend, condition or revoke licenses issued under this Act.
  - (c) The authority to examine, investigate and conduct enforcement actions as necessary to carry out the intended purposes of this Act, including the authority to subpoena witnesses and documents, enter orders, including cease and desist orders, order restitution and monetary penalties and order the removal and ban of individuals from office or employment.

- (2) **BROAD ADMINISTRATIVE AUTHORITY**—That the Commissioner shall have the broad administrative authority to administer, interpret and enforce this Act, and promulgate rules implementing this Act, in order to carry out the intentions of the Legislature.

**MSL XX.XXX.030 DEFINITIONS**—For purposes of this title, the following definitions shall apply:

(X) *ACT*—The term “Act” or “this Act” means . . . [States should note that “this Act” as used throughout the MSL means either this law as a complete law, or a primary state mortgage law that this law has been merged into. When adopting the term “this Act,” states that intend to also mean other state mortgage laws must be careful to include the appropriate reference to those other laws.]

(X) *ADVERTISING*—The term “advertising” means . . .

(X) *AFFILIATE*—The term “affiliate” means . . .

(X) *ANNUAL AUDIT*—The term “annual audit” means . . .

(X) *BORROWER*—The term “borrower” means . . .

(X) *BRANCH OFFICE*—The term “branch office” means . . .

(X) *COMMISSIONER*—The “commissioner” means . . .

(X) *COMMITMENT* or *LOAN COMMITMENT*—The term “commitment” or “loan commitment” means . . .

(X) *CONTROL*—The term “control” means . . .

(X) *DEPARTMENT/DIVISION*—The “department” means . . .

(1) *DEPOSITORY INSTITUTION*—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act, and includes any credit union.

(X) *DESIGNATED BROKER OR OFFICER, ETC.*—The term “designated broker” means . . .

(X) *DIGITAL SIGNATURE*—The term “digital signature” means . . .

(X) *ESCROW FUNDS*—The term “escrow funds” means . . . [States may also wish to define “trust funds.”]

(2) *FEDERAL BANKING AGENCIES*—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.

(X) *INTEREST RATE LOCK IN AGREEMENT*—The term “interest rate lock in agreement” means . . .

(X) *INVESTIGATION*—The term “investigation” means . . .

(X) *LICENSEE*—The term “licensee” means . . .

- (X) *MAKING A MORTGAGE LOAN*—The term “making a mortgage loan” means . . .
- (X) *MORTGAGE BROKER*—The term “mortgage broker” means . . .
- (X) *MORTGAGE BROKERAGE AGREEMENT*—The term “mortgage brokerage agreement” means . . .
- (X) *MORTGAGE LENDER*—The term “mortgage lender” means . . .
- (3) **MORTGAGE LOAN ORIGINATOR**—
- (a) **IN GENERAL**—The term “mortgage loan originator”—
- (i) Means an individual who—
- (A) Takes a residential mortgage loan application; and
- (B) 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 mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage 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, United States Code.
- (b) **TAKES A RESIDENTIAL MORTGAGE LOAN APPLICATION**—For purposes of this subsection, “takes a residential mortgage loan application” shall have the following meanings:
- (i) Recording the borrower’s application information in any form for use in a credit decision; or
- (ii) Receiving the borrower’s application information in any form for use in a credit decision;
- (c) [Optional Language] **RESIDENTIAL MORTGAGE LOAN APPLICATION**—For purposes of this subsection, “residential mortgage loan application” shall have the same meaning as “application” under 24 CFR Part 3500.2 (Regulation X), which states—
- “Application means the submission of a borrower’s financial information in anticipation of a credit decision, whether written or computer-generated, relating to a federally related mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a federally related mortgage loan under this part. The subsequent addition of an identified property to the submission converts the submission to an application for a federally related mortgage loan.”
- (d) **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.

(c) REAL ESTATE BROKERAGE ACTIVITY DEFINED—For purposes of this Act 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 subsections (i), (ii), (iii), or (iv) of this section.

(X) MORTGAGE PROVIDER—The term “mortgage provider” means . . .

(X) MORTGAGE SERVICER—The term “mortgage servicer” means . . .

(4) 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 licensing and registration of licensed mortgage loan originators.

(X) ORIGINATE—The term “originate” means . . .

(5) PERSON—The term “person” means a natural person, corporation, company, limited liability corporation, partnership, or association.

(6) REGISTERED MORTGAGE LOAN ORIGINATOR—The term “registered mortgage loan originator” means any individual who—

- (a) Meets the definition of mortgage loan originator and is an employee of—
  - (i) A depository institution;
  - (ii) A subsidiary that is—
    - (A) Owned and controlled by a depository institution; and
    - (B) 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.

(7) 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 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

- (X) *SERVICE CORPORATION*—The term “service corporation” means . . .
- (X) *SUBSIDIARY*—The term “subsidiary” means . . .
- (X) *THIRD-PARTY PROVIDER*—The term “third-party provider” means . . .

- (8) **UNIQUE IDENTIFIER**—The term “unique identifier” means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

***MSL XX.XXX.0X0 EXEMPTIONS FROM THIS ACT*** [This section will cover exemptions from the Act (e.g. banks, credit unions, etc.). Note that MSL XX.XXX.040(2) provides a single exemption from this Act for the Registered Mortgage Loan Originators of depository institutions. However, the institutions themselves are not exempt from the Act because it is currently written for Mortgage Loan Originators only.]

#### **MSL XX.XXX.040 LICENSE AND REGISTRATION REQUIRED—**

- (1) **IN GENERAL**—An individual, unless specifically exempted from this Act under MSL XX.XXX.040(2), shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under this Act. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(X) ***EXPANDED IN GENERAL***—An individual or person, unless specifically exempted . . . [This section will capture the companies and branch locations required to be licensed.]

- (2) **EXEMPTION FROM THIS ACT**—Registered Mortgage Loan Originators, when acting for an entity described in MSL XX.XXX.030(6)(a)(i), (ii) or (iii) are exempt from this Act.

#### **(3) LOAN PROCESSOR OR UNDERWRITER—**

(a) **IN GENERAL**.—The term “loan processor or underwriter” means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under [reference appropriate state mortgage licensing laws here].

(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.

(c) **LICENSE NOT REQUIRED**—An individual engaging solely in loan processor or underwriter activities, 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 mortgage loan originator shall not be required to obtain and maintain a license under MSL XX.XXX.040(1).

(d) **INDEPENDENT CONTRACTORS**—An independent contractor may not engage in residential mortgage loan origination activities as a loan processor or underwriter unless such independent contractor obtains and maintains a license under MSL XX.XXX.040(1). Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

*(X) LICENSE ISSUANCE BASED ON INDIVIDUAL—[This section intends to cover the requirement for owner and controlling person application in conjunction with company application.]*

## **MSL XX.XXX.050 STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE—**

(1) **APPLICATION FORM**—Applicants for a license shall apply in a form as prescribed by the Commissioner. Each such form shall contain content as set forth by rule, regulation, instruction or procedure of the Commissioner and may be changed or updated as necessary by the Commissioner in order to carry out the purposes of this Act.

(2) **COMMISSIONER MAY ESTABLISH RELATIONSHIPS OR CONTRACTS**—In order to fulfill the purposes of this Act, the Commissioner is authorized to establish relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this Act.

(3) **WAIVE OR MODIFY REQUIREMENTS** [Optional language if needed by a state.]—For the purpose of participating in the Nationwide Mortgage Licensing System & Registry, the Commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements of this chapter and to establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System & Registry.

(4) **BACKGROUND CHECKS**—In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, 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, national and international criminal history background check; and
- (b) Personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the Commissioner to obtain—
  - (i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
  - (ii) Information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(5) **AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING CRIMINAL INFORMATION**—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 (4)(a) and (b)(ii) the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from and distributing information to the Department of Justice or any governmental agency.

(6) **AGENT FOR PURPOSES OF REQUESTING AND DISTRIBUTING NON-CRIMINAL INFORMATION**—For the purposes of this section and in order to reduce the points of contact which the Commissioner may have to maintain for purposes of subsection (4)(b)(i) and (ii) the Commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source so directed by the Commissioner.

(X) **APPLICATION CONTENT AND PROCESS**—*[The section will cover specific information to be provided by individuals or persons such as name, social security number, date of birth, employment history, etc.]*

(X) **UNDERTAKINGS AND REPRESENTATIONS**—*[This section contains requirements for statements about the company by controlling persons. It also might contain a section warranting that employees are knowledgeable of laws and regulations.]*

(X) **CHANGE IN CONTROL**—*[The section will cover the requirements when a change in control takes place.]*

**MSL XX.XXX.060 ISSUANCE OF LICENSE**—The Commissioner may not issue a mortgage loan originator license unless the Commissioner makes at a minimum the following findings:

(1) **NO LICENSE REVOCATION**—The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction.

(2) **NO FELONY CONVICTION**—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) **CHARACTER AND FITNESS**—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 mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this Act.

(4) **PRE-LICENSING EDUCATION**—The applicant has completed the pre-licensing education requirement described in subsection MSL XX.XXX.070.

(5) **WRITTEN TEST**—The applicant has passed a written test that meets the test requirement described in subsection MSL XX.XXX.080.

(6) **NET WORTH, SURETY BOND OR STATE FUND REQUIREMENT**—The applicant has



met the [States must choose one: net worth, surety bond requirement, or paid into a State fund] as required pursuant to MSL XX.XXX.140.

**MSL XX.XXX.0X0 INTERNET MORTGAGE LENDING—***[This section would include coverage mortgage lending activity over the Internet. While this may not be a standalone section, it is offered as a placeholder for discussion purposes and inclusion where appropriate.]*

**MSL XX.XXX.070 PRE-LICENSING EDUCATION OF LOAN ORIGINATORS—**

- (1) MINIMUM EDUCATIONAL REQUIREMENTS—In order to meet the pre-licensing education requirement referred to in subsection MSL XX.XXX.060(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2) of this section, 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) of this section, pre-licensing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

**MSL XX.XXX.080 TESTING OF LOAN ORIGINATORS—**

- (1) IN GENERAL—In order to meet the written test requirement referred to in MSL XX.XXX.060(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 a test provider approved by the Nationwide Mortgage Licensing System and Registry.

- (2) QUALIFIED TEST—A written test shall not be treated as a qualified written test for purposes of paragraph (1) of this section 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 licensed mortgage 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 mortgage loan originator.

#### **MSL XX.XXX.090 STANDARDS FOR LICENSE RENEWAL—**

(1) **IN GENERAL**—The minimum standards for license renewal for mortgage loan originators shall include the following:

- (a) The mortgage loan originator continues to meet the minimum standards for license issuance under MSL XX.XXX.060(1)-(5).
- (b) The mortgage loan originator has satisfied the annual continuing education requirements described in MSL XX.XXX.100.

#### **MSL XX.XXX.100 CONTINUING EDUCATION FOR MORTGAGE LOAN ORIGINATORS—**

(1) **IN GENERAL**—In order to meet the annual continuing education requirements referred to in section XX.XXX.090(1)(b), a licensed mortgage loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2) of this section, 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) of this section, continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.

(3) **CALCULATION OF CONTINUING EDUCATION CREDITS**—A licensed mortgage 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 licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

**MSL XX.XXX.110 AUTHORITY TO REQUIRE LICENSE**—In addition to any other duties imposed upon the Commissioner by law, the Commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the Commissioner is authorized to participate in

the Nationwide Mortgage Licensing System and Registry. For this purpose, the Commissioner may establish [by rule/regulation or order] requirements as necessary, including but not limited to:

- (1) BACKGROUND CHECKS—Background checks for:
  - (a) Criminal history through fingerprint or other databases;
  - (b) Civil or administrative records;
  - (c) Credit history; or
  - (d) Any other information as deemed necessary by the Commissioner;
- (2) FEES—The payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;
- (3) SETTING DATES—The setting or resetting as necessary of renewal or reporting dates; and
- (4) OTHER—Requirements for amending or surrendering a license or any other such activities as the Commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

**MSL XX.XXX.120 NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY INFORMATION CHALLENGE PROCESS**—The Commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the Commissioner.

**MSL XX.XXX.1X0 DISCLOSURE REQUIREMENTS**—~~[The section will cover state and federal disclosure requirements.]~~

**MSL XX.XXX.1X0 TRUST ACCOUNTS**—~~[The section will cover the requirement for trust or escrow accounts for the maintenance of others' funds (e.g. deposits for appraisal, etc., or if applicable, servicer escrow accounts).]~~

**MSL XX.XXX.1X0 RECORD KEEPING REQUIREMENTS**—~~[This section will cover records maintenance, accounting and retention requirements.]~~

**MSL XX.XXX.130** [For states lacking sufficient enforcement authority for compliance with SAFE Sec. 1508(d)(1) & (5).] **ENFORCEMENT AUTHORITIES, VIOLATIONS AND PENALTIES**—

- (1) In order to ensure the effective supervision and enforcement of this Act the Commissioner may:
  - (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this Act, rules issued under this Act or order or directive entered under this Act.
  - (b) Order restitution against persons subject to this Act for violations of this Act.
  - (c) Impose fines on persons subject to this Act pursuant to subsections (2), (3) and (4) of this section.
  - (d) Issue orders or directives under this Act as follows:
    - (i) Order or direct persons subject to this Act to cease and desist from conducting business, including immediate temporary orders to cease and desist.

- (ii) Order or direct persons subject to this Act to cease any harmful activities or violations of this Act, including immediate temporary orders to cease and desist.
  - (iii) Order or direct such other affirmative action as the Commissioner deems necessary.
  - (iv) Remove or ban from office or employment, including license revocation, any person conducting business under this Act:
    - (A) For a violation of this Act; or
    - (B) If the Commissioner determines that such person has been convicted of a felony that would preclude licensing under this Act; or
    - (C) If by a preponderance of evidence the Commissioner determines that the person no longer demonstrates the financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the person subject to the Act will operate honestly, fairly, and efficiently within the purposes of the Act.
- (2) The Commissioner may impose a civil penalty on a mortgage loan originator or person subject to this Act, if the Commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this Act has violated or failed to comply with any requirement of this Act or any regulation prescribed by the Commissioner under this Act or order issued under authority of this Act.
- (3) The maximum amount of penalty for each act or omission described in subsection (2) of this section shall be \$25,000.
- (4) Each violation or failure to comply with any directive or order of the Commissioner is a separate and distinct violation or failure.

*MSL XX.XXX.IX0 CRIMINAL ACTS—[This section will identify misdemeanors and felonies chargeable under this law. For example: intentional records destruction, theft of trust funds, acts of mortgage fraud, etc.]*

*MSL XX.XXX.IX0 INSTITUTION OF CRIMINAL PROSECUTIONS—[This section will cover the authority to make criminal prosecutions.]*

**MSL XX.XXX.140** [Pursuant to PL 110-285, Title V, Section 1508(d)(6), each state will choose one of the following options.]

**SURETY BOND REQUIRED—**

- (1) **COVERAGE, FORM AND REGULATIONS**—Each mortgage loan originator shall be covered by a surety bond in accordance with this section as follows:
- (a) The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (2) of this section.
  - (b) The surety bond shall be in a form as prescribed by the Commissioner.
  - (c) The Commissioner may promulgate rules with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this Act.

- (2) **PENAL SUM OF SURETY BOND**—The penal sum of the surety bond shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.
- (3) **ACTION ON BOND**—When an action is commenced on a licensee's bond the Commissioner may require the filing of a new bond.
- (4) **NEW BOND**—Immediately upon recovery upon any action on the bond the licensee shall file a new bond.

OR

**MINIMUM NET WORTH REQUIRED—**

- (1) **MINIMUM NET WORTH**—A minimum net worth shall be continuously maintained for mortgage loan originators as follows:
  - (a) Minimum net worth shall be maintained in an amount that reflects the dollar amount of loans originated as determined by the Commissioner.
  - (b) The Commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this Act.

OR

**STATE FUND**—[Each state choosing this option will draft unique language establishing a fund.]

**MSL XX.XXX.150 CONFIDENTIALITY**—In order to promote more effective regulation and reduce regulatory burden through supervisory information sharing—

(1) **PROTECTIONS**—Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any Federal law or [state citation for public disclosure law] regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, 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 Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal law or [state citation of public disclosure law].

(2) **AGREEMENTS AND SHARING ARRANGEMENTS**—For these purposes, the Commissioner is authorized to enter agreements or sharing arrangements with other governmental agencies or associations representing governmental agencies.

(3) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS**—Information or material that is subject to a privilege or confidentiality under subsection (1) of this section shall not be subject to—

- (a) 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
- (b) 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 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.

(4) **COORDINATION WITH** [State citation of public disclosure law]—[State citation of public disclosure law] relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) shall be superseded by the requirements of this section.

(5) **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, mortgage loan originators that is included in the Nationwide Mortgage Licensing System and Registry for access by the public.

**MSL XX.XXX.160 [For states lacking sufficient investigation or examination authority for compliance with SAFE Sec. 1515.] INVESTIGATION AND EXAMINATION**

**AUTHORITY**—In addition to any authority allowed under this Act the Commissioner shall have the authority to conduct investigations and examinations as follows:

(1) **AUTHORITY TO ACCESS INFORMATION**—For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this Act, the Commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including but not limited to:

- (a) Criminal, civil and administrative history information, including nonconviction data as specified in [state criminal code citation]; and
- (b) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
- (c) Any other documents, information or evidence the Commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence.

(2) **INVESTIGATION, EXAMINATION, AND SUBPOENA AUTHORITY**—For the purposes of investigating violations or complaints arising under this Act, or for the purposes of examination, the Commissioner may review, investigate, or examine any licensee, individual or person subject to this Act, as often as necessary in order to carry out the purposes of this Act. The Commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the Commissioner deems relevant to the inquiry.

(3) **AVAILABILITY OF BOOKS AND RECORDS**—Each licensee, individual or person subject to this Act shall make available to the Commissioner upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The Commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.

(4) **REPORTS AND OTHER INFORMATION AS DIRECTED**—Each licensee, individual or person subject to this Act shall make or compile reports or prepare other information as directed by the Commissioner in order to carry out the purposes of this section including but not limited to:

- (a) Accounting compilations;
- (b) Information lists and data concerning loan transactions in a format prescribed by the Commissioner; or
- (c) Such other information deemed necessary to carry out the purposes of this section.

(5) **CONTROL ACCESS TO RECORDS**—In making any examination or investigation authorized by this Act, the Commissioner may control access to any documents and records of the licensee or person under examination or investigation. The Commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the Commissioner. Unless the Commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(6) **ADDITIONAL AUTHORITY**—In order to carry out the purposes of this section, the Commissioner may:

- (a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
- (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section;
- (c) Use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this Act;
- (d) Accept and rely on examination or investigation reports made by other government officials, within or without this state;
- (e) Accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this Act in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the Commissioner; or
- (f) Assess the licensee, individual or person subject to this Act the cost of the services in

subsection (a) of this section.

(7) **EFFECT OF AUTHORITY**—The authority of this section shall remain in effect, whether such a licensee, individual or person subject to this Act acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.

(8) **WITHHOLD RECORDS**—No licensee, individual or 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.

**MSL XX.XXX.170 [This language is optional for states with insufficient coverage of prohibited practices. Each state will provide its own intro and include the practices as necessary. Practices 6, 8 and 10 support requirements in the SAFE Act.] PROHIBITED ACTS AND PRACTICES**—It is a violation of this Act for a person or individual subject to this Act to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Act may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this Act without holding a valid license as required under this Act, or assist or aide and abet any person in the conduct of business under this Act without a valid license as required under this Act ;
- (7) Fail to make disclosures as required by this Act and any other applicable state or federal law including regulations thereunder;
- (8) Fail to comply with this Act or rules promulgated under this Act, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;
- (9) Make, in any manner, any false or deceptive statement or representation [optional add on: including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising];
- (10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or



the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;

(11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Act;

(13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.

(14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

**MSL XX.XXX.180 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.

**MSL XX.XXX.190 REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY**—[Notwithstanding or Subject to state privacy law] the Commissioner is required to report regularly violations of this act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in [MSL XX.XXX.150].

**MSL XX.XXX.X00 MORTGAGE BROKER AGREEMENTS AND VALIDITY OF CONTRACT**—*[This section would cover agreements between brokers and borrowers and the validity and enforceability of certain types of contracts, especially borrower agreements to pay fees.]*

**MSL XX.XXX.X00 ADVERTISEMENTS AND PROMOTIONS**—*[This section would restrict the way in which licensees could solicit business. For example: No use of government or “official looking” ads or emblems, or representations of affiliations that are untrue or inaccurate.]*

**MSL XX.XXX.X00 MORTGAGE LOAN ORIGINATOR AFFILIATIONS**—*[The section would cover the prohibition on MLOs working for more than one entity at a time.]*

**MSL [For applicable states only.] XX.XXX.X0X PRIVATELY INSURED CREDIT UNIONS**—Privately insured credit unions must comply with the registration regulations or guidelines developed by the Federal Financial Institutions Examination Council under Title V of Public Law 110-289.