

1 SB249  
2 108191-4  
3 By Senators Denton, Little (T), Pittman, Bedford, Barron,  
4 Figures, Benefield, Means, and Penn  
5 RFD: Banking and Insurance  
6 First Read: 03-FEB-09

1 SB249

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4 ENROLLED, An Act,

5 To provide for the licensing and regulation of  
6 mortgage loan originators; to provide for licensure  
7 exemptions; and to provide a civil penalty for violations.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. This Act may be cited as the "Alabama  
10 Secure and Fair Enforcement for Mortgage Licensing Act of 2009  
11 or Alabama S.A.F.E. Mortgage Licensing Act of 2009."

12 Section 2. The activities of mortgage loan  
13 originators and the origination or offering of financing for  
14 residential real property have a direct, valuable and  
15 immediate impact upon Alabama's consumers, Alabama's economy,  
16 the neighborhoods and communities of Alabama, and the housing  
17 and real estate industry. The Legislature finds that  
18 accessibility to mortgage credit is vital to the state's  
19 citizens. The Legislature also finds that it is essential for  
20 the protection of the citizens of Alabama and the stability of  
21 Alabama's economy that reasonable standards for licensing and  
22 regulation of the business practices of mortgage loan  
23 originators be imposed. Therefore the Legislature establishes  
24 within this Act:

1           (a) SYSTEM OF SUPERVISION AND ENFORCEMENT—An  
2 effective system of supervision and enforcement of the  
3 mortgage lending industry, including:

4           (i) The authority to issue licenses to conduct  
5 business under this Act, including the authority to write  
6 rules or regulations or adopt procedures necessary to the  
7 licensing of persons covered under this Act.

8           (ii) The authority to deny, suspend, condition or  
9 revoke licenses issued under this Act.

10           (iii) The authority to examine, investigate and  
11 conduct enforcement actions as necessary to carry out the  
12 intended purposes of this Act, including the authority to  
13 subpoena witnesses and documents, enter orders, including  
14 cease and desist orders, order restitution and monetary  
15 penalties and order the removal and ban of individuals from  
16 office or employment.

17           (b) BROAD ADMINISTRATIVE AUTHORITY—That the  
18 Supervisor shall have the broad administrative authority to  
19 administer, interpret and enforce this Act, and promulgate  
20 rules or regulations implementing this Act, in order to carry  
21 out the intentions of the Legislature.

22           Section 3. For purposes of this Act, the following  
23 definitions shall apply:

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

4           (2) FEDERAL BANKING AGENCIES—The term "Federal  
5 banking agencies" means the Board of Governors of the Federal  
6 Reserve System, the Comptroller of the Currency, the Director  
7 of the Office of Thrift Supervision, the National Credit Union  
8 Administration, and the Federal Deposit Insurance Corporation.

9           (3) IMMEDIATE FAMILY MEMBER—The term "immediate  
10 family member" means a spouse, child, sibling, parent,  
11 grandparent, or grandchild. This includes stepparents,  
12 stepchildren, stepsiblings, and adoptive relationships.

13           (4) INDIVIDUAL—The term "individual" means a natural  
14 person.

15           (5) LOAN PROCESSOR OR UNDERWRITER—

16           (a) IN GENERAL—The term "loan processor or  
17 underwriter" means an individual who performs clerical or  
18 support duties as an employee at the direction of and subject  
19 to the supervision and instruction of a person licensed, or  
20 exempt from licensing under the Alabama Consumer Credit Act or  
21 Mortgage Brokers Licensing Act.

22           (b) CLERICAL OR SUPPORT DUTIES—For purposes of  
23 subsection (a), the term "clerical or support duties" may  
24 include subsequent to the receipt of an application—

1 (i) The receipt, collection, distribution, and  
2 analysis of information common for the processing or  
3 underwriting of a residential mortgage loan; and

4 (ii) Communicating with a consumer to obtain the  
5 information necessary for the processing or underwriting of a  
6 loan, to the extent that such communication does not include  
7 offering or negotiating loan rates or terms, or counseling  
8 consumers about residential mortgage loan rates or terms.

9 (c) REPRESENTATIONS TO THE PUBLIC—An individual  
10 engaging solely in loan processor or underwriter activities,  
11 shall not represent to the public, through advertising or  
12 other means of communicating or providing information  
13 including the use of business cards, stationery, brochures,  
14 signs, rate lists, or other promotional items, that such  
15 individual can or will perform any of the activities of a  
16 mortgage loan originator.

17 (6) LOSS MITIGATION SPECIALIST—The term "loss  
18 mitigation specialist" means an individual employed by a  
19 lender or servicer who negotiates or renegotiates the terms of  
20 an existing loan, or assists in refinancing an existing loan  
21 when a borrower is in default, or in reasonably foreseeable  
22 likelihood of default.

23 (7) MORTGAGE LOAN ORIGINATOR—

24 (a) IN GENERAL—The term "mortgage loan originator"—

1           (i) Means an individual who for compensation or gain  
2 or in the expectation of compensation or gain—

3           (A) Takes a residential mortgage loan application;  
4 or

5           (B) Offers or negotiates terms of a residential  
6 mortgage loan;

7           (ii) Does not include an individual engaged solely  
8 as a loan processor or underwriter except as otherwise  
9 provided in Section 4(3);

10           (iii) Does not include a person or entity that only  
11 performs real estate brokerage activities and is licensed or  
12 registered in accordance with Alabama law, unless the person  
13 or entity is compensated by a lender, a mortgage broker, or  
14 other mortgage loan originator or by any agent of such lender,  
15 mortgage broker, or other mortgage loan originator; and

16           (iv) Does not include a person or entity solely  
17 involved in extensions of credit relating to timeshare plans,  
18 as that term is defined in section 101(53D) of title 11,  
19 United States Code.

20           (b) REAL ESTATE BROKERAGE ACTIVITY DEFINED—For  
21 purposes of this Act the term "real estate brokerage activity"  
22 means any activity that involves offering or providing real  
23 estate brokerage services to the public, including—

1           (i) Acting as a real estate agent or real estate  
2 broker for a buyer, seller, lessor, or lessee of real  
3 property;

4           (ii) Bringing together parties interested in the  
5 sale, purchase, lease, rental, or exchange of real property;

6           (iii) Negotiating, on behalf of any party, any  
7 portion of a contract relating to the sale, purchase, lease,  
8 rental, or exchange of real property (other than in connection  
9 with providing financing with respect to any such  
10 transaction);

11           (iv) Engaging in any activity for which a person  
12 engaged in the activity is required to be registered or  
13 licensed as a real estate agent or real estate broker under  
14 any applicable law; and

15           (v) Offering to engage in any activity, or act in  
16 any capacity, described in subsections (i), (ii), (iii), or  
17 (iv) of this section.

18           (8) NATIONWIDE MORTGAGE LICENSING SYSTEM AND  
19 REGISTRY—The term "Nationwide Mortgage Licensing System and  
20 Registry" means a mortgage licensing system developed and  
21 maintained by the Conference of State Bank Supervisors and the  
22 American Association of Residential Mortgage Regulators for  
23 the licensing and registration of licensed mortgage loan  
24 originators.

1                   (9) NONTRADITIONAL MORTGAGE PRODUCT—The term  
2 "nontraditional mortgage product" means any mortgage product  
3 other than a 30-year fixed rate mortgage.

4                   (10) PERSON—The term "person" means a natural  
5 person, corporation, company, limited liability company,  
6 partnership, or association.

7                   (11) REGISTERED MORTGAGE LOAN ORIGINATOR—The term  
8 "registered mortgage loan originator" means any individual  
9 who—

10                   (a) Meets the definition of mortgage loan originator  
11 and is an employee of—

12                   (i) A depository institution;

13                   (ii) A subsidiary that is—

14                   (A) Owned and controlled by a depository  
15 institution; and

16                   (B) Regulated by a Federal banking agency; or

17                   (iii) An institution regulated by the Farm Credit  
18 Administration; and

19                   (b) Is registered with, and maintains a unique  
20 identifier through, the Nationwide Mortgage Licensing System  
21 and Registry, or if prior to the Federal Banking Agencies  
22 establishing a registration system, would be subject to  
23 registration under the registration system when established by  
24 the Federal Banking Agencies and then would maintain a unique  
25 identifier.



1           (12) RESIDENTIAL MORTGAGE LOAN—The term "residential  
 2 mortgage loan" means any loan primarily for personal, family,  
 3 or household use that is secured by a mortgage, deed of trust,  
 4 or other equivalent consensual security interest on a dwelling  
 5 (as defined in section 103(v) of the Truth in Lending Act) or  
 6 residential real estate upon which is constructed or intended  
 7 to be constructed a dwelling.

8           (13) RESIDENTIAL REAL ESTATE—The term "residential  
 9 real estate" means any real property located in Alabama, upon  
 10 which is constructed or intended to be constructed a dwelling.

11           (14) SUPERVISOR—The Supervisor of the Bureau of  
 12 Loans of the State Banking Department.

13           (15) UNIQUE IDENTIFIER—The term "unique identifier"  
 14 means a number or other identifier assigned by protocols  
 15 established by the Nationwide Mortgage Licensing System and  
 16 Registry.

17           Section 4. License and Registration Required

18           (1) IN GENERAL—An individual, unless specifically  
 19 exempted from this Act under subsection (2) of this section,  
 20 shall not engage in the business of a mortgage loan originator  
 21 with respect to any dwelling located in this State without  
 22 first obtaining and maintaining annually a license under this  
 23 Act. Each licensed mortgage loan originator must register with  
 24 and maintain a valid unique identifier issued by the  
 25 Nationwide Mortgage Licensing System and Registry.

1           (2) EXEMPTION FROM THIS ACT—The following are exempt  
2 from and are not subject to this Act:

3           (a) Registered Mortgage Loan Originators, loan  
4 processors, loss mitigation specialists, and other employees  
5 when acting for an entity described in Section  
6 3(11)(a)(i), (ii) or (iii) are exempt from this Act.

7           (b) Any individual who offers or negotiates terms of  
8 a residential mortgage loan with or on behalf of an immediate  
9 family member of the individual.

10          (c) Any individual who offers or negotiates terms of  
11 a residential mortgage loan secured by a dwelling that served  
12 as the individual's residence.

13          (d) A licensed attorney who negotiates the terms of  
14 a residential mortgage loan on behalf of a client as an  
15 ancillary matter to the attorney's representation of the  
16 client, unless the attorney is compensated by a lender, a  
17 mortgage broker, or other mortgage loan originator or by any  
18 agent of such lender, mortgage broker, or other mortgage loan  
19 originator.

20          (e) The provisions of the Federal Secure and Fair  
21 Enforcement for Mortgage Licensing Act of 2008 shall apply to  
22 the activities of retail sellers of manufactured or modular  
23 homes to the extent determined by the United States Department  
24 of Housing and Urban Development through written guidelines,  
25 rules, regulations, or interpretive letters.

1           (f) Notwithstanding the licensing requirements of  
2 this section, an individual acting exclusively as a loss  
3 mitigation specialist engaging in loss mitigation efforts with  
4 respect to existing mortgage transactions is not required to  
5 meet the education, testing, background, and licensing  
6 standards of this act until July 1, 2011, unless denied by the  
7 United States Department of Housing and Urban Development.

8           (3) INDEPENDENT CONTRACTOR LOAN PROCESSORS OR  
9 UNDERWRITERS—A loan processor or underwriter who is an  
10 independent contractor may not engage in the activities of a  
11 loan processor or underwriter unless such independent  
12 contractor loan processor or underwriter obtains and maintains  
13 a license under Section 4(1). Each independent contractor loan  
14 processor or underwriter licensed as a mortgage loan  
15 originator must have and maintain a valid unique identifier  
16 issued by the Nationwide Mortgage Licensing System and  
17 Registry.

18           (4) AUTHORITY TO ESTABLISH LICENSING RULES,  
19 REGULATIONS OR INTERIM PROCEDURES AND ACCEPT EARLY  
20 APPLICATIONS—For the purposes of implementing an orderly and  
21 efficient licensing process the Supervisor may establish  
22 licensing rules or regulations and interim procedures for  
23 licensing and acceptance of applications.

24           Section 5. STATE LICENSE AND REGISTRATION  
25 APPLICATION AND ISSUANCE—

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

7           (2) LICENSE FEE—Each application shall be filed with  
8 an initial license fee of seventy-five dollars (\$75.00). This  
9 license fee shall be in addition to the fees required to apply  
10 through the Nationwide Mortgage Licensing System and Registry.

11           (3) SUPERVISOR MAY ESTABLISH RELATIONSHIPS OR  
12 CONTRACTS—In order to fulfill the purposes of this Act, the  
13 Supervisor is authorized to establish relationships or  
14 contracts with the Nationwide Mortgage Licensing System and  
15 Registry or other entities designated by the Nationwide  
16 Mortgage Licensing System and Registry to collect and maintain  
17 records and process transaction fees or other fees related to  
18 licensees or other persons subject to this Act.

19           (4) WAIVE OR MODIFY REQUIREMENTS—For the purpose of  
20 participating in the Nationwide Mortgage Licensing System and  
21 Registry, the Supervisor is authorized to waive or modify, in  
22 whole or in part, by rule, regulation or order, any or all of  
23 the requirements of this chapter and to establish new  
24 requirements as reasonably necessary to participate in the  
25 Nationwide Mortgage Licensing System and Registry.

1           (5) BACKGROUND CHECKS—Notwithstanding any existing  
2 state law to the contrary, in connection with an application  
3 for licensing as a mortgage loan originator, the applicant  
4 shall, at a minimum, furnish to the Nationwide Mortgage  
5 Licensing System and Registry information concerning the  
6 applicant's identity, including—

7           (a) Fingerprints for submission to the Federal  
8 Bureau of Investigation, and any governmental agency or entity  
9 authorized to receive such information for a state, national  
10 and international criminal history background check; and

11           (b) Personal history and experience in a form  
12 prescribed by the Nationwide Mortgage Licensing System and  
13 Registry, including the submission of authorization for the  
14 Nationwide Mortgage Licensing System and Registry and the  
15 Supervisor to obtain—

16           (i) An independent credit report obtained from a  
17 consumer reporting agency described in section 603(p) of the  
18 Fair Credit Reporting Act; and

19           (ii) Information related to any administrative,  
20 civil or criminal findings by any governmental jurisdiction.

21           (6) AGENT FOR PURPOSES OF REQUESTING AND  
22 DISTRIBUTING CRIMINAL INFORMATION—For the purposes of this  
23 section and in order to reduce the points of contact which the  
24 Federal Bureau of Investigation may have to maintain for  
25 purposes of subsection (4) (a) and (b) (ii) of this section the

1 Supervisor may use the Nationwide Mortgage Licensing System  
2 and Registry as a channeling agent for requesting information  
3 from and distributing information to the Department of Justice  
4 or any governmental agency.

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

13 Section 6. ISSUANCE OF LICENSE—The Supervisor shall  
14 not issue a mortgage loan originator license unless the  
15 Supervisor makes at a minimum the following findings:

16 (1) NO LICENSE REVOCATION—The applicant has never  
17 had a mortgage loan originator license revoked in any  
18 governmental jurisdiction, except that a subsequent formal  
19 vacation of such revocation shall not be deemed a revocation.

20 (2) NO FELONY CONVICTION—The applicant has not been  
21 convicted of, or pled guilty or nolo contendere to, a felony  
22 in a domestic, foreign, or military court—

23 (a) During the 7-year period preceding the date of  
24 the application for licensing and registration; or

1           (b) At any time preceding such date of application,  
2 if such felony involved an act of fraud, dishonesty, or a  
3 breach of trust, or money laundering;

4           (c) Provided that any pardon of a conviction shall  
5 not be a conviction for purposes of this subsection.

6           (3) CHARACTER AND FITNESS—The applicant has  
7 demonstrated financial responsibility, character, and general  
8 fitness such as to command the confidence of the community and  
9 to warrant a determination that the mortgage loan originator  
10 will operate honestly, fairly, and efficiently within the  
11 purposes of this Act. The Supervisor shall not base a license  
12 denial, in whole or in part, on an applicant's credit score,  
13 nor shall the Supervisor use a credit report as the sole basis  
14 for license denial.

15           (a) For purposes of this subsection a person has  
16 shown that he or she is not financially responsible when he or  
17 she has shown a disregard in the management of his or her own  
18 financial condition. A determination that an individual has  
19 not shown financial responsibility may include, but not be  
20 limited to:

21           (i) Current outstanding judgments, except judgments  
22 solely as a result of medical expenses;

23           (ii) Current outstanding tax liens or other  
24 government liens and filings;

25           (iii) Foreclosures within the past three years;

1 (iv) A pattern of seriously delinquent accounts  
2 within the past three years.

3 (4) PRE-LICENSING EDUCATION—The applicant has  
4 completed the pre-licensing education requirement described in  
5 subsection Section 7.

6 (5) WRITTEN TEST—The applicant has passed a written  
7 test that meets the test requirement described in subsection  
8 Section 8.

9 (6) NET WORTH, SURETY BOND OR STATE FUND  
10 REQUIREMENT—The applicant has met the surety bond requirement  
11 as required pursuant to Section 14.

12 Section 7. PRE-LICENSING EDUCATION OF LOAN  
13 ORIGINATORS—

14 (1) MINIMUM EDUCATIONAL REQUIREMENTS—In order to  
15 meet the pre-licensing education requirement referred to in  
16 subsection Section 6(4) a person shall complete at least 20  
17 hours of education approved in accordance with subsection (2)  
18 of this section, which shall include at least—

19 (a) 3 hours of Federal law and regulations;

20 (b) 3 hours of ethics, which shall include  
21 instruction on fraud, consumer protection, and fair lending  
22 issues; and

23 (c) 2 hours of training related to lending standards  
24 for the nontraditional mortgage product marketplace.



1           (2) APPROVED EDUCATIONAL COURSES—For purposes of  
2 subsection (1) of this section, pre-licensing education  
3 courses shall be reviewed, and approved by the Nationwide  
4 Mortgage Licensing System and Registry based upon reasonable  
5 standards. Review and approval of a pre-licensing education  
6 course shall include review and approval of the course  
7 provider.

8           (3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL  
9 COURSES—Nothing in this section shall preclude any  
10 pre-licensing education course, as approved by the Nationwide  
11 Mortgage Licensing System and Registry that is provided by the  
12 employer of the applicant or an entity which is affiliated  
13 with the applicant by an agency contract, or any subsidiary or  
14 affiliate of such employer or entity.

15           (4) VENUE OF EDUCATION—Pre-licensing education may  
16 be offered either in a classroom, online or by any other means  
17 approved by the Nationwide Mortgage Licensing System and  
18 Registry.

19           (5) RECIPROCITY OF EDUCATION—The pre-licensing  
20 education requirements approved by the Nationwide Mortgage  
21 Licensing System and Registry in subsections (1)(a), (b) and  
22 (c) of this section for any state shall be accepted as credit  
23 towards completion of pre-licensing education requirements in  
24 Alabama.

25           Section 8. TESTING OF LOAN ORIGINATORS—

1           (1) IN GENERAL—In order to meet the written test  
2 requirement referred to in Section 6(5), an individual shall  
3 pass, in accordance with the standards established under this  
4 subsection, a qualified written test developed by the  
5 Nationwide Mortgage Licensing System and Registry and  
6 administered by a test provider approved by the Nationwide  
7 Mortgage Licensing System and Registry based upon reasonable  
8 standards.

9           (2) QUALIFIED TEST—A written test shall not be  
10 treated as a qualified written test for purposes of subsection  
11 (1) of this section unless the test adequately measures the  
12 applicant's knowledge and comprehension in appropriate subject  
13 areas, including—

14           (a) Ethics;

15           (b) Federal law and regulation pertaining to  
16 mortgage origination;

17           (c) State law and regulation pertaining to mortgage  
18 origination;

19           (d) Federal and State law and regulation, including  
20 instruction on fraud, consumer protection, the nontraditional  
21 mortgage marketplace, and fair lending issues.

22           (3) TESTING LOCATION—Nothing in this section shall  
23 prohibit a test provider approved by the Nationwide Mortgage  
24 Licensing System and Registry from providing a test at the  
25 location of the employer of the applicant or the location of

1 any subsidiary or affiliate of the employer of the applicant,  
2 or the location of any entity with which the applicant holds  
3 an exclusive arrangement to conduct the business of a mortgage  
4 loan originator.

5 (4) MINIMUM COMPETENCE—

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

10 (b) INITIAL RETESTS—An individual may retake a test  
11 3 consecutive times with each consecutive taking occurring at  
12 least 30 days after the preceding test.

13 (c) SUBSEQUENT RETESTS—After failing 3 consecutive  
14 tests, an individual shall wait at least 6 months before  
15 taking the test again.

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

21 Section 9. STANDARDS FOR LICENSE RENEWAL—

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

1 (a) The mortgage loan originator continues to meet  
2 the minimum standards for license issuance under Section  
3 6(1)-(6).

4 (b) The mortgage loan originator has satisfied the  
5 annual continuing education requirements described in Section  
6 10.

7 (c) The mortgage loan originator has paid all  
8 required fees for renewal of the license. The fee related to  
9 the renewal of the license shall be seventy-five dollars  
10 (\$75.00). This license renewal fee shall be in addition to the  
11 fees required to renew through the Nationwide Mortgage  
12 Licensing System and Registry.

13 (2) FAILURE TO SATISFY MINIMUM STANDARDS OF LICENSE  
14 RENEWAL—The license of a mortgage loan originator failing to  
15 satisfy the minimum standards for license renewal shall  
16 expire. The Supervisor may adopt procedures for the  
17 reinstatement of expired licenses consistent with the  
18 standards established by the Nationwide Mortgage Licensing  
19 System and Registry.

20 Section 10. CONTINUING EDUCATION FOR MORTGAGE LOAN  
21 ORIGINATORS—

22 (1) IN GENERAL—In order to meet the annual  
23 continuing education requirements referred to in Section  
24 9(1)(b), a licensed mortgage loan originator shall complete at

1 least 8 hours of education approved in accordance with  
2 subsection (2) of this section, which shall include at least—

3 (a) 3 hours of Federal law and regulations;

4 (b) 2 hours of ethics, which shall include  
5 instruction on fraud, consumer protection, and fair lending  
6 issues; and

7 (c) 2 hours of training related to lending standards  
8 for the nontraditional mortgage product marketplace.

9 (2) APPROVED EDUCATIONAL COURSES—For purposes of  
10 subsection (1) of this section, continuing education courses  
11 shall be reviewed, and approved by the Nationwide Mortgage  
12 Licensing System and Registry based upon reasonable standards.  
13 Review and approval of a continuing education course shall  
14 include review and approval of the course provider.

15 (3) APPROVAL OF EMPLOYER AND AFFILIATE EDUCATIONAL  
16 COURSES—Nothing in this section shall preclude any education  
17 course, as approved by the Nationwide Mortgage Licensing  
18 System and Registry, that is provided by the employer of the  
19 mortgage loan originator or an entity which is affiliated with  
20 the mortgage loan originator by an agency contract, or any  
21 subsidiary or affiliate of such employer or entity.

22 (4) VENUE OF EDUCATION—Continuing education may be  
23 offered either in a classroom, online or by any other means  
24 approved by the Nationwide Mortgage Licensing System and  
25 Registry.

1           (5) CALCULATION OF CONTINUING EDUCATION CREDITS—A  
2 licensed mortgage loan originator—

3           (a) Except for Section 9(2) and subsection (9) of  
4 this section may only receive credit for a continuing  
5 education course in the year in which the course is taken; and

6           (b) May not take the same approved course in the  
7 same or successive years to meet the annual requirements for  
8 continuing education.

9           (6) INSTRUCTOR CREDIT—A licensed mortgage loan  
10 originator who is an approved instructor of an approved  
11 continuing education course may receive credit for the  
12 licensed mortgage loan originator's own annual continuing  
13 education requirement at the rate of 2 hours credit for every  
14 1 hour taught.

15           (7) RECIPROCITY OF EDUCATION—A person having  
16 successfully completed the education requirements approved by  
17 the Nationwide Mortgage Licensing System and Registry in  
18 subsections (1)(a), (b) and (c) of this section for any state  
19 shall be accepted as credit towards completion of continuing  
20 education requirements in Alabama.

21           (8) LAPSE IN LICENSE—A licensed mortgage loan  
22 originator who subsequently becomes unlicensed must complete  
23 the continuing education requirements for the last year in  
24 which the license was held prior to issuance of a new or  
25 renewed license.

1           (9) MAKE UP OF CONTINUING EDUCATION—A person meeting  
2 the requirements of Section 9(1) (a) and (c) may make up any  
3 deficiency in continuing education as established by rule or  
4 regulation of the Supervisor.

5           Section 11. AUTHORITY TO REQUIRE LICENSE—In addition  
6 to any other duties imposed upon the Supervisor by law, the  
7 Supervisor shall require mortgage loan originators to be  
8 licensed and registered through the Nationwide Mortgage  
9 Licensing System and Registry. In order to carry out this  
10 requirement the Supervisor is authorized to participate in the  
11 Nationwide Mortgage Licensing System and Registry. For this  
12 purpose, the Supervisor may establish by rule/regulation or  
13 order requirements as necessary, including but not limited to:

14           (1) BACKGROUND CHECKS—Background checks for:

15           (a) Criminal history through fingerprint or other  
16 databases;

17           (b) Civil or administrative records;

18           (c) Credit history; or

19           (d) Any other information as deemed necessary by the  
20 Nationwide Mortgage Licensing System and Registry.

21           (2) FEES—The payment of fees to apply for or renew  
22 licenses through the Nationwide Mortgage Licensing System and  
23 Registry;

24           (3) SETTING DATES—The setting or resetting as  
25 necessary of renewal or reporting dates; and

1           (4) OTHER—Requirements for amending or surrendering  
2 a license or any other such activities as the Supervisor deems  
3 necessary for participation in the Nationwide Mortgage  
4 Licensing System and Registry.

5           Section 12. NATIONWIDE MORTGAGE LICENSING SYSTEM AND  
6 REGISTRY INFORMATION CHALLENGE PROCESS—The Supervisor shall  
7 establish a process whereby mortgage loan originators may  
8 challenge information entered into the Nationwide Mortgage  
9 Licensing System and Registry.

10          Section 13. ENFORCEMENT AUTHORITIES, VIOLATIONS AND  
11 PENALTIES—

12           (1) In order to ensure the effective supervision and  
13 enforcement of this Act the Supervisor may:

14           (a) Deny, suspend, revoke, condition or decline to  
15 renew a license for a violation of this Act, rules or  
16 regulations issued under this Act or order or directive  
17 entered under this Act, or for failure to comply with any  
18 other state or federal law, including the rules and  
19 regulations thereunder, applicable to any business authorized  
20 or conducted under this act.

21           (b) Deny, suspend, revoke, condition or decline to  
22 renew a license if an applicant or licensee fails at any time  
23 to meet the requirements of Section 6 or Section 9, or  
24 withholds information or makes a material misstatement in an  
25 application for a license or renewal of a license.



1           (c) Order restitution against persons subject to  
2 this Act for violations of this Act.

3           (d) Impose fines on persons subject to this Act  
4 pursuant to subsections (2), (3) and (4) of this section.

5           (e) Issue orders or directives under this Act as  
6 follows:

7           (i) Order or direct persons subject to this Act to  
8 cease and desist from conducting business, including immediate  
9 temporary orders to cease and desist.

10          (ii) Order or direct persons subject to this Act to  
11 cease any harmful activities or violations of this Act,  
12 including immediate temporary orders to cease and desist.

13          (iii) Enter immediate temporary orders to cease  
14 business under a license or interim license issued pursuant to  
15 the authority granted under Section 4(5) if the Supervisor  
16 determines that such license was erroneously granted or the  
17 licensee is currently in violation of this Act;

18          (iv) Order or direct such other affirmative action  
19 as the Supervisor deems necessary.

20          (2) The Supervisor may impose a civil penalty on a  
21 mortgage loan originator or person subject to this Act, if the  
22 Supervisor finds, on the record after notice and opportunity  
23 for hearing, that such mortgage loan originator or person  
24 subject to this Act has violated or failed to comply with any  
25 requirement of this Act or any regulation prescribed by the

1 Supervisor under this Act or order issued under authority of  
2 this Act.

3 (3) The maximum amount of penalty for each act or  
4 omission described in subsection (2) of this section shall be  
5 \$25,000.

6 (4) Each violation or failure to comply with any  
7 directive or order of the Supervisor is a separate and  
8 distinct violation or failure.

9 (5) A violation of this act or any order, rule,  
10 regulation, or procedure does not affect the obligation of a  
11 borrower or other person under the terms of a mortgage loan or  
12 the enforceability of mortgage loan documents. No private  
13 cause of action is created by or exists under this act.

14 Section 14. SURETY BOND REQUIRED—

15 (1) ~~COVERAGE, FORM AND REGULATIONS~~—Each mortgage  
16 loan originator shall be covered by a surety bond in  
17 accordance with this section. In the event that the mortgage  
18 loan originator is an employee or exclusive agent of a person  
19 subject to the Alabama Consumer Credit Act or Mortgage Brokers  
20 Licensing Act, the surety bond of such person subject to the  
21 Alabama Consumer Credit Act or Mortgage Brokers Licensing Act  
22 can be used in lieu of the mortgage loan originator's surety  
23 bond requirement.

1           (a) The surety bond shall provide coverage for each  
2 mortgage loan originator in an amount as prescribed in  
3 subsection (2) of this section.

4           (b) The surety bond shall be in a form as prescribed  
5 by the Supervisor.

6           (c) The Supervisor may promulgate rules or  
7 regulations with respect to the requirements for such surety  
8 bonds as are necessary to accomplish the purposes of this Act.

9           (2) PENAL SUM OF SURETY BOND—The penal sum of the  
10 surety bond shall be maintained in an amount that reflects the  
11 dollar amount of loans originated as determined by the  
12 Supervisor.

13           (3) ACTION ON BOND—When an action is commenced on a  
14 licensee's bond the Supervisor may require the filing of a new  
15 bond.

16           (4) NEW BOND—Immediately upon recovery upon any  
17 action on the bond the licensee shall file a new bond.

18           Section 15. CONFIDENTIALITY—In order to promote more  
19 effective regulation and reduce regulatory burden through  
20 supervisory information sharing—

21           (1) PROTECTIONS—Except as otherwise provided in  
22 Public Law 110-289, Section 1512, the requirements under any  
23 Federal law regarding the privacy or confidentiality of any  
24 information or material provided to the Nationwide Mortgage  
25 Licensing System and Registry, and any privilege arising under

1 Federal or State law (including the rules of any Federal or  
2 State court) with respect to such information or material,  
3 shall continue to apply to such information or material after  
4 the information or material has been disclosed to the  
5 Nationwide Mortgage Licensing System and Registry. Such  
6 information and material may be shared with all State and  
7 Federal regulatory officials with mortgage industry oversight  
8 authority without the loss of privilege or the loss of  
9 confidentiality protections provided by Federal or State law.

10 (2) AGREEMENTS AND SHARING ARRANGEMENTS—For these  
11 purposes, the Supervisor is authorized to enter agreements or  
12 sharing arrangements with other governmental agencies, the  
13 Conference of State Bank Supervisors, the American Association  
14 of Residential Mortgage Regulators or other associations  
15 representing governmental agencies as established by rule,  
16 regulation or order of the Supervisor.

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

21 (a) Disclosure under any Federal or State law  
22 governing the disclosure to the public of information held by  
23 an officer or an agency of the Federal Government or the  
24 respective State; or

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

8           (4) COORDINATION WITH STATE LAW—Existing Alabama law  
9 relating to the disclosure of confidential supervisory  
10 information or any information or material described in  
11 subsection (1) of this section that is inconsistent with  
12 subsection (1) shall be superseded by the requirements of this  
13 section.

14           (5) PUBLIC ACCESS TO INFORMATION—This section shall  
15 not apply with respect to the information or material relating  
16 to the employment history of, and publicly adjudicated  
17 disciplinary and enforcement actions against, mortgage loan  
18 originators that is included in the Nationwide Mortgage  
19 Licensing System and Registry for access by the public.

20           Section 16. INVESTIGATION AND EXAMINATION  
21 AUTHORITY—In addition to any authority allowed under this Act  
22 the Supervisor shall have the authority to conduct  
23 investigations and examinations as follows:

24           (1) AUTHORITY TO ACCESS INFORMATION—For purposes of  
25 initial licensing, license renewal, license suspension,

1 license conditioning, license revocation or termination, or  
2 general or specific inquiry or investigation to determine  
3 compliance with this Act, the Supervisor shall have the  
4 authority to access, receive and use any books, accounts,  
5 records, files, documents, information or evidence including  
6 but not limited to:

7 (a) Criminal, civil and administrative history  
8 information, including nonconviction data; and

9 (b) Personal history and experience information  
10 including independent credit reports obtained from a consumer  
11 reporting agency described in section 603(p) of the Fair  
12 Credit Reporting Act; and

13 (c) Any other documents, information or evidence the  
14 Supervisor deems relevant to the inquiry or investigation  
15 regardless of the location, possession, control or custody of  
16 such documents, information or evidence.

17 (2) INVESTIGATION, EXAMINATION, AND SUBPOENA  
18 AUTHORITY—For the purposes of investigating violations or  
19 complaints arising under this Act, or for the purposes of  
20 examination, the Supervisor may review, investigate, or  
21 examine any licensee, individual or person subject to this  
22 Act, as often as necessary in order to carry out the purposes  
23 of this Act. The Supervisor may direct, subpoena, or order the  
24 attendance of and examine under oath all persons whose  
25 testimony may be required about the loans or the business or

1 subject matter of any such examination or investigation, and  
2 may direct, subpoena, or order such person to produce books,  
3 accounts, records, files, and any other documents the  
4 Supervisor deems relevant to the inquiry.

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

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

19 (a) Accounting compilations;

20 (b) Information lists and data concerning loan  
21 transactions in a format prescribed by the Supervisor; or

22 (c) Such other information deemed necessary to carry  
23 out the purposes of this section.

24 (5) CONTROL ACCESS TO RECORDS—In making any  
25 examination or investigation authorized by this Act, the

1 Supervisor may control access to any documents and records of  
2 the licensee or person under examination or investigation. The  
3 Supervisor may take possession of the documents and records or  
4 place a person in exclusive charge of the documents and  
5 records in the place where they are usually kept. During the  
6 period of control, no individual or person shall remove or  
7 attempt to remove any of the documents and records except  
8 pursuant to a court order or with the consent of the  
9 Supervisor. Unless the Supervisor has reasonable grounds to  
10 believe the documents or records of the licensee have been, or  
11 are at risk of being altered or destroyed for purposes of  
12 concealing a violation of this Act, the licensee or owner of  
13 the documents and records shall have access to the documents  
14 or records as necessary to conduct its ordinary business  
15 affairs.

16 (6) ADDITIONAL AUTHORITY—In order to carry out the  
17 purposes of this section, the Supervisor may:

18 (a) Retain attorneys, accountants, or other  
19 professionals and specialists as examiners, auditors, or  
20 investigators to conduct or assist in the conduct of  
21 examinations or investigations;

22 (b) Enter into agreements or relationships with  
23 other government officials or regulatory associations in order  
24 to improve efficiencies and reduce regulatory burden by  
25 sharing resources, standardized or uniform methods or



1 procedures, and documents, records, information or evidence  
2 obtained under this section;

3 (c) Use, hire, contract or employ public or  
4 privately available analytical systems, methods or software to  
5 examine or investigate the licensee, individual or person  
6 subject to this Act;

7 (d) Accept and rely on examination or investigation  
8 reports made by other government officials, within or without  
9 this state; or

10 (e) Accept audit reports made by an independent  
11 certified public accountant for the licensee, individual or  
12 person subject to this Act in the course of that part of the  
13 examination covering the same general subject matter as the  
14 audit and may incorporate the audit report in the report of  
15 the examination, report of investigation or other writing of  
16 the Supervisor.

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

22 (8) WITHHOLD RECORDS—No licensee, individual or  
23 person subject to investigation or examination under this  
24 section may knowingly withhold, abstract, remove, mutilate,

1 destroy, or secrete any books, records, computer records, or  
2 other information.

3 Section 17. PROHIBITED ACTS AND PRACTICES—It is a  
4 violation of this Act for a person or individual subject to  
5 this Act to:

6 (1) Obtain property by intentional fraud or  
7 intentional misrepresentation;

8 (2) Solicit or enter into a contract with a borrower  
9 that provides in substance that the person or individual  
10 subject to this Act may earn a fee or commission through "best  
11 efforts" to obtain a loan even though no loan is actually  
12 obtained for the borrower;

13 (3) Conduct any business covered by this Act without  
14 holding a valid license if required under this Act;

15 (4) Fail to make disclosures as required by this  
16 Act;

17 (5) Fail to comply with this Act or rules or  
18 regulations promulgated under this Act;

19 (6) Collect, charge, or attempt to collect or charge  
20 any fee prohibited by this Act; or

21 (7) Fail to account for monies belonging to a party  
22 to a residential mortgage loan transaction, as required by law  
23 or regulation.

24 Section 18. MORTGAGE CALL REPORTS—Each person  
25 employing a Mortgage Loan Originator licensed under this act

1 shall submit to the Nationwide Mortgage Licensing System and  
2 Registry reports of condition, which shall be in such form and  
3 shall contain such information as the Nationwide Mortgage  
4 Licensing System and Registry may require.

5 Section 19. REPORT TO NATIONWIDE MORTGAGE LICENSING  
6 SYSTEM AND REGISTRY—Notwithstanding state privacy law the  
7 Supervisor is required to report regularly violations of this  
8 act, as well as enforcement actions and other relevant  
9 information, to the Nationwide Mortgage Licensing System and  
10 Registry subject to the provisions contained in Section 15.

11 Section 20. UNIQUE IDENTIFIER SHOWN—The unique  
12 identifier of any person originating a residential mortgage  
13 loan shall be clearly shown on all residential mortgage loan  
14 application forms, solicitations or advertisements, including  
15 business cards or websites, and any other documents as  
16 established by rule, regulation or order of the Supervisor.

17 Section 21. If any provisions of this act or its  
18 application to any person or circumstance is held invalid, the  
19 remainder of the act or the application of the provision to  
20 other persons or circumstances is not affected.

21 Section 22. The effective date of this act shall be  
22 June 1, 2009; however, in order to facilitate an orderly  
23 transition to licensing and minimize disruption in the  
24 mortgage marketplace, the effective date for licensure  
25 requirements of this act shall be June 1, 2010, or such later

1       date approved by the Secretary of the U.S. Department of  
2       Housing and Urban Development, pursuant to the authority  
3       granted under Public Law 110-289, Section 1508(a).

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President and Presiding Officer of the Senate

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Speaker of the House of Representatives

SB249  
Senate 02-APR-09  
I hereby certify that the within Act originated in and passed  
the Senate, as amended.

McDowell Lee  
Secretary

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House of Representatives  
Passed: 14-MAY-09

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By: Senator Denton