

HOUSE No. 4127

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act adopting the Federal Secure And Fair Enforcement for Mortgage Licensing Act of 2008.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1
2
3
4
5
6
7
8
9
10
11
12

SECTION 1. The General Laws are hereby amended by striking out chapter 255F, as inserted by section 15 of chapter 206 of the acts of 2008, and inserting in place thereof the following chapter:

CHAPTER 255F.
LICENSING OF MORTGAGE LOAN ORIGINATORS.

Section 1. As used in this chapter, the following words shall, unless the context otherwise requires, have the following meanings:-

- “Commissioner”, the commissioner of banks.
- “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.
- “Division”, the division of banks.

13 “Entity”, a person or entity that is a licensee under chapter 255E, as regulated by the
14 division.

15 “Federal banking agencies”, the term “federal banking agencies” means the Board of
16 Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the
17 Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit
18 Insurance Corporation.

19 “Immediate family member”, a spouse, child, sibling, parent, grandparent, or grandchild.
20 This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

21 “Individual”, a natural person.

22 “Loan processor or underwriter”, (a) an individual who performs clerical or support
23 duties as an employee at the direction of and subject to the supervision and instruction of a
24 person licensed, or exempt from licensing under this chapter.

25 (b) for purposes of subsection (a), the term “clerical or support duties” may include
26 subsequent to the receipt of an application:

27 (i) the receipt, collection, distribution, and analysis of information common for the
28 processing or underwriting of a residential mortgage loan; and

29 (ii) communicating with a consumer to obtain the information necessary for the
30 processing or underwriting of a loan, to the extent that such communication does not include
31 offering or negotiating loan rates or terms, or counseling consumers about residential mortgage
32 loan rates or terms.

33 (c) An individual engaging solely in loan processor or underwriter activities, shall not
34 represent to the public, through advertising or other means of communicating or providing
35 information including the use of business cards, stationery, brochures, signs, rate lists, or other
36 promotional items, that such individual can or will perform any of the activities of a mortgage
37 loan originator

38 “Mortgage loan originator”,(a) The term “mortgage loan originator”, an individual who
39 for compensation or gain or in the expectation of compensation or gain:

40 (A) takes a residential mortgage loan application; or

41 (B) offers or negotiates terms of a residential mortgage loan;

42 (ii) does not include an individual engaged solely as a loan processor or underwriter
43 except as otherwise provided in subsection 4 of section 2;

44 (iii) does not include a person or entity that only performs real estate brokerage activities
45 and is licensed or registered in accordance with chapter 112, sections 87PP to 87DDD1/2,
46 inclusive, unless the person or entity is compensated by a lender, a mortgage broker, or other
47 mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage
48 loan originator; and

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

51 (b) For purposes of this chapter the term “real estate brokerage activity” shall mean any
52 activity that involves offering or providing real estate brokerage services to the public, including:

53 (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of
54 real property;

55 (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of
56 real property;

57 (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale,
58 purchase, lease, rental, or exchange of real property (other than in connection with providing
59 financing with respect to any such transaction);

60 (iv) engaging in any activity for which a person engaged in the activity is required to be
61 registered or licensed as a real estate agent or real estate broker under any applicable law; and

62 (v) offering to engage in any activity, or act in any capacity, described in clauses (i), (ii),
63 (iii), or (iv) of this paragraph.

64 “Nationwide mortgage licensing system and registry”, a mortgage licensing system
65 developed and maintained by the Conference of State Bank Supervisors and the American
66 Association of Residential Mortgage Regulators for the licensing and registration of licensed
67 mortgage loan originators.

68 “Nontraditional mortgage product”, any mortgage product other than a 30-year fixed rate
69 mortgage.

70 “Person”, a natural person, corporation, company, limited liability company, partnership,
71 or association.

72 “Registered mortgage loan originator”, any individual who:

73 (a) meets the definition of mortgage loan originator and is an employee of:
74 (i) a depository institution;
75 (ii) a subsidiary that is—
76 (A) owned and controlled by a depository institution; and
77 (B) regulated by a federal banking agency; or
78 (iii) An institution regulated by the Farm Credit Administration; and
79 (b) Is registered with, and maintains a unique identifier through, the Nationwide
80 Mortgage Licensing System and Registry.

81 “Residential mortgage loan”, any loan primarily for personal, family, or household use
82 that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a
83 dwelling as defined in section 103(v) of the Truth in Lending Act or residential real estate upon
84 which is constructed or intended to be constructed a dwelling as so defined.

85 “Residential real estate”, any real property located in the commonwealth, upon which is
86 constructed or intended to be constructed a dwelling.

87 “Unique identifier”, a number or other identifier assigned by protocols established by the
88 Nationwide Mortgage Licensing System and Registry.

89 Section 2. (1) An individual, unless specifically exempted from this chapter under
90 subsection (3) of this section, shall not engage in the business of a mortgage loan originator with
91 respect to any dwelling located in the commonwealth without first obtaining and maintaining
92 annually a license under this chapter. Each licensed mortgage loan originator must register with

93 and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and
94 Registry. An individual who is an employee of a person exempt from licensing under section 2
95 of chapter 255E who is not exempt by subsection (3) shall not engage in the business of a
96 mortgage loan originator with respect to any dwelling located in the commonwealth without first
97 obtaining and maintaining annually a license under this chapter.

98 (2) In order to facilitate an orderly transition to licensing and minimize disruption in the
99 mortgage marketplace, the effective date for subsection (1):

100 (a) For all individuals other than individuals described in subsection (b) shall be July 31,
101 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban
102 Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

103 (b) For all individuals licensed as mortgage loan originators as of the enactment of this
104 chapter shall be January 1, 2011, or such later date approved by the Secretary of the U.S.
105 Department of Housing and Urban Development, pursuant to the authority granted under Public
106 Law 110-289, Section 1508(a).

107 (3) The following are exempt from this chapter:

108 (a) Registered Mortgage Loan Originators are exempt from this chapter.

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

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

113 (d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf
114 of a client as an ancillary matter to the attorney's representation of the client, unless the attorney
115 is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent
116 of such lender, mortgage broker, or other mortgage loan originator.

117 (4) A loan processor or underwriter who is an independent contractor may not engage in
118 the activities of a loan processor or underwriter unless such independent contractor loan
119 processor or underwriter obtains and maintains a license under subsection (1) of section 2. Each
120 independent contractor loan processor or underwriter licensed as a mortgage loan originator must
121 have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing
122 System and Registry.

123 (5) For the purposes of implementing an orderly and efficient licensing process the
124 commissioner may establish licensing rules or regulations and interim procedures for licensing
125 and acceptance of applications. For previously registered or licensed individuals the
126 commissioner may establish expedited review and licensing procedures.

127

128 Section 3. (1) Applicants for a license shall apply in a form as prescribed by the
129 commissioner. Each such form shall contain content as set forth by rule, regulation, instruction
130 or procedure of the commissioner and may be changed or updated as necessary by the
131 commissioner in order to carry out the purposes of this chapter.

132 (2) In order to fulfill the purposes of this chapter, the commissioner is authorized to
133 establish relationships or contracts with the Nationwide Mortgage Licensing System and
134 Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry

135 to collect and maintain records and process transaction fees or other fees related to licensees or
136 other persons subject to this chapter.

137 (3) For the purpose of participating in the Nationwide Mortgage Licensing System and
138 Registry, the commissioner is authorized to waive or modify, in whole or in part, by rule,
139 regulation or order, any or all of the requirements of this chapter and to establish new
140 requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing
141 System and Registry.

142 (4) In connection with an application for licensing as a mortgage loan originator, the
143 applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and
144 Registry information concerning the applicant's identity, including:

145 (a) fingerprints for submission to the Federal Bureau of Investigation, and any
146 governmental agency or entity authorized to receive such information for a state, national and
147 international criminal history background check; and

148 (b) personal history and experience in a form prescribed by the Nationwide Mortgage
149 Licensing System and Registry, including the submission of authorization for the Nationwide
150 Mortgage Licensing System and Registry and the commissioner to obtain—

151 (i) an independent credit report obtained from a consumer reporting agency described in
152 section 603(p) of the Fair Credit Reporting Act; and

153 (ii) information related to any administrative, civil or criminal findings by any
154 governmental jurisdiction.

155 The commissioner may obtain, pursuant to section 172J of chapter 6 all available
156 criminal offender record information from the criminal history systems board on an applicant for
157 a mortgage loan originator license by means of fingerprint checks.

158 (5) For the purposes of this section and in order to reduce the points of contact which
159 the Federal Bureau of Investigation may have to maintain for purposes of clause (a) and
160 subclause (ii) of clause (b) of subsection (4) the commissioner may use the Nationwide Mortgage
161 Licensing System and Registry as a channeling agent for requesting information from and
162 distributing information to the Department of Justice or any governmental agency.

163 (6) For the purposes of this section and in order to reduce the points of contact which the
164 commissioner may have to maintain for purposes of subclauses (i) and (ii) of clause (b) of
165 subsection (4) the commissioner may use the Nationwide Mortgage Licensing System and
166 Registry as a channeling agent for requesting and distributing information to and from any
167 source so directed by the commissioner.

168 Section 4. The commissioner shall not issue a mortgage loan originator license unless the
169 commissioner makes at a minimum the following findings:-

170 (1) The applicant has never had a mortgage loan originator license revoked in any
171 governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not
172 be deemed a revocation.

173 (2) The applicant has not been convicted of, or pled guilty or nolo contendere to, a
174 felony in a domestic, foreign, or military court:

175 (a) during the 7-year period preceding the date of the application for licensing and
176 registration; or

177 (b) at any time preceding such date of application, if such felony involved an act of
178 fraud, dishonesty, or a breach of trust, or money laundering.

179 The applicant has no other convictions or admissions to sufficient facts involving fraud,
180 dishonesty, or a breach of trust, or that the applicant has not had any adverse civil judgments
181 involving fraudulent dealings. A pardon of a conviction shall not be a conviction for purposes of
182 this subsection.

183 (3) The applicant has demonstrated financial responsibility, character, reputation,
184 integrity and general fitness such as to command the confidence of the community and to
185 warrant a determination that the mortgage loan originator will operate honestly, fairly, soundly
186 and efficiently in the public interest, consistent with the purposes of this chapter.

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

191 (i) current outstanding judgments, except judgments solely as a result of medical
192 expenses;

193 (ii) current outstanding tax liens or other government liens and filings;

194 (iii) foreclosures within the past 3 years;

195 (iv) a pattern of seriously delinquent accounts within the past 3 years.

196 (4) The applicant has completed the pre-licensing education requirement described in
197 section 5.

198 (5) The applicant has passed a written test that meets the test requirement described in
199 section 6.

200 (6) The applicant has met the surety bond requirement as required pursuant to section 12.

201 (7) A mortgage loan originator may be employed by 1 and not more than 1 entity. Each
202 original license issued to a mortgage loan originator must be provided to and maintained by the
203 employing entity at the entity's main office. If the employment of a mortgage loan originator is
204 terminated, the employing entity shall return the mortgage loan originator's license to the
205 division within 5 business days after termination. The reason for termination shall be given in a
206 format determined by rules and regulations of the commissioner. For a period of 1 year after the
207 termination of employment, the mortgage loan originator may request the re-assignment of the
208 license to another entity by submitting an application to the division, along with a fee established
209 by the division by rule. The return of the license of any mortgage loan originator to the division
210 that is not re-assigned to another entity terminates the right of the mortgage loan originator to
211 engage in any residential mortgage loan origination activity until division procedures have been
212 followed to reactivate such license. The license of any mortgage loan originator that has been
213 returned to the division and not re-assigned to another entity within 1 year of termination of
214 employment shall be cancelled. Each license shall state the name of the mortgage loan originator
215 licensee and the name and main office address of the entity employing such mortgage loan
216 originator.

217 If the commissioner shall not issue a license, he shall notify the applicant of the denial.
218 Within 20 days thereafter, the commissioner shall enter upon the Division’s records a written
219 decision and findings containing the reasons supporting the denial and shall forthwith give
220 written notice thereof by registered mail to the applicant. Within 30 days after receipt of such
221 notice, the applicant may seek judicial review of the denial in accordance with section 14 of
222 chapter 30A.

223 Section 5. (1) in order to meet the pre-licensing education requirement referred to in
224 subsection (4) of section 4, a person shall complete at least 20 hours of education approved in
225 accordance with subsection (2) of this section, which shall include at least:

226 3 hours of federal law and regulations;

227 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair
228 lending issues;

229 2 hours of training related to lending standards for the nontraditional mortgage product
230 marketplace; and

231 State law and regulation, which shall include instruction on state consumer protection
232 laws and other related statutes.

233 (2) For purposes of subsection (1), pre-licensing education courses shall be reviewed, and
234 approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable
235 standards. Review and approval of a pre-licensing education course shall include review and
236 approval of the course provider.

237 (3) Nothing in this section shall preclude any pre-licensing education course, as approved
238 by the Nationwide Mortgage Licensing System and Registry that is provided by the employer of
239 the applicant or an entity which is affiliated with the applicant by an agency contract, or any
240 subsidiary or affiliate of such employer or entity.

241 (4) Pre-licensing education may be offered either in a classroom, online or by any other
242 means approved by the Nationwide Mortgage Licensing System and Registry.

243 (5) The pre-licensing education requirements approved by the Nationwide Mortgage
244 Licensing System and Registry in clauses (a), (b) and (c) of subsection (4) for any state shall be
245 accepted as credit towards completion of pre-licensing education requirements in the
246 commonwealth.

247 Section 6. (1) In order to meet the written test requirement referred to in subsection (5)
248 of section 4, an individual shall pass, in accordance with the standards established under this
249 section, a qualified written test developed by the Nationwide Mortgage Licensing System and
250 Registry and administered by a test provider approved by the Nationwide Mortgage Licensing
251 System and Registry based upon reasonable standards.

252 (2) A written test shall not be treated as a qualified written test for purposes of
253 subsection (1) of this section unless the test adequately measures the applicant's knowledge and
254 comprehension in appropriate subject areas, including:—

255 (a) ethics;

256 (b) federal law and regulation pertaining to mortgage origination;

257 (c) state law and regulation pertaining to mortgage origination; and

258 (d) federal and state law and regulation, including instruction on fraud, consumer
259 protection, the nontraditional mortgage marketplace, and fair lending issues.

260 (3) Nothing in this section shall prohibit a test provider approved by the Nationwide
261 Mortgage Licensing System and Registry from providing a test at the location of the employer of
262 the applicant or the location of any subsidiary or affiliate of the employer of the applicant, or the
263 location of any entity with which the applicant holds an exclusive arrangement to conduct the
264 business of a mortgage loan originator.

265 (4) (a) An individual shall not be considered to have passed a qualified written test
266 unless the individual achieves a test score of not less than 75 per cent correct answers to
267 questions.

268 (b) An individual may retake a test 3 consecutive times with each consecutive taking
269 occurring at least 30 days after the preceding test.

270 (c) After failing 3 consecutive tests, an individual shall wait at least 6 months before
271 taking the test again.

272 (d) A licensed mortgage loan originator who fails to maintain a valid license for a period
273 of 5 years or longer shall retake the test, not taking into account any time during which such
274 individual is a registered mortgage loan originator.

275 Section 7. (1) The minimum standards for license renewal for mortgage loan originators
276 shall include the following:-

277 (a) The mortgage loan originator continues to meet the minimum standards for license
278 issuance under subsections (1) to (7), inclusive, of section 4.

279 (b) The mortgage loan originator has satisfied the annual continuing education
280 requirements described in section 8.

281 (c) The mortgage loan originator has paid all required fees for renewal of the license.

282 (2) The license of a mortgage loan originator failing to satisfy the minimum standards
283 for license renewal shall expire. The commissioner may adopt procedures for the reinstatement
284 of expired licenses consistent with the standards established by the Nationwide Mortgage
285 Licensing System and Registry.

286 Section 8. (1) In order to meet the annual continuing education requirements referred to
287 in clause (b) of subsection (1) of section 7, a licensed mortgage loan originator shall complete at
288 least 8 hours of education approved in accordance with subsection (2) of this section, which shall
289 include at least:

290 3 hours of federal law and regulation;

291 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair
292 lending issues;

293 2 hours of training related to lending standards for the nontraditional mortgage product
294 marketplace; and

295 State law and regulation, which shall include instruction on state consumer protection
296 laws and other related statutes.

297 (2) For purposes of subsection (1), continuing education courses shall be reviewed, and
298 approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable

299 standards. Review and approval of a continuing education course shall include review and
300 approval of the course provider.

301 (3) Nothing in this section shall preclude any education course, as approved by the
302 Nationwide Mortgage Licensing System and Registry, that is provided by the employer of the
303 mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an
304 agency contract, or any subsidiary or affiliate of such employer or entity.

305 (4) Continuing education may be offered either in a classroom, online or by any other
306 means approved by the Nationwide Mortgage Licensing System and Registry.

307 (5) A licensed mortgage loan originator—

308 (a) except for subsection (2) of section 7 and subsection (9) of this section may only
309 receive credit for a continuing education course in the year in which the course is taken; and

310 (b) may not take the same approved course in the same or successive years to meet the
311 annual requirements for continuing education.

312 (6) A licensed mortgage loan originator who is an approved instructor of an approved
313 continuing education course may receive credit for the licensed mortgage loan originator's own
314 annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

315 (7) A person having successfully completed the education requirements approved by the
316 Nationwide Mortgage Licensing System and Registry in clauses (a), (b) and (c) of subsection (1)
317 of this section for any state shall be accepted as credit towards completion of continuing
318 education requirements in the commonwealth.

319 (8) A licensed mortgage loan originator who subsequently becomes unlicensed must
320 complete the continuing education requirements for the last year in which the license was held
321 prior to issuance of a new or renewed license.

322 (9) A person meeting the requirements of clauses (a) and (c) of subsection (1) of section
323 7 may make up any deficiency in continuing education as established by rule or regulation of the
324 commissioner.

325 Section 9. In addition to any other duties imposed upon the commissioner by law, the
326 commissioner shall require mortgage loan originators to be licensed and registered through the
327 Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the
328 commissioner is authorized to participate in the Nationwide Mortgage Licensing System and
329 Registry. For this purpose, the commissioner may establish by regulation requirements as
330 necessary, including, but not limited to:-

331 (1) background checks for:-

332 (a) criminal history through fingerprint or other databases;

333 (b) civil or administrative records;

334 (c) credit history; or

335 (d) any other information as deemed necessary by the Nationwide Mortgage Licensing
336 System and Registry.

337 (2) the payment of fees to apply for or renew licenses through the Nationwide Mortgage
338 Licensing System and Registry provided, however, that each application for a license shall be
339 accompanied by an investigation fee and license fee provided, that investigation and license fees

340 shall be determined annually by the secretary of administration under section 3B of chapter 7;
341 provided, further, that such investigation and license fees shall not apply to any community
342 development corporation as defined in section 1 of chapter 40F and organized under the General
343 Laws provided, further, that classifications or adjustments as deemed necessary may be made
344 relative to fees for any nonprofit agency or corporation incorporated under the laws of the
345 commonwealth for the purpose of assisting low to moderate income households in the purchase
346 or rehabilitation of family residences of 4 units or less and which holds tax-exempt status granted
347 under the provisions of Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as
348 otherwise determined by the commissioner;

349 (3) the setting or resetting as necessary of renewal or reporting dates; and

350 (4) requirements for amending or surrendering a license or any other such activities as
351 the commissioner deems necessary for participation in the Nationwide Mortgage Licensing
352 System and Registry.

353 Section 10. The commissioner shall establish a process whereby mortgage loan
354 originators may challenge information entered into the Nationwide Mortgage Licensing System
355 and Registry by the commissioner.

356 Section 11. (1) In order to ensure the effective supervision and enforcement of this
357 chapter the commissioner may, pursuant to chapter 30A:-

358 (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this
359 chapter, rules or regulations issued under this chapter or order or directive entered under this
360 chapter.

361 (b) Deny, suspend, revoke, condition or decline to renew a license if an applicant or
362 licensee fails at any time to meet the requirements of section 4 or section 7, or withholds
363 information or makes a material misstatement in an application for a license or renewal of a
364 license.

365 (c) Order restitution against persons subject to this chapter for violations of this chapter.

366 (d) Impose fines on persons subject to this chapter pursuant to subsections (2), (3) and
367 (4).

368 (e) Issue orders or directives under this chapter as follows:

369 (i) Order or direct persons subject to this chapter to cease and desist from conducting
370 business, including immediate temporary orders to cease and desist.

371 (ii) Order or direct persons subject to this chapter to cease any harmful activities or
372 violations of this chapter, including immediate temporary orders to cease and desist.

373 (iii) Enter immediate temporary orders to cease business under a license or interim
374 license issued pursuant to the authority granted under subsection (5) of section 2 if the
375 commissioner determines that such license was erroneously granted or the licensee is currently in
376 violation of this chapter;

377 (iv) Order or direct such other affirmative action as the commissioner deems necessary.

378 (2) The commissioner may impose a civil penalty on a mortgage loan originator or
379 person subject to this chapter, if the commissioner finds, on the record after notice and
380 opportunity for hearing, that such mortgage loan originator or person subject to this chapter has

381 violated or failed to comply with any requirement of this chapter or any regulation prescribed by
382 the commissioner under this chapter or order issued under authority of this chapter.

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

385 (4) Each violation or failure to comply with any directive or order of the commissioner is
386 a separate and distinct violation or failure.

387 (5) (a) Whenever the commissioner determines that any person has, directly or indirectly,
388 violated this chapter or any rule or regulation promulgated hereunder, applicable to the conduct
389 of a mortgage loan originator on residential property in the commonwealth, any order issued by
390 the commissioner pursuant to this chapter or any written agreement entered between the licensee
391 and the commissioner, the commissioner may serve upon that person a written notice of
392 intention:- (i) to prohibit the person from performing in the capacity of a principal employee on
393 behalf of any licensee for a period of time that the commissioner considers necessary; (ii) to
394 prohibit the person from applying for or obtaining a license from the commissioner for a period
395 up to 36 months following the effective date of an order issued under paragraph (b) or (c); or
396 (iii) to prohibit the person from any further participation, in any manner, as a mortgage loan
397 originator in the commonwealth or to prohibit the person from being employed by, as agent of,
398 or operating on behalf of a licensee under this chapter or any other business which requires a
399 license from the commissioner. (b) A written notice issued under paragraph (a) shall contain a
400 written statement of the facts that support the prohibition and shall give notice of an opportunity
401 for a hearing to be held thereon. The hearing shall be fixed for a date not more than 30 days after
402 the date of service upon the commissioner of the request for a hearing. If the person fails to

403 submit a request for a hearing within 20 days of service of notice under said paragraph (a), or
404 otherwise fails to appear in person or by a duly authorized representative, the party shall be
405 considered to have consented to the issuance of an order of prohibition in accordance with the
406 notice. (c) In the event that consent is granted by operation of paragraph (b), or if after a hearing
407 the commissioner finds that any of the grounds specified in the notice have been established, the
408 commissioner may issue an order of prohibition in accordance with paragraph (a) as the
409 commissioner finds appropriate. (d) An order issued under paragraph (b) or (c) shall be effective
410 upon service upon the person. The commissioner shall also serve a copy of the order upon the
411 licensee of which the person is an employee or on whose behalf the person is performing. The
412 order shall remain in effect and enforceable until it is modified, terminated, suspended or set
413 aside by the commissioner or a court of competent jurisdiction. (e) Except as consented to in
414 writing by the commissioner, any person who, pursuant to an order issued under paragraph (b) or
415 (c), has been prohibited from participating in whole or in part as a mortgage loan originator may
416 not, while the order is in effect, continue or commence to perform in the capacity of a mortgage
417 loan originator, or otherwise participate in any manner, if so prohibited by order of the
418 commissioner, in the conduct of the affairs of:- (i) any licensee under this chapter; (ii) any other
419 business which requires a license from the commissioner; or (iii) any bank as defined under
420 section 1 of chapter 167 or any subsidiary thereof. (6) The commissioner may suspend, revoke
421 or refuse to renew the license of the entity employing any licensed mortgage originator if the
422 commissioner finds that: (a) the entity knew or should have known that the mortgage loan
423 originator violated this chapter or any rule or regulation promulgated hereunder, or any other law
424 applicable to the conduct of its business; (b) the entity knew of any fact or condition to exist
425 which, if it had existed at the time of the original application for such license, would have

426 warranted the commissioner in refusing to issue such license; or (c) the mortgage loan originator
427 committed any fraud, misappropriated funds or misrepresented any of the material particulars of
428 a mortgage loan transaction approved by the entity.

429 Section 12. (1) Each mortgage loan originator shall be covered by a surety bond in
430 accordance with this section. In the event that the mortgage loan originator is an employee or
431 exclusive agent of a person subject to chapter 255E, the surety bond of such person subject to
432 this chapter can be used in lieu of the mortgage loan originator's surety bond requirement.

433 (a) The surety bond shall provide coverage for each mortgage loan originator in an
434 amount as prescribed in subsection (2).

435 (b) The surety bond shall be in a form as prescribed by the commissioner.

436 (c) The commissioner may promulgate rules or regulations with respect to the
437 requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.

438 (2) The penal sum of the surety bond shall be maintained in an amount that reflects the
439 dollar amount of loans originated as determined by the commissioner.

440 (3) When an action is commenced on a licensee's bond the commissioner may require
441 the filing of a new bond.

442 (4) Immediately upon recovery upon any action on the bond the licensee shall file a new
443 bond.

444 Section 13. In order to promote more effective regulation and reduce regulatory burden
445 through supervisory information sharing:—

446 (1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements
447 under any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any
448 information or material provided to the Nationwide Mortgage Licensing System and Registry,
449 and any privilege arising under federal or state law, including the rules of any federal or state
450 court, with respect to such information or material, shall continue to apply to such information or
451 material after the information or material has been disclosed to the Nationwide Mortgage
452 Licensing System and Registry. Such information and material may be shared with all state and
453 federal regulatory officials with mortgage industry oversight authority without the loss of
454 privilege or the loss of confidentiality protections provided by federal law or said section 10 of
455 chapter 66.

456 (2) For these purposes, the commissioner is authorized to enter agreements or sharing
457 arrangements with other governmental agencies, the Conference of State Bank Supervisors, the
458 American Association of Residential Mortgage Regulators or other associations representing
459 governmental agencies as established by rule, regulation or order of the commissioner.

460 (3) Information or material that is subject to a privilege or confidentiality under
461 subsection (1) shall not be subject to:—

462 (a) disclosure under any federal or state law governing the disclosure to the public of
463 information held by an officer or an agency of the federal government or the respective State; or

464 (b) subpoena or discovery, or admission into evidence, in any private civil action or
465 administrative process, unless with respect to any privilege held by the Nationwide Mortgage
466 Licensing System and Registry with respect to such information or material, the person to whom

467 such information or material pertains waives, in whole or in part, in the discretion of such
468 person, that privilege.

469 (4) Section 10 of chapter 66 relating to the disclosure of confidential supervisory
470 information or any information or material described in subsection (1) that is inconsistent with
471 said subsection (1) shall be superseded by the requirements of this section.

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

476 Section 14. In addition to any authority allowed under this chapter the commissioner
477 shall have the authority to conduct investigations and examinations as follows:-

478 (1) For purposes of initial licensing, license renewal, license suspension, license
479 conditioning, license revocation or termination, or general or specific inquiry or investigation to
480 determine compliance with this chapter, the commissioner shall have the authority to access,
481 receive and use any books, accounts, records, files, documents, information or evidence
482 including, but not limited to:

483 (a) criminal, civil and administrative history information, including nonconviction data
484 as specified in applicable provisions of the General Laws;

485 (b) personal history and experience information including independent credit reports
486 obtained from a consumer reporting agency described in section 603(p) of the Fair Credit
487 Reporting Act; and

488 (c) any other documents, information or evidence the commissioner deems relevant to
489 the inquiry or investigation regardless of the location, possession, control or custody of such
490 documents, information or evidence.

491 (2) For the purposes of investigating violations or complaints arising under this chapter,
492 or for the purposes of examination, the commissioner may review, investigate, or examine any
493 licensee, individual or person subject to this chapter, as often as necessary in order to carry out
494 the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of
495 and examine under oath all persons whose testimony may be required about the loans or the
496 business or subject matter of any such examination or investigation, and may direct, subpoena, or
497 order such person to produce books, accounts, records, files, and any other documents the
498 commissioner deems relevant to the inquiry.

499 (3) Each licensee, individual or person subject to this chapter shall make available to the
500 commissioner upon request the books and records relating to the operations of such licensee,
501 individual or person subject to this chapter. The commissioner shall have access to such books
502 and records and interview the officers, principals, mortgage loan originators, employees,
503 independent contractors, agents, and customers of the licensee, individual or person subject to
504 this chapter concerning their business.

505 (4) Each licensee, individual or person subject to this chapter shall make or compile
506 reports or prepare other information as directed by the commissioner in order to carry out the
507 purposes of this section including but not limited to:-

508 (a) accounting compilations;

509 (b) information lists and data concerning loan transactions in a format prescribed by the
510 commissioner; or

511 (c) such other information deemed necessary to carry out the purposes of this section.

512 (5) In making any examination or investigation authorized by this chapter, the
513 commissioner may control access to any documents and records of the licensee or person under
514 examination or investigation. The commissioner may take possession of the documents and
515 records or place a person in exclusive charge of the documents and records in the place where
516 they are usually kept. During the period of control, no individual or person shall remove or
517 attempt to remove any of the documents and records except pursuant to a court order or with the
518 consent of the commissioner. Unless the commissioner has reasonable grounds to believe the
519 documents or records of the licensee have been, or are at risk of being altered or destroyed for
520 purposes of concealing a violation of this chapter, the licensee or owner of the documents and
521 records shall have access to the documents or records as necessary to conduct its ordinary
522 business affairs.

523 The commissioner shall preserve a full record of each such examination of a licensee.
524 All records of investigation and reports of examination by the commissioner, including work
525 papers, information derived from such reports or in response to such reports, and any copies
526 thereof in the possession of any licensee under the supervision of the commissioner, shall be
527 confidential and privileged communications, shall not be subject to subpoena and shall not be a
528 public record under clause Twenty-sixth of section 7 of chapter 4. For the purpose of this
529 paragraph, records of investigation and reports of examinations shall include records of
530 investigation and reports of examinations conducted by any bank regulatory agency of the

531 federal government and any other state, and of any foreign government which are considered
532 confidential by such agency or foreign government and which are in possession of the
533 commissioner. In any proceeding before a court, the court may issue a protective order to seal
534 the record protecting the confidentiality of any such record, other than any such record on file
535 with the court or filed in connection with the court proceeding, and the court may exclude the
536 public from any portion of a proceeding at which any such record may be disclosed. Copies of
537 such reports of examination shall be furnished to a licensee for its use only and shall not be
538 exhibited to any other person, organization or agency without prior written approval by the
539 commissioner. The commissioner may, in his discretion, furnish to regulatory agencies of the
540 federal government, of other states, or of foreign countries and any law enforcement agency,
541 such information, reports, inspections and statements relating to the licensees under his
542 supervision.

543 (6) In order to carry out the purposes of this section, the commissioner may:-

544 (a) retain attorneys, accountants, or other professionals and specialists as examiners,
545 auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

546 (b) enter into agreements or relationships with other government officials or regulatory
547 associations in order to improve efficiencies and reduce regulatory burden by sharing resources,
548 standardized or uniform methods or procedures, and documents, records, information or
549 evidence obtained under this section;

550 (c) use, hire, contract or employ public or privately available analytical systems, methods
551 or software to examine or investigate the licensee, individual or person subject to this chapter;

552 (d) accept and rely on examination or investigation reports made by other government
553 officials, within or without the commonwealth; or

554 (e) accept audit reports made by an independent certified public accountant for the
555 licensee, individual or person subject to this chapter in the course of that part of the examination
556 covering the same general subject matter as the audit and may incorporate the audit report in the
557 report of the examination, report of investigation or other writing of the commissioner.

558 (7) The authority of this section shall remain in effect, whether such a licensee,
559 individual or person subject to this chapter acts or claims to act under any licensing or
560 registration law of the commonwealth, or claims to act without such authority.

561 (8) No licensee, individual or person subject to investigation or examination under this
562 section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books,
563 records, computer records, or other information.

564 Section 15. It is a violation of this chapter for a person or individual subject to this
565 chapter to:-

566 (1) directly or indirectly employ any scheme, device, or artifice to defraud or mislead
567 borrowers or lenders or to defraud any person;

568 (2) engage in any unfair or deceptive practice toward any person;

569 (3) obtain property by fraud or misrepresentation;

570 (4) solicit or enter into a contract with a borrower that provides in substance that the
571 person or individual subject to this chapter may earn a fee or commission through “best efforts”
572 to obtain a loan even though no loan is actually obtained for the borrower;

573 (5) solicit, advertise, or enter into a contract for specific interest rates, points, or other
574 financing terms unless the terms are actually available at the time of soliciting, advertising, or
575 contracting;

576 (6) conduct any business covered by this chapter without holding a valid license as
577 required under this chapter, or assist or aide and abet any person in the conduct of business under
578 this chapter without a valid license as required under this chapter;

579 (7) fail to make disclosures as required by this chapter and any other applicable state or
580 federal law including regulations thereunder;

581 (8) fail to comply with this chapter or rules or regulations promulgated under this
582 chapter, or fail to comply with any other state or federal law, including the rules and regulations
583 thereunder, applicable to any business authorized or conducted under this chapter;

584 (9) make, in any manner, any false or deceptive statement or representation including,
585 with regard to the rates, points, or other financing terms or conditions for a residential mortgage
586 loan, or engage in bait and switch advertising;

587 (10) negligently make any false statement or knowingly and willfully make any omission
588 of material fact in connection with any information or reports filed with a governmental agency
589 or the Nationwide Mortgage Licensing System and Registry or in connection with any
590 investigation conducted by the commissioner or another governmental agency;

591 (11) make any payment, threat or promise, directly or indirectly, to any person for the
592 purposes of influencing the independent judgment of the person in connection with a residential
593 mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of

594 a property, for the purposes of influencing the independent judgment of the appraiser with
595 respect to the value of the property;

596 (12) collect, charge, attempt to collect or charge or use or propose any agreement
597 purporting to collect or charge any fee prohibited by this chapter;

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

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

602 Section 16. Each licensed mortgage loan originator shall submit to the Nationwide
603 Mortgage Licensing System and Registry reports of condition, which shall be in such form and
604 shall contain such information as the Nationwide Mortgage Licensing System and Registry may
605 require.

606 Section 17. Notwithstanding any general or special law or rules or regulations to the
607 contrary, the commissioner is required to report regularly violations of this chapter, as well as
608 enforcement actions and other relevant information, to the Nationwide Mortgage Licensing
609 System and Registry subject to the provisions contained in section 13.

610 Section 18. The unique identifier of any person originating a residential mortgage loan
611 shall be clearly shown on all residential mortgage loan application forms, solicitations or
612 advertisements, including business cards or websites, and any other documents as established by
613 rule, regulation or order of the commissioner.

614 Section 19. The commissioner may adopt, amend or repeal rules and regulations which
615 may include an adequate net worth requirement for mortgage loan originators to aid in the
616 administration and enforcement of this chapter.

617 SECTION 2. A person previously licensed under chapter 255F of the General Laws
618 subsequent to the effective date of said chapter 255F, applying to be licensed again, shall prove
619 that they have completed all of the continuing education requirements for the year in which the
620 license was last held.

621 SECTION 3. Section 17 and section 18 of chapter 206 of the acts of 2007 are hereby
622 repealed.

623 SECTION 4. Section 19 of chapter 255F of the General Laws, as appearing in section 1,
624 shall take effect upon its passage.

625 SECTION 5. Sections 1 and 2 shall take effect on July 31, 2009.