

**HOUSE . . . . . No. 4178**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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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 SECTION 1. The General Laws are hereby amended by striking out chapter 255F and  
2 inserting in place thereof the following chapter:-

3 CHAPTER 255F.

4 LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

7 “Clerical or support duties”, may include subsequent to the receipt of an application: (i)  
8 the receipt, collection, distribution, and analysis of information common for the processing or  
9 underwriting of a residential mortgage loan; and (ii) communicating with a consumer to obtain  
10 the information necessary for the processing or underwriting of a loan, to the extent that such  
11 communication does not include offering or negotiating loan rates or terms, or counseling  
12 consumers about residential mortgage loan rates or terms.

13 “Commissioner”, the commissioner of the division of banks.

14 “Depository institution”, shall have the same meaning as in section 3 of the Federal  
15 Deposit Insurance Act, and shall include credit unions.

16 “Division”, the division of banks.

17 “Entity”, a person or entity that is a licensee under chapter 255E.

18 “Federal banking agencies”, the Board of Governors of the Federal Reserve System, the  
19 Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit  
20 Union Administration, and the Federal Deposit Insurance Corporation.

21 “Immediate family member”, a spouse, child, step child, adopted child, sibling, step  
22 sibling, adopted sibling, parent, step parent, adopted parent, grandparent, or grandchild.

23 “Individual”, a natural person.

24 “Loan processor or underwriter”, an individual who performs clerical or support duties as  
25 an employee at the direction of and subject to the supervision and instruction of a person  
26 licensed, or exempt from licensing under this chapter; provided, however, that said person shall  
27 not represent to the public, through advertising or other means of communicating or providing  
28 information including, but not limited to, the use of business cards, stationery, brochures, signs,  
29 rate lists, or other promotional items, that such individual is licensed or otherwise authorized by  
30 law to perform any of the activities of a mortgage loan originator or that such person intends to  
31 perform any of the activities of a mortgage loan originator.

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33 “Mortgage loan originator”, a person who for compensation or gain or in the expectation  
34 of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or  
35 negotiates terms of a residential mortgage loan.

36 “Nationwide mortgage licensing system and registry”, a mortgage licensing system  
37 developed and maintained by the Conference of State Bank Supervisors and the American  
38 Association of Residential Mortgage Regulators for the licensing and registration of licensed  
39 mortgage loan originators.

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

42 “Person”, a natural person, corporation, company, limited liability company, partnership,  
43 or association.

44 “Real estate brokerage activity”, any activity involving offering or providing real estate  
45 brokerage services to the public, including without limitation: (i) acting as a real estate agent or  
46 real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) facilitating the sale,  
47 purchase, lease, rental, or exchange of real property; (iii) negotiating, on behalf of any person,  
48 any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property  
49 other than in connection with providing financing with respect to any such transaction; (iv)  
50 engaging in any activity for which a registration or license as a real estate agent or real estate  
51 broker is required; and (v) offering to engage in any activity, or act in any capacity, described in  
52 clauses (i) to (iv), inclusive.

53 “Registered mortgage loan originator”, any individual who: (a) meets the definition of  
54 mortgage loan originator and is an employee of: (i) a depository institution; (ii) a subsidiary that

55 is (A) owned and controlled by a depository institution; and (B) regulated by a federal banking  
56 agency; or (iii) an institution regulated by the Farm Credit Administration; and (b) is registered  
57 with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and  
58 Registry.

59 “Residential mortgage loan”, any loan primarily for personal, family, or household use  
60 that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a  
61 dwelling as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. section 1602(v) or  
62 residential real estate upon which is constructed or intended to be constructed a dwelling as so  
63 defined.

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

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

68 Section 2. (a) No individual shall act as a mortgage loan originator with respect to any  
69 dwelling unless such person has first obtained a mortgage loan originator license from the  
70 commissioner or is exempt from the licensure requirement under subsection (b). No person shall  
71 knowingly employ or retain a mortgage loan originator unless the mortgage loan originator is  
72 licensed under this chapter or is exempt from the licensure requirement under subsection (b).  
73 Each licensed mortgage loan originator shall register with the Nationwide Mortgage Licensing  
74 System and Registry and shall maintain a valid unique identifier issued by the Nationwide  
75 Mortgage Licensing System and Registry.

76 (b) The following shall be not be required to obtain a license pursuant to subsection (a):  
77 (i) registered mortgage loan originators; (ii) any person offering or negotiating a residential  
78 mortgage loan with or on behalf of an immediate family member; (iii) any person offering or  
79 negotiating a residential mortgage loan secured by a dwelling that served as the individual's  
80 primary residence; (iv) any person admitted to practice law in the commonwealth negotiating the  
81 terms of a residential mortgage loan on behalf of a client as an ancillary matter to the person's  
82 representation of the client, unless the person is compensated by a lender, a mortgage broker, or  
83 other mortgage loan originator or by any agent of such lender, mortgage broker, or other  
84 mortgage loan originator; (v) any person engaged solely as a loan processor or underwriter  
85 unless said person is acting as an independent contractor; (vi) any person that performs only real  
86 estate brokerage activities and is licensed or registered pursuant to sections 87PP to 87DDD1/2,  
87 inclusive, of chapter 112, unless the person is compensated by a lender, a mortgage broker, or  
88 other mortgage loan originator or by any agent of such lender, mortgage broker, or other  
89 mortgage loan originator; and (vii) any person solely involved in extensions of credit relating to  
90 timeshare plans, as that term is defined in 11 U.S.C. section 101(53D).

91 (c) The commissioner may promulgate rules and regulations for the administration and  
92 enforcement of this chapter.

93 Section 3. (a) Any person seeking a mortgage loan originator's license pursuant to this  
94 chapter shall file an application, accompanied by the appropriate fee, with the division. Said  
95 application shall be made on a form to be furnished by the division, and shall require the  
96 applicant to state his name, the name and address of his employer, if any, and such other  
97 information as the division may require. The applicant shall, at a minimum, furnish to the  
98 Nationwide Mortgage Licensing System and Registry information concerning the applicant's

99 identity, including: (i) fingerprints for submission to the Federal Bureau of Investigation, and  
100 any governmental agency or entity authorized to receive such information for a state, national  
101 and international criminal history background check; and (ii) personal history and experience in  
102 a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the  
103 submission of authorization for the Nationwide Mortgage Licensing System and Registry and the  
104 commissioner to obtain: (1) an independent credit report obtained from a consumer reporting  
105 agency described in section 603(p) of the Fair Credit Reporting Act; and (2) information related  
106 to any administrative, civil or criminal findings by any governmental entity.

107 (b) The commissioner may enter into agreements with the Nationwide Mortgage  
108 Licensing System and Registry or other entities designated by the Nationwide Mortgage  
109 Licensing System and Registry to collect and maintain records and process transaction fees or  
110 other fees related to licensees or other persons subject to this chapter.

111 (c) The commissioner may, for the purpose of participating in the Nationwide Mortgage  
112 Licensing System and Registry, waive or modify any requirement of this chapter and may  
113 establish new requirements as reasonably necessary to participate in the Nationwide Mortgage  
114 Licensing System and Registry.

115 (d) The commissioner may use the Nationwide Mortgage Licensing System and  
116 Registry as a channeling agent for requesting information from the Federal Bureau of  
117 Investigation for the purposes of clause (i) and subclause (2) of clause (ii) of subsection (a) and  
118 distributing information to the Department of Justice or any governmental agency.

119 (e) The commissioner may use the Nationwide Mortgage Licensing System and Registry  
120 as a channeling agent for requesting and distributing information to and from any source for the

121 purposes of subclauses (1) and (2) of clause (ii) of subsection (a) as so directed by the  
122 commissioner.

123         Section 4. (a) The commissioner shall issue a mortgage loan originator license to an  
124 applicant therefore unless the applicant: (i) has had a mortgage loan originator license revoked  
125 in any governmental jurisdiction; provided, however, that a subsequent formal vacation of such  
126 revocation shall not be deemed a revocation; (ii) has been convicted of, or pled guilty, admitted  
127 to sufficient facts or nolo contendere to, a felony in a domestic, foreign, or military court: (a)  
128 during the 7-year period preceding the date of the application for licensing and registration; (b) at  
129 any time preceding such date of application, if such felony involved an act of fraud, dishonesty,  
130 or a breach of trust, or money laundering; or (c) has other convictions or admissions to sufficient  
131 facts involving fraud, dishonesty, or a breach of trust, or that the applicant has had any adverse  
132 civil judgments involving fraudulent dealings; provided, however, that a pardon of a conviction  
133 shall not be a conviction for purposes of this subsection; (iii) has failed to demonstrate financial  
134 responsibility, character, reputation, integrity and general fitness such as to command the  
135 confidence of the community and to warrant a determination that such applicant will operate  
136 honestly, fairly, soundly and efficiently in the public interest, consistent with the purposes of this  
137 chapter if the applicant is granted a license; provided, however, that for purposes of this clause a  
138 person shall have shown that he or she is not financially responsible when he or she has shown a  
139 disregard in the management of his or her own financial condition; and provided further, that a  
140 determination that an individual has not shown financial responsibility may include, but shall not  
141 be limited to: (a) current outstanding judgments, except judgments solely as a result of medical  
142 expenses; (b) current outstanding tax liens or other government liens and filings; (c) foreclosure  
143 within the past 3 years; or (d) a pattern of seriously delinquent accounts within the past 3 years;

144 (iv) failure to complete the pre-licensing education requirement described in section 5; (v) failure  
145 to pass a written test that meets the test requirement described in section 6; or (vi) has failed to  
146 meet the surety bond requirement as required pursuant to section 12. The commissioner shall  
147 either grant or deny an application within a reasonable period of such filing. If the commissioner  
148 denies an application for licensure, he shall notify the applicant of the denial, in writing, within  
149 10 days of such denial. Within 20 days thereafter, the commissioner shall enter upon the  
150 division's records a written decision and findings containing the reasons supporting the denial  
151 and shall forthwith give written notice thereof by registered mail to the applicant. Within 30 days  
152 after receipt of such notice, the applicant may seek judicial review of the denial in accordance  
153 with section 14 of chapter 30A.

154 (b) A mortgage loan originator may be employed by no more than 1 entity. Each license  
155 issued to a mortgage loan originator shall be provided to, and maintained by, the employing  
156 entity at the employing entity's main office. If the employment of a mortgage loan originator is  
157 terminated, the employing entity shall return the mortgage loan originator's license to the  
158 division within 5 business days after termination. The reason for termination shall be provided to  
159 the commissioner. For a period of 1 year after the termination of employment, the mortgage loan  
160 originator may request the re-assignment of the license to another employing entity by  
161 submitting an application, together with a re-assignment fee as established by the commissioner,  
162 to the division. The return of the license of any mortgage loan originator to the division that is  
163 not re-assigned to another employing entity shall terminate the right of the mortgage loan  
164 originator to engage in any residential mortgage loan origination activity until reactivation of  
165 said license. The license of any mortgage loan originator that has been returned to the division  
166 and not re-assigned to another employing entity within 1 year of termination of employment



167 shall be cancelled; provided, however, that the person holding the license may reapply to the  
168 division for licensure pursuant to this chapter. Each license shall state the name of the mortgage  
169 loan originator licensee and the name and main office address of the entity employing such  
170 mortgage loan originator.

171           Section 5. (a) An applicant for a mortgage loan originator’s license shall complete a  
172 minimum of 20 hours of pre-licensing education approved by the Nationwide Mortgage  
173 Licensing System and Registry based upon reasonable standards which shall include, without  
174 limitation: (i) 3 hours of federal law and regulations; (ii) 3 hours of ethics, which shall include  
175 instruction on fraud, consumer protection, and fair lending issues; (iii) 2 hours of training related  
176 to lending standards for the nontraditional mortgage product marketplace; and (iv) state law and  
177 regulation, which shall include instruction on state consumer protection laws and other related  
178 statutes.

179           Section 6. (a) An applicant for a mortgage loan originator’s license shall pass, in  
180 accordance with the standards established under this section, a qualified written examination  
181 developed by the Nationwide Mortgage Licensing System and Registry and administered by a  
182 test provider approved by the Nationwide Mortgage Licensing System and Registry based upon  
183 reasonable standards.

184           (b) A written examination shall not be considered a qualified written examination for  
185 purposes of this section unless the test adequately measures the applicant’s knowledge and  
186 comprehension in appropriate subject areas, including, but not limited to: (i) ethics; (ii) federal  
187 law and regulation pertaining to mortgage origination; (iii) state law and regulation pertaining to

188 mortgage origination; and (iv) federal and state law and regulation, including instruction on  
189 fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

190 (c) No person shall be considered to have passed the qualified written examination unless  
191 the person achieves a test score of not less than 75 per cent correct answers to questions. A  
192 person may retake the qualified written examination 3 consecutive times with each consecutive  
193 taking occurring at least 30 days after the preceding examination. Upon failing 3 consecutive  
194 written examinations, a person shall not be eligible to sit for another written examination for a  
195 period of at least 6 months. A licensed mortgage loan originator who fails to maintain a valid  
196 license for a period of 5 years or longer shall retake the test, not taking into account any time  
197 during which such individual is a registered mortgage loan originator.

198 Section 7. (a) A mortgage loan originator's license issued pursuant to this chapter shall  
199 be valid for a period of not more than 1 year. The division may renew a mortgage loan  
200 originator's license upon the submission of documents showing that: (i) the mortgage loan  
201 originator remains in compliance with this chapter; (ii) the mortgage loan originator has satisfied  
202 the annual continuing education requirements pursuant to section 8; and (iii) the mortgage loan  
203 originator has paid all required fees for renewal of the license. The license of a mortgage loan  
204 originator failing to satisfy the minimum standards for license renewal shall expire.

205 (b) The commissioner may adopt procedures for the reinstatement of expired licenses  
206 consistent with the standards established by the Nationwide Mortgage Licensing System and  
207 Registry. A mortgage loan originator licensed pursuant to this chapter who subsequently  
208 becomes unlicensed shall complete the continuing education requirements for the last year in  
209 which the license was held prior to issuance of a new or renewed license.

210 Section 8. (a) A mortgage loan originator licensed pursuant to this chapter shall,  
211 annually, complete a minimum of 8 hours of continuing education approved by the Nationwide  
212 Mortgage Licensing System and Registry based upon reasonable standards, which shall include,  
213 without limitation: (i) 3 hours of federal law and regulation; (ii) 2 hours of ethics, which shall  
214 include instruction on fraud, consumer protection, and fair lending issues; (iii) 2 hours of training  
215 related to lending standards for the nontraditional mortgage product marketplace; and (iv) state  
216 law and regulation, which shall include instruction on state consumer protection laws and other  
217 related statutes. A licensed mortgage loan originator who is an approved instructor of an  
218 approved continuing education course may receive credit to satisfy such licensed mortgage loan  
219 originator's annual continuing education requirement at the rate of 2 hours credit for every 1  
220 hour taught.

221 (b) A mortgage loan originator licensed pursuant to this chapter shall: (i) only receive  
222 credit for a continuing education course in the year in which the course is taken; and (ii) not take  
223 the same approved course in the same or successive years to meet the annual requirements for  
224 continuing education.

225 Section 9. The commissioner may participate in the Nationwide Mortgage Licensing  
226 System and Registry and shall require mortgage loan originators to be licensed and registered  
227 through the Nationwide Mortgage Licensing System and Registry. The commissioner may  
228 establish by regulation requirements, including, but not limited to: (i) background checks for: (1)  
229 criminal history through a database that utilizes the fingerprint of the subject or other databases;  
230 (2) civil or administrative records; (3) credit history; or (4) any other information as deemed  
231 necessary by the Nationwide Mortgage Licensing System and Registry; (ii) the payment of fees  
232 to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry;

233 provided, however, that each application for a license shall be accompanied by an investigation  
234 fee and license fee provided, that investigation and license fees shall be determined annually by  
235 the secretary of administration under section 3B of chapter 7; provided, further, that such  
236 investigation and license fees shall not apply to any community development corporation as  
237 defined in section 1 of chapter 40F and organized under the General Laws; and provided further,  
238 that classifications or adjustments as deemed necessary may be made relative to fees for any  
239 nonprofit agency or corporation incorporated under the laws of the commonwealth for the  
240 purpose of assisting low to moderate income households in the purchase or rehabilitation of  
241 family residences of 4 units or less and which holds tax-exempt status granted under the  
242 provisions of section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as otherwise  
243 determined by the commissioner; (iii) the setting or resetting as necessary of renewal or reporting  
244 dates; and (iv) requirements for amending or surrendering a license or any other such activities  
245 as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing  
246 System and Registry.

247 Section 10. The commissioner shall establish a process whereby mortgage loan  
248 originators may challenge information entered into the Nationwide Mortgage Licensing System  
249 and Registry by the commissioner; provided, however, that anyone aggrieved by a decision of  
250 the commissioner may appeal said decision in accordance with chapter 30A.

251 Section 11. (a) The commissioner may for the administration and enforcement of this  
252 chapter, pursuant to chapter 30A: (i) deny, suspend, revoke, condition or decline to renew a  
253 license for a violation of this chapter, or of any rule or regulation issued under this chapter or of  
254 any order or directive entered under this chapter; (ii) deny, suspend, revoke, condition or decline  
255 to renew a license if an applicant or licensee fails at any time to meet the requirements of section

256 4 or section 7, or withholds information or makes a material misstatement in an application for a  
257 license or renewal of a license; (iii) order restitution against persons subject to this chapter for  
258 violations of this chapter; (iv) impose fines on persons subject to this chapter pursuant to  
259 subsections (b) and (c); (v) order or direct persons subject to this chapter to cease and desist from  
260 conducting business, including immediate temporary orders to cease and desist; (vi) order or  
261 direct persons subject to this chapter to cease any activities inconsistent with or in violation of  
262 this chapter, including immediate temporary orders to cease and desist; (vii) enter immediate  
263 temporary orders to cease business under a license if the commissioner determines that such  
264 license was erroneously granted or the licensee is currently in violation of this chapter; or (viii)  
265 order or direct such other affirmative action as the commissioner deems necessary.

266 (b) The commissioner may impose a civil assessment on a person subject to this chapter,  
267 if the commissioner finds, on the record after notice and opportunity for hearing, that such  
268 person has violated or failed to comply with any requirement of this chapter or any regulation  
269 promulgated or order issued by the commissioner.

270 (c) The maximum amount of a civil assessment imposed by the commissioner for  
271 violation of this chapter shall not exceed \$25,000; provided, however, that each violation or  
272 failure to comply with any directive or order of the commissioner shall constitute separate and  
273 distinct violations or failures for purposes of imposing civil assessments.

274 (d) (i) Whenever the commissioner determines that any person has, directly or indirectly,  
275 violated this chapter or any rule or regulation promulgated hereunder or any order issued by the  
276 commissioner pursuant to this chapter or any written agreement entered between the licensee and  
277 the commissioner, the commissioner may serve upon that person a written notice of intent to: (1)

278 prohibit the person from performing in the capacity of a principal employee on behalf of any  
279 licensee for a period of time that the commissioner considers necessary; (2) prohibit the person  
280 from obtaining a license from the commissioner for a period up to 36 months following the  
281 effective date of an order issued under subparagraph (ii) or (iii); or (3) prohibit the person from  
282 any further actions, in any manner, as a mortgage loan originator or to prohibit the person from  
283 being employed by, as agent of, or operating on behalf of a licensee under this chapter or any  
284 other business which requires a license from the commissioner.

285 (ii) A written notice issued under clause (i) shall contain a written statement of the facts  
286 that support the prohibition and shall give notice of an opportunity for a hearing to be held  
287 thereon. The hearing shall occur not more than 30 days after the date of service upon the  
288 commissioner requesting a hearing. If the person fails to submit a request for a hearing within 20  
289 days of service of notice under clause (i), or otherwise fails to appear in person or by a duly  
290 authorized representative, the party shall be considered to have consented to the issuance of an  
291 order of prohibition in accordance with the notice.

292 (iii) In the event that consent is granted by operation of clause (ii), or if after a hearing  
293 the commissioner finds that any of the grounds specified in the notice have been established, the  
294 commissioner may issue an order of prohibition in accordance with clause (i) as the  
295 commissioner finds appropriate.

296 (iv) An order issued under clauses (ii) or (iii) shall be effective upon service upon the  
297 person who is the subject of the order. The commissioner shall also serve a copy of the order  
298 upon the licensee of which the person is an employee or on whose behalf the person is

299 performing. The order shall remain in effect and enforceable until it is modified, terminated,  
300 suspended or set aside by the commissioner or a court of competent jurisdiction.

301 (v) Except as consented to in writing by the commissioner, any person who, pursuant to  
302 an order issued under clauses (ii) or (iii) has been prohibited from participating in whole or in  
303 part as a mortgage loan originator shall not, while the order is in effect, continue or commence to  
304 perform in the capacity of a mortgage loan originator, or otherwise participate in any manner, if  
305 so prohibited by order of the commissioner, in the conduct of the affairs of: (1) a mortgage loan  
306 originator licensed under this chapter; (2) any other business which requires a license from the  
307 commissioner; or (3) any bank as defined under section 1 of chapter 167 or any subsidiary  
308 thereof.

309 (e) The commissioner may suspend, revoke or refuse to renew the license of the entity  
310 employing any licensed mortgage originator upon finding that: (i) the entity knew or reasonably  
311 should have known that the mortgage loan originator violated this chapter or any rule or  
312 regulation promulgated hereunder, or any other law applicable to the conduct of its business; (ii)  
313 the entity knew of any fact or condition which, if it had existed at the time of the original  
314 application for such license, would have warranted the commissioner in refusing to issue such  
315 license; or (iii) the mortgage loan originator committed any fraud, misappropriated funds or  
316 misrepresented any of the material particulars of a mortgage loan transaction approved by the  
317 entity.

318 (f) Nothing in this chapter shall preclude the prosecution of a criminal action arising  
319 from an act or omission for which a civil assessment has been imposed.

320 Section 12. (a) Each mortgage loan originator shall be covered by a surety bond in  
321 accordance with this section. The surety bond shall provide coverage for each mortgage loan  
322 originator in an amount as prescribed in subsection (b) and shall be in a form prescribed by the  
323 commissioner. If a mortgage loan originator is an employee or exclusive agent of an entity, the  
324 surety bond of said entity may be used to satisfy the mortgage loan originator's surety bond  
325 requirement.

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

328 (c) Upon commencement of an action on a licensee's bond the commissioner may  
329 require the filing of a new bond. The commissioner shall, immediately upon recovery upon any  
330 action on the bond, require that the licensee to file a new bond.

331 Section 13. (a) Except as otherwise provided in Public Law 110-289, section 1512, the  
332 requirements under any federal law or section 10 of chapter 66 regarding the privacy or  
333 confidentiality of any information or material provided to the Nationwide Mortgage Licensing  
334 System and Registry, and any privilege arising under federal or state law, including the rules of  
335 any federal or state court, with respect to such information or material, shall continue to apply to  
336 such information or material after the information or material has been disclosed to the  
337 Nationwide Mortgage Licensing System and Registry. Such information and material may be  
338 shared with all state and federal regulatory officials with mortgage industry oversight authority  
339 without the loss of privilege or the loss of confidentiality protections provided by federal law or  
340 said section 10 of chapter 66.



341 (b) For the purposes described in subsection (a), the commissioner may enter agreements  
342 or sharing arrangements with other governmental agencies, the Conference of State Bank  
343 Supervisors, the American Association of Residential Mortgage Regulators or other associations  
344 representing governmental agencies as established by rule, regulation or order of the  
345 commissioner.

346 (c) Information or material that is subject to a privilege or confidentiality under  
347 subsection (a) shall not be subject to: (i) disclosure under any federal or state law governing the  
348 disclosure to the public of information held by an officer or an agency of the federal government  
349 or the respective State; or (ii) subpoena or discovery, or admission into evidence, in any private  
350 civil action or administrative process, unless with respect to any privilege held by the  
351 Nationwide Mortgage Licensing System and Registry with respect to such information or  
352 material, the person to whom such information or material pertains waives, in whole or in part, in  
353 the discretion of such person, that privilege.

354 (d) Section 10 of chapter 66 relating to the disclosure of confidential supervisory  
355 information or any information or material described in subsection (a) that is inconsistent with  
356 said subsection (a) shall be superseded by the requirements of this section.

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

361 Section 14. (a) The commissioner shall have the authority to conduct investigations and  
362 examinations for: (i) purposes of initial licensing, license renewal, license suspension, license

363 conditioning, license revocation or termination, or general or specific inquiry or investigation to  
364 determine compliance with this chapter, the commissioner shall have the authority to access,  
365 receive and use any books, accounts, records, files, documents, information or evidence  
366 including, but not limited to: (1) criminal, civil and administrative history information, including  
367 non-conviction data as specified in applicable provisions of the General Laws; (2) personal  
368 history and experience information including independent credit reports obtained from a  
369 consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and (3)  
370 any other documents, information or evidence the commissioner deems relevant to the inquiry or  
371 investigation regardless of the location, possession, control or custody of such documents,  
372 information or evidence; and (ii) the purposes of investigating violations or complaints arising  
373 under this chapter, or for the purposes of examination, the commissioner may review,  
374 investigate, or examine any licensee, individual or person subject to this chapter, in order to carry  
375 out the purposes of this chapter.

376 (b) Each licensee or person subject to this chapter shall make available to the  
377 commissioner upon request the books and records relating to the operations of such licensee,  
378 individual or person. The commissioner shall have access to such books and records and  
379 interview the officers, principals, mortgage loan originators, employees, independent contractors,  
380 agents, and customers of the licensee, individual or person subject to this chapter concerning  
381 their business.

382 (c) Each licensee or person subject to this chapter shall make or compile reports or  
383 prepare other information as directed by the commissioner in order to carry out the purposes of  
384 this section including, but not limited to: (i) accounting compilations; (ii) information lists and

385 data concerning loan transactions in a format prescribed by the commissioner; or (iii) such other  
386 information deemed necessary to carry out the purposes of this section.

387 (d) In making any examination or investigation authorized by this chapter, the  
388 commissioner may control access to any documents and records of the licensee or person under  
389 examination or investigation. The commissioner may take possession of the documents and  
390 records or place a person in exclusive charge of the documents and records in the place where  
391 they are usually kept. During the period of control, no individual or person shall remove or  
392 attempt to remove any of the documents and records except pursuant to a court order or with the  
393 consent of the commissioner. Unless the commissioner has reasonable grounds to believe the  
394 documents or records of the licensee have been, or are at risk of being altered or destroyed for  
395 purposes of concealing a violation of this chapter, the licensee or owner of the documents and  
396 records shall have access to the documents or records as necessary to conduct its ordinary  
397 business affairs.

398 The commissioner shall preserve a full record of each such examination of a licensee. All  
399 records of investigation and reports of examination by the commissioner including, but not  
400 limited to, work papers, information derived from such reports or in response to such reports, and  
401 any copies thereof in the possession of any licensee under the supervision of the commissioner,  
402 shall be confidential and privileged communications, shall not be subject to subpoena and shall  
403 not be a public record under clause Twenty-sixth of section 7 of chapter 4. For the purpose of  
404 this paragraph, records of investigation and reports of examinations shall include records of  
405 investigation and reports of examinations conducted by any bank regulatory agency of the  
406 federal government and any other state, and of any foreign government which are considered  
407 confidential by such agency or foreign government and which are in possession of the

408 commissioner. In any proceeding before a court, the court may issue a protective order to seal  
409 the record protecting the confidentiality of any such record, other than any such record on file  
410 with the court or filed in connection with the court proceeding, and the court may exclude the  
411 public from any portion of a proceeding at which any such record may be disclosed. Copies of  
412 such reports of examination shall be furnished to a licensee for its use only and shall not be  
413 exhibited to any other person, organization or agency without prior written approval by the  
414 commissioner. The commissioner may furnish to regulatory agencies of the federal government,  
415 of other states, or of foreign countries and any law enforcement agency, such information,  
416 reports, inspections and statements relating to the licensees under his supervision.

417 (e) In order to carry out the purposes of this section, the commissioner may: (i) retain  
418 attorneys, accountants, or other professionals and specialists as examiners, auditors, or  
419 investigators to conduct or assist in the conduct of examinations or investigations; (ii) enter into  
420 agreements or relationships with other government officials or regulatory associations in order to  
421 improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform  
422 methods or procedures, and documents, records, information or evidence obtained under this  
423 section; (iii) use, hire, contract or employ public or privately available analytical systems,  
424 methods or software to examine or investigate the licensee, individual or person subject to this  
425 chapter; (iv) accept and rely on examination or investigation reports made by other government  
426 officials, within or without the commonwealth; or (v) accept audit reports made by an  
427 independent certified public accountant for the licensee, individual or person subject to this  
428 chapter in the course of that part of the examination covering the same general subject matter as  
429 the audit and may incorporate the audit report in the report of the examination, report of  
430 investigation or other writing of the commissioner.

431 (f) No person subject to this chapter shall knowingly withhold, abstract, remove,  
432 mutilate, destroy, or secrete any books, records, computer records, or other information unless  
433 otherwise authorized by law or regulation.

434 Section 15. It shall be a violation of this chapter for any person to: (a) directly or  
435 indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to  
436 defraud any person; (b) engage in any unfair or deceptive practice toward any person; (c) obtain  
437 property by fraud or misrepresentation; (d) solicit or enter into a contract with a borrower that  
438 provides in substance that the person or individual subject to this chapter may earn a fee or  
439 commission through best efforts to obtain a loan even though no loan is actually obtained for the  
440 borrower; (e) solicit, advertise, or enter into a contract for specific interest rates, points, or other  
441 financing terms unless the terms are actually available at the time of soliciting, advertising, or  
442 contracting; (f) conduct any business covered by this chapter without holding a valid license as  
443 required under this chapter, or assist or aid and abet any person in the conduct of business under  
444 this chapter without a valid license as required under this chapter; (g) fail to make disclosures as  
445 required by this chapter and any other applicable state or federal law including regulations  
446 thereunder; (h) fail to comply with this chapter or rules or regulations promulgated under this  
447 chapter, or fail to comply with any other state or federal law, including the rules and regulations  
448 thereunder, applicable to any business authorized or conducted under this chapter; (i) make, in  
449 any manner, any false or deceptive statement or representation including, with regard to the  
450 rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in  
451 bait and switch advertising; (j) make any false statement or knowingly and willfully make any  
452 omission of material fact in connection with any information or reports filed with a governmental  
453 agency or the Nationwide Mortgage Licensing System and Registry or in connection with any

454 investigation conducted by the commissioner or another governmental agency; (k) make any  
455 payment, threat or promise, directly or indirectly, to any person for the purposes of influencing  
456 the independent judgment of the person in connection with a residential mortgage loan, or make  
457 any payment threat or promise, directly or indirectly, to any appraiser of a property, for the  
458 purposes of influencing the independent judgment of the appraiser with respect to the value of  
459 the property; (l) collect, charge, attempt to collect or charge or use or propose any agreement  
460 purporting to collect or charge any fee prohibited by this chapter; (m) cause or require a  
461 borrower to obtain property insurance coverage in an amount that exceeds the replacement cost  
462 of the improvements as established by the property insurer; or (n) fail to truthfully account for  
463 monies belonging to a party to a residential mortgage loan transaction.

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

468           Section 17. The commissioner shall report violations of this chapter, as well as  
469 enforcement actions and other relevant information, to the Nationwide Mortgage Licensing  
470 System and Registry subject to the provisions contained in section 13, in conformance with Pub.  
471 Law 110-289, section 1512.

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

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

479           SECTION 2. Section 17 and section 18 of chapter 206 of the acts of 2007 are hereby  
480 repealed.

481           SECTION 3. Notwithstanding any general or special law to the contrary, a person  
482 licensed under chapter 255F of the General Laws prior to the effective date of this act shall prove  
483 that they have completed all of the continuing education requirements to the satisfaction of the  
484 commissioner.

485           SECTION 4. Section 19 of chapter 255F of the General Laws, inserted by section 1, shall  
486 take effect upon its passage. The remainder of section 1 shall take effect on July 31, 2009;  
487 provided, however, that subsection (a) of section 2 of chapter 255F of the General Laws, as  
488 appearing in section 1, shall apply on January 1, 2011 or such later date, as approved by the  
489 Secretary of the United States Department of Housing and Urban Development, pursuant to the  
490 authority granted under Public Law 110-289, section 1508, to persons who are licensed  
491 mortgage loan originators on July 31, 2009; and provided further, that said subsection (a) of said  
492 section 2 of said chapter 255F of the General Laws, as appearing in section 1, shall apply to all  
493 other persons on July 31, 2010 or such later date, as approved by the said Secretary, pursuant to  
494 the authority granted under said Public Law 110-289, section 1508.