

# SENATE . . . . . No. 452

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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, as  
2 inserted by section 15 of chapter 206 of the acts of 2008, and inserting in place thereof the  
3 following chapter:

4           CHAPTER 255F.

5           LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

8           “Commissioner”, the commissioner of banks.

9           “Depository institution”, the term “depository institution” has the same meaning as in  
10 section 3 of the Federal Deposit Insurance Act, and includes any credit union.

11          “Division”, the division of banks.

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

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

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

“Individual”, a natural person.

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

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

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

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

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

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

(A) takes a residential mortgage loan application; or

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

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

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

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

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

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

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

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

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

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

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

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

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

“Registered mortgage loan originator”, any individual who:

(a) meets the definition of mortgage loan originator and is an employee of:

(i) a depository institution;

(ii) a subsidiary that is—

(A) owned and controlled by a depository institution; and

(B) regulated by a federal banking agency; or

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

(b) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

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

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

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

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

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

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

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

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

(3) The following are exempt from this chapter:

(a) Registered Mortgage Loan Originators, when acting for an entity are exempt from this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) foreclosures within the past 3 years;

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

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

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

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

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

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

(a) 3 hours of federal and state law and regulations;

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

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

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

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

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

(5) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System and Registry in clauses (a), (b) and (c) of subsection (4) for any state shall be

accepted as credit towards completion of pre-licensing education requirements in the commonwealth.

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

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

- (a) ethics;
- (b) federal law and regulation pertaining to mortgage origination;
- (c) state law and regulation pertaining to mortgage origination; and
- (d) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

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

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

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

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

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

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

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

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

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

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

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

(a) 3 hours of federal and state law and regulations;

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

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

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

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

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

(5) A licensed mortgage loan originator—

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

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

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

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

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

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

Section 9. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the commissioner is authorized to participate in the Nationwide Mortgage Licensing System and



318 Registry. For this purpose, the commissioner may establish by regulation requirements as  
319 necessary, including, but not limited to:-

320 (1) background checks for:-

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

322 (b) civil or administrative records;

323 (c) credit history; or

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

326 (2) the payment of fees to apply for or renew licenses through the Nationwide Mortgage  
327 Licensing System and Registry provided, however, that each application for a license shall be  
328 accompanied by an investigation fee and license fee provided, that investigation and license fees  
329 shall be determined annually by the secretary of administration under section 3B of chapter 7;  
330 provided, further, that such investigation and license fees shall not apply to any community  
331 development corporation as defined in section 1 of chapter 40F and organized under the General  
332 Laws provided, further, that classifications or adjustments as deemed necessary may be made  
333 relative to fees for any nonprofit agency or corporation incorporated under the laws of the  
334 commonwealth for the purpose of assisting low to moderate income households in the purchase  
335 or rehabilitation of family residences of 4 units or less and which holds tax-exempt status granted  
336 under the provisions of Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as  
337 otherwise determined by the commissioner;

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any regulation prescribed by the commissioner under this chapter or order issued under authority of this chapter.

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

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

(5) (a) Whenever the commissioner determines that any person has, directly or indirectly, violated this chapter or any rule or regulation promulgated hereunder, applicable to the conduct of a mortgage loan originator on residential property in the commonwealth, any order issued by the commissioner pursuant to this chapter or any written agreement entered between the licensee

and the commissioner, the commissioner may serve upon that person a written notice of intention:-

(i) to prohibit the person from performing in the capacity of a principal employee on behalf of any licensee for a period of time that the commissioner considers necessary;

(ii) to prohibit the person from applying for or obtaining a license from the commissioner for a period up to 36 months following the effective date of an order issued under paragraph (b) or (c); or

(iii) to prohibit the person from any further participation, in any manner, as a mortgage loan originator in the commonwealth or to prohibit the person from being employed by, as agent of, or operating on behalf of a licensee under this chapter or any other business which requires a license from the commissioner.

(b) A written notice issued under paragraph (a) shall contain a written statement of the facts that support the prohibition and shall give notice of an opportunity for a hearing to be held thereon. The hearing shall be fixed for a date not more than 30 days after the date of service upon the commissioner of the request for a hearing. If the person fails to submit a request for a hearing within 20 days of service of notice under said paragraph (a), or otherwise fails to appear in person or by a duly authorized representative, the party shall be considered to have consented to the issuance of an order of prohibition in accordance with the notice.

(c) In the event that consent is granted by operation of paragraph (b), or if after a hearing the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of prohibition in accordance with paragraph (a) as the commissioner finds appropriate.

(d) An order issued under paragraph (b) or (c) shall be effective upon service upon the person. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee or on whose behalf the person is performing. The order shall remain in effect and enforceable until it is modified, terminated, suspended or set aside by the commissioner or a court of competent jurisdiction.

(e) Except as consented to in writing by the commissioner, any person who, pursuant to an order issued under paragraph (b) or (c), has been prohibited from participating in whole or in part as a mortgage loan originator may not, while the order is in effect, continue or commence to perform in the capacity of a mortgage loan originator, or otherwise participate in any manner, if so prohibited by order of the commissioner, in the conduct of the affairs of:-

(i) any licensee under this chapter;

(ii) any other business which requires a license from the commissioner; or

(iii) any bank as defined under section 1 of chapter 167 or any subsidiary thereof.

(6) The commissioner may suspend, revoke or refuse to renew the license of the entity employing any licensed mortgage originator if the commissioner finds that: (a) the entity knew or should have known that the mortgage loan originator violated this chapter or any rule or regulation promulgated hereunder, or any other law applicable to the conduct of its business; (b) the entity knew of any fact or condition to exist which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing to issue such license; or (c) the mortgage loan originator committed any fraud, misappropriated funds or misrepresented any of the material particulars of a mortgage loan transaction approved by the entity.

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

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

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

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

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

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

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

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

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state

court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or said section 10 of chapter 66.

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

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

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

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

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

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

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

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

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

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

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

(2) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any



licensee, individual or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

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

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

(a) accounting compilations;

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

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

(5) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under

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

518         The commissioner shall preserve a full record of each such examination of a licensee.  
519 All records of investigation and reports of examination by the commissioner, including work  
520 papers, information derived from such reports or in response to such reports, and any copies  
521 thereof in the possession of any licensee under the supervision of the commissioner, shall be  
522 confidential and privileged communications, shall not be subject to subpoena and shall not be a  
523 public record under clause Twenty-sixth of section 7 of chapter 4. For the purpose of this  
524 paragraph, records of investigation and reports of examinations shall include records of  
525 investigation and reports of examinations conducted by any bank regulatory agency of the  
526 federal government and any other state, and of any foreign government which are considered  
527 confidential by such agency or foreign government and which are in possession of the  
528 commissioner. In any proceeding before a court, the court may issue a protective order to seal  
529 the record protecting the confidentiality of any such record, other than any such record on file  
530 with the court or filed in connection with the court proceeding, and the court may exclude the  
531 public from any portion of a proceeding at which any such record may be disclosed. Copies of

532 such reports of examination shall be furnished to a licensee for its use only and shall not be  
533 exhibited to any other person, organization or agency without prior written approval by the  
534 commissioner. The commissioner may, in his discretion, furnish to regulatory agencies of the  
535 federal government, of other states, or of foreign countries and any law enforcement agency,  
536 such information, reports, inspections and statements relating to the licensees under his  
537 supervision.

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

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

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

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

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

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

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

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

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

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

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

(3) obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

612           Section 20. The commissioner shall have the authority to issue rules and regulations  
613 relative to this chapter.

614           SECTION 2. A person previously licensed under chapter 255F of the General Laws  
615 subsequent to the effective date of said chapter 255F, applying to be licensed again, shall prove

616 that they have completed all of the continuing education requirements for the year in which the  
617 license was last held.

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

620 SECTION 4. Section 20 of chapter 255F of the General Laws, as appearing in section 1,  
621 shall take effect upon its passage.

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