

HOUSE No.4127

The Commonwealth of Massachusetts

By Mr. Koutoujian of Waltham, for the committee on Financial Services, on Senate, No. 452 and House, No. 980, a Bill adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (House, No. 4127). June 3, 2009.

AN ACT ADOPTING THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

FOR THE COMMITTEE

NAME:

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DISTRICT/ADDRESS:

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The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT ADOPTING THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

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

1 SECTION 1. The General Laws are hereby amended by striking out chapter 255F, as inserted by
2 section 15 of chapter 206 of the acts of 2008, and 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 requires, have
6 the following meanings:-

7 “Commissioner”, the commissioner of banks.

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

10 “Division”, the division of banks.

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

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

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

17 “Individual”, a natural person.

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

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

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

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

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

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

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

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

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

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

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

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

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

- 51 (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of
52 real property;
- 53 (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale,
54 purchase, lease, rental, or exchange of real property (other than in connection with
55 providing financing with respect to any such transaction);
- 56 (iv) engaging in any activity for which a person engaged in the activity is required to be
57 registered or licensed as a real estate agent or real estate broker under any applicable law;
58 and
- 59 (v) offering to engage in any activity, or act in any capacity, described in clauses (i), (ii),
60 (iii), or (iv) of this paragraph.

61

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

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

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

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

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

69 (i) a depository institution;

70 (ii) a subsidiary that is—

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

72 (B) regulated by a federal banking agency; or

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

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

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

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

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

84

85 Section 2. (1) An individual, unless specifically exempted from this chapter under subsection (3) of this
86 section, shall not engage in the business of a mortgage loan originator with respect to any dwelling
87 located in the commonwealth without first obtaining and maintaining annually a license under this
88 chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier
89 issued by the Nationwide Mortgage Licensing System and Registry. An individual who is an employee
90 of a person exempt from licensing under section 2 of chapter 255E who is not exempt by subsection (3)
91 shall not engage in the business of a mortgage loan originator with respect to any dwelling located in the
92 commonwealth without first obtaining and maintaining annually a license under this chapter.

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

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

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

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

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

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

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

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

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

116 (5) For the purposes of implementing an orderly and efficient licensing process the commissioner may
117 establish licensing rules or regulations and interim procedures for licensing and acceptance of

118 applications. For previously registered or licensed individuals the commissioner may establish expedited
119 review and licensing procedures.

120

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

125 (2) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish
126 relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other entities
127 designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records
128 and process transaction fees or other fees related to licensees or other persons subject to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

182 (iii) foreclosures within the past 3 years;

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

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

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

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

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

201 (8) If the commissioner shall not issue a license, he shall notify the applicant of the denial. Within
202 20 days thereafter, the commissioner shall enter upon the Division's records a written decision and
203 findings containing the reasons supporting the denial and shall forthwith give written notice thereof by
204 registered mail to the applicant. Within 30 days after receipt of such notice, the applicant may seek
205 judicial review of the denial in accordance with section 14 of chapter 30A.
206

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

210

- 211 (a) 3 hours of federal law and regulations;
- 212 (b) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair
213 lending issues;
- 214 (c) 2 hours of training related to lending standards for the nontraditional mortgage product
215 marketplace; and
- 216 (d) State law and regulation, which shall include instruction on state consumer protection laws
217 and other related statutes.

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

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

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

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

230

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

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

239 (a) ethics;

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

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

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

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

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

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

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

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

257

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

260 (a) The mortgage loan originator continues to meet the minimum standards for license issuance

261 under subsections (1) to (7), inclusive, of section 4.

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

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

265
266 (2) The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal
267 shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent
268 with the standards established by the Nationwide Mortgage Licensing System and Registry.

269
270 Section 8. (1) In order to meet the annual continuing education requirements referred to in clause (b) of
271 subsection (1) of section 7, a licensed mortgage loan originator shall complete at least 8 hours of
272 education approved in accordance with subsection (2) of this section, which shall include at least:

273 (a) 3 hours of federal law and regulation;

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

276 (c) 2 hours of training related to lending standards for the nontraditional mortgage product
277 marketplace; and

278 (d) State law and regulation, which shall include instruction on state consumer protection laws and
279 other related statutes.

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

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

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

289 (5) A licensed mortgage loan originator—

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

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

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

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

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

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

306

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

313 (1) background checks for:-

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

315 (b) civil or administrative records;

316 (c) credit history; or

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

319 (2) the payment of fees to apply for or renew licenses through the Nationwide Mortgage
320 Licensing System and Registry provided, however, that each application for a license shall be
321 accompanied by an investigation fee and license fee provided, that investigation and license fees
322 shall be determined annually by the secretary of administration under section 3B of chapter 7;
323 provided, further, that such investigation and license fees shall not apply to any community
324 development corporation as defined in section 1 of chapter 40F and organized under the General
325 Laws provided, further, that classifications or adjustments as deemed necessary may be made
326 relative to fees for any nonprofit agency or corporation incorporated under the laws of the
327 commonwealth for the purpose of assisting low to moderate income households in the purchase
328 or rehabilitation of family residences of 4 units or less and which holds tax-exempt status granted

329 under the provisions of Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as
330 otherwise determined by the commissioner;
331 (3) the setting or resetting as necessary of renewal or reporting dates; and
332 (4) requirements for amending or surrendering a license or any other such activities as the commissioner
333 deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

334

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

338

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

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

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

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

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

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

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

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

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

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

358

359 (2) The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this
360 chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that such
361 mortgage loan originator or person subject to this chapter has violated or failed to comply with any

362 requirement of this chapter or any regulation prescribed by the commissioner under this chapter or order
363 issued under authority of this chapter.

364 (3) The maximum amount of penalty for each act or omission described in subsection (2) shall be
365 \$25,000.

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

368 (5) (a) Whenever the commissioner determines that any person has, directly or indirectly, violated this
369 chapter or any rule or regulation promulgated hereunder, applicable to the conduct of a mortgage loan
370 originator on residential property in the commonwealth, any order issued by the commissioner pursuant to
371 this chapter or any written agreement entered between the licensee and the commissioner, the
372 commissioner may serve upon that person a written notice of intention:-

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

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

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

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

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

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

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

400 (i) any licensee under this chapter;

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

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

403 (6) The commissioner may suspend, revoke or refuse to renew the license of the entity employing any

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

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

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

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

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

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

422

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

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

426

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

429 (1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any
430 federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any information or
431 material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising
432 under federal or state law, including the rules of any federal or state court, with respect to such
433 information or material, shall continue to apply to such information or material after the information or
434 material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such
435 information and material may be shared with all state and federal regulatory officials with mortgage
436 industry oversight authority without the loss of privilege or the loss of confidentiality protections
437 provided by federal law or said section 10 of chapter 66.

438 (2) For these purposes, the commissioner is authorized to enter agreements or sharing arrangements with
439 other governmental agencies, the Conference of State Bank Supervisors, the American Association of

440 Residential Mortgage Regulators or other associations representing governmental agencies as established
441 by rule, regulation or order of the commissioner.

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

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

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

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

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

458

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

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

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

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

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

473 (2) For the purposes of investigating violations or complaints arising under this chapter, or for the
474 purposes of examination, the commissioner may review, investigate, or examine any licensee, individual
475 or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.

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

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

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

488 (a) accounting compilations;

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

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

492 (5) In making any examination or investigation authorized by this chapter, the commissioner may control
493 access to any documents and records of the licensee or person under examination or investigation. The
494 commissioner may take possession of the documents and records or place a person in exclusive charge of
495 the documents and records in the place where they are usually kept. During the period of control, no
496 individual or person shall remove or attempt to remove any of the documents and records except pursuant
497 to a court order or with the consent of the commissioner. Unless the commissioner has reasonable
498 grounds to believe the documents or records of the licensee have been, or are at risk of being altered or
499 destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents
500 and records shall have access to the documents or records as necessary to conduct its ordinary business
501 affairs.

502 The commissioner shall preserve a full record of each such examination of a licensee. All records
503 of investigation and reports of examination by the commissioner, including work papers, information
504 derived from such reports or in response to such reports, and any copies thereof in the possession of any
505 licensee under the supervision of the commissioner, shall be confidential and privileged communications,
506 shall not be subject to subpoena and shall not be a public record under clause Twenty-sixth of section 7 of
507 chapter 4. For the purpose of this paragraph, records of investigation and reports of examinations shall
508 include records of investigation and reports of examinations conducted by any bank regulatory agency of
509 the federal government and any other state, and of any foreign government which are considered
510 confidential by such agency or foreign government and which are in possession of the commissioner. In
511 any proceeding before a court, the court may issue a protective order to seal the record protecting the
512 confidentiality of any such record, other than any such record on file with the court or filed in connection
513 with the court proceeding, and the court may exclude the public from any portion of a proceeding at
514 which any such record may be disclosed. Copies of such reports of examination shall be furnished to a

515 licensee for its use only and shall not be exhibited to any other person, organization or agency without
516 prior written approval by the commissioner. The commissioner may, in his discretion, furnish to
517 regulatory agencies of the federal government, of other states, or of foreign countries and any law
518 enforcement agency, such information, reports, inspections and statements relating to the licensees under
519 his supervision.

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

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

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

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

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

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

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

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

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

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

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

545 (3) obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

576

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

580

581 Section 17. Notwithstanding any general or special law or rules or regulations to the contrary, the
582 commissioner is required to report regularly violations of this chapter, as well as enforcement actions and

583 other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the
584 provisions contained in section 13.

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

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

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

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

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

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