

SENATE No. 2307

The Commonwealth of Massachusetts

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In the Year Two Thousand Fourteen
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SENATE, Thursday, July 24, 2014

The committee on Ways and Means, to whom was referred the House Bill to regulate real estate appraisal management companies (House, No. 3849); reports, recommending that the same ought to pass with an amendment striking out all after the enacting clause and inserting in place thereof the text of Senate document numbered 2307.

For the committee,
Stephen M. Brewer

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1 SECTION 1. Chapter 13 of the General Laws is hereby amended by striking out section
2 92, as appearing in the 2012 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 92. (a) There is hereby established a board of real estate appraisers, which shall
5 consist of 9 members to be appointed by the governor: 2 of whom shall be members of the
6 general public appointed in accordance with section 9B; 1 of whom shall be a member of the
7 banking industry; 1 of whom shall be a representative of an appraisal management company; 1
8 of whom shall be an employee in charge or controlling person of an appraisal management
9 company; and 4 of whom shall be real estate appraisers. Each real estate appraiser who is a
10 member of the board shall be licensed or certified pursuant to sections 173 to 195, inclusive, of
11 chapter 112.

12 (b) The term of each appointed member shall be 3 years. Upon expiration of a member's
13 term, such member of the board shall continue to hold office until the appointment and
14 qualification of a successor. No person shall serve as a member of the board for more than 2
15 consecutive terms. The governor may remove a member for cause.

16 (c) Each member of the board shall be paid for expenses actually incurred in the
17 performance of official duties.

18 (d) The board shall annually elect a chairperson from among its members. The director of
19 professional licensure, with approval of the board, shall appoint an executive secretary to serve
20 the board. The division of professional licensure shall employ such other clerical and technical
21 assistants as may be necessary to discharge the official duties of the board.

22 (e) The board shall hold at least 6 meetings each year and may hold special meetings as
23 required at a time and place determined by the board.

24 SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the
25 following 14 sections:-

26 Section 264. The following terms as used in sections 264 to 277, inclusive, shall have the
27 following meanings, unless the context clearly requires otherwise:

28 “Analysis”, a study of real estate or real property other than estimating value.

29 “Applicant”, a person who applies to be registered as an appraisal management company
30 in the commonwealth.

31 “Appraisal” or “real estate appraisal”, written analysis, opinion or conclusion prepared by
32 a real estate appraiser relating to the nature, quality, value or utility of specified interests in, or
33 aspects of, identified real estate; provided, that an “appraisal” may be classified as a valuation or
34 an analysis, or both.

35 “Appraisal assignment”, an engagement for which an appraiser is employed or retained to
36 act, or would be perceived by a third party or the public as acting, as a disinterested third party in

37 rendering an unbiased analysis, opinion or conclusion relating to the nature, quality or utility of
38 specified interests in, or aspects of, identified real estate.

39 “Appraisal management company”, any corporation, limited liability company,
40 partnership, sole proprietorship, subsidiary, unit or other business entity that directly or indirectly
41 performs the following appraisal management services: (i) administers a network of fee
42 appraisers or employee appraisers to perform real estate appraisal assignments for clients; (ii)
43 receives requests for real estate appraisal services from clients and, for a fee paid by the client,
44 enters into an agreement with 1 or more independent appraisers to perform the real estate
45 appraisal services contained in the request; or (iii) otherwise serves as a third-party broker of
46 appraisal management services between clients and appraisers.

47 “Appraisal practice”, valuation services performed by an individual acting as an
48 appraiser, including, but not limited to, appraisal, appraisal review or appraisal consulting.

49 “Appraisal report”, a written report of an appraisal.

50 “Appraisal review”, the act or process of developing and communicating an opinion
51 about the quality of another appraiser’s work that was performed as part of an appraisal
52 assignment related to the appraiser’s data collection, analysis, opinions, conclusions, opinion of
53 value or compliance with the Uniform Standards of Professional Appraisal Practice; provided
54 however, that “appraisal review” shall not include: (i) a general examination for grammatical,
55 typographical or similar errors or (ii) a general examination for completeness including
56 regulatory or client requirements as specified in an agreement process that does not communicate
57 an opinion of value.

58 “Appraisal services”, the services required to perform an appraisal, including defining the
59 scope of work, inspecting the property, reviewing necessary and appropriate public and private
60 data sources including, but not limited to, multiple listing services, tax assessment records and
61 public land records, developing and rendering an opinion of value and preparing and submitting
62 the appraisal report.

63 “Board”, the board of registration of real estate appraisers established by section 92 of
64 chapter 13.

65 “Controlling person”, (1) an officer or director of an appraisal management company or
66 an individual who holds a 10 per cent or greater ownership interest in an appraisal management
67 company; (2) an individual employed, appointed or authorized by an appraisal management
68 company who has the authority to enter into a contractual relationship with clients for the
69 performance of appraisal services and who has the authority to enter into agreements with
70 independent appraisers for the completion of appraisals; or (3) an individual who possesses the
71 power to direct or cause the direction of the management or policies of an appraisal management
72 company.

73 “Covered transaction”, an extension of consumer credit that is or will be secured by the
74 consumer's principal dwelling.

75 “Dwelling”, a residential structure that contains 1 to 4 units, whether or not that structure
76 is attached to real property, an individual condominium unit, cooperative unit, mobile home or
77 trailer, if it is used as the consumer's principal residence.

78 “Employee in charge”, a designated employee of the appraisal management company,
79 who is an appraiser certified in the commonwealth, with the responsibilities and obligations to
80 the board as set forth in section 269.

81 “Fee Appraiser”, (i) a person who is a state-licensed or state-certified appraiser and
82 receives a fee for performing an appraisal, but who is not an employee of the person engaging
83 the appraiser; or (ii) an organization that, in the ordinary course of business, employs state-
84 licensed or state-certified appraisers to perform appraisals, receives a fee for performing the
85 appraisals and is not subject to section 1124 of the federal Financial Institutions Reform,
86 Recovery and Enforcement Act of 1989 codified at 12 U.S.C. § 3353; provided however, that a
87 “fee appraiser”, as defined in clause (i), shall be exempt from section 148B of chapter 149.

88 “Person”, an individual, sole proprietorship, partnership, limited liability company,
89 limited partnership, corporation, association or other group engaged in joint business activities,
90 however organized.

91 “Real estate”, an identified parcel or tract of land including improvements, if any.

92 “Real estate appraiser”, a person who develops and communicates real estate appraisals
93 and who holds a current, valid certificate as a state-certified general real estate appraiser, state-
94 certified residential real estate appraiser or state-licensed real estate appraiser pursuant to section
95 178.

96 “Real property”, 1 or more defined interests, benefits and rights inherent in the ownership
97 of real estate.

98 “Registrant”, a real estate appraisal management company registered pursuant to sections
99 264 to 277, inclusive.

100 “Valuation”, an estimate of the value of real estate or real property.

101 “Valuation Services”, services pertaining to all aspects of property value.

102 Section 265. (a) No person shall directly or indirectly engage, or attempt to engage, in
103 business as an appraisal management company, to directly or indirectly engage or attempt to
104 perform appraisal management services or to advertise or hold itself out as engaging in or
105 conducting business as an appraisal management company without first being registered by the
106 board pursuant to sections 264 to 277, inclusive, regardless of the person’s use of the term
107 “appraisal management company”, “mortgage technology company” or any other name.

108 (b) Sections 264 to 277, inclusive, shall not apply to:

109 (i) an agency of the federal government or any state or municipal government;

110 (ii) an appraisal management company that is a subsidiary, owned and controlled
111 by a financial institution regulated by a federal financial institution regulatory agency, provided
112 that the appraisal management company shall be in compliance with section 1124 of the federal
113 Financial Institutions Reform, Recovery and Enforcement Act of 1989, codified at 12 U.S.C. §
114 3353, and any rules promulgated under that section;

115 (iii) a licensed real estate broker or salesperson performing activities in
116 accordance with section 174; provided, however, that an exempt person shall not include a real
117 estate broker or salesperson who receives compensation of any kind in connection with the
118 referral or placement of an appraisal assignment; or

119 (iv) an appraisal management company exempt from licensure under rules and
120 regulations adopted by the board.

121 (c) A fee appraiser shall not perform appraisal services for real property located in the
122 commonwealth for an appraisal management company, which is not registered pursuant to
123 sections 264 to 277, inclusive, unless the company is exempt from licensing as provided in this
124 section.

125 Section 266. The board may adopt rules and regulations to implement sections 264 to
126 277, inclusive.

127 Section 267. (a) Applicants shall make a written application to the board on a form
128 prescribed by the board, which shall set forth the applicant's qualifications for registration. The
129 application shall identify each controlling person within the appraisal management company.
130 The application shall be accompanied by the applicable fee, as determined annually by the
131 secretary of administration and finance pursuant to section 3B of chapter 7 and any other
132 information the board deems necessary pursuant to rules and regulations adopted by the board.
133 Upon receipt of a completed application and fee the board shall determine whether each
134 controlling person is of good moral character. If an applicant meets the board's qualifications,
135 the board shall then issue a certificate of registration to the applicant authorizing the applicant to
136 act as a real estate appraisal management company in the commonwealth.

137 (b) An application for registration shall include the following certifications from the
138 applicant:

139 (i) a certification that the applicant has a system and process in place to verify that
140 a person being added to the appraiser panel of the appraisal management company for appraisal

141 assignments on real property located in the commonwealth holds a license or certification in
142 good standing in the commonwealth issued pursuant to this chapter;

143 (ii) a certification that the applicant has a system in place to review the work of all
144 fee appraisers that are performing real estate appraisal services for the appraisal management
145 company on a periodic basis to confirm that the real estate appraisal services are being conducted
146 in accordance with the Uniform Standards of Professional Appraisal Practice; and

147 (iii) a certification that the applicant maintains a detailed record of each service
148 request that it receives and the fee appraiser that performs the residential real estate appraisal
149 services for the appraisal management company.

150 (c) A person who, directly or indirectly, owns more than 10 per cent of an appraisal
151 management company seeking registration, or any officer, controlling person, employee in
152 charge or managing principal of a appraisal management company seeking registration shall not
153 be eligible for registration if (i) the individual had a license or certificate to act as an appraiser or
154 to engage in any activity related to the transfer of real property refused, denied, canceled or
155 revoked in the commonwealth or in any other state, whether on a temporary or permanent basis
156 or (ii) the individual is not of good moral character as determined by the board.

157 (d) A registrant having a good faith belief that a real estate appraiser licensed in the
158 commonwealth has violated applicable law or the Uniform Standards of Professional Appraisal
159 Practice or has engaged in unethical conduct shall promptly file a complaint with the board.

160 Section 268. An appraisal management company applying to the board for registration
161 shall designate 1 employee in charge who shall be the main contact for all communication
162 between the board and the appraisal management company.

163 Section 269. In order to serve as the employee in charge for a registered appraisal
164 management company, a designee shall, in addition to continually holding a valid license issued
165 by the board as a state-certified appraiser:

166 (1) not have had a license to practice as an appraiser or to engage in any activity related
167 to the transfer of real property refused, denied, canceled or revoked in the commonwealth or in
168 any other state;

169 (2) be of good moral character;

170 (3) submit to a state background investigation; and

171 (4) shall be responsible for:

172 (i) management of the process of selecting appraisers for the performance of real
173 estate appraisal services;

174 (ii) management of the process of conducting appraisal reviews; provided, that an
175 employee of an appraisal management company or a contractor working on behalf of the
176 company who has any involvement in the performance of an appraisal review, of completed
177 appraisals of real property located in the commonwealth, shall be licensed or certified in the
178 commonwealth and in good standing pursuant to sections 264 to 277, inclusive; and

179 (iii) maintaining required documentation as part of the board file.

180 Section 270. An appraisal management company shall file a form with the board
181 indicating the appraisal management company's designation of a controlling person and
182 employee in charge and the individual's acceptance of the responsibility. An appraisal
183 management company shall notify the board of any change in the appraisal management

184 company's controlling person or employee in charge and shall have 30 days from the date a
185 vacancy occurs in either position to designate a temporary or permanent replacement and, in the
186 event a temporary designation is made, 90 days to appoint a permanent replacement. An
187 appraisal management company that does not comply with this section shall have the appraisal
188 management company's registration suspended, pursuant to section 274, until the appraisal
189 management company complies with this section. An individual operating an appraisal
190 management company as a sole proprietorship shall be a certified general or certified residential
191 appraiser and shall be considered the managing principal for purposes of sections 264 to 277,
192 inclusive, unless another managing principal is designated.

193 Section 271. The following fees shall be determined annually by the secretary of
194 administration and finance pursuant to section 3B of chapter 7 and shall be collected by the
195 board: (a) application fee; (b) initial license fee; (c) annual renewal fee; (d) change in controlling
196 person or employee in charge fee; and (e) late renewal fee. All licensing and application fees and
197 civil administrative penalties collected pursuant to sections 264 to 277, inclusive, shall be
198 deposited into the Division of Professional Licensure Trust Fund, established in section 35V of
199 chapter 10.

200 Section 272. In addition to the filing fee, each applicant for registration shall post with
201 the board and maintain a surety bond in an amount designated by the board. The bond shall: (i)
202 be in the form prescribed by the board; and (ii) accrue to the commonwealth for the benefit of a
203 claimant against the registrant to secure the faithful performance of the registrant's obligations
204 pursuant to sections 264 to 277, inclusive.

205 The aggregate liability of the surety shall not exceed the principal sum of the bond. A
206 party having a claim against the registrant may bring suit directly on the surety bond or the board
207 may bring suit on behalf of the party having a claim against the registrant. A deposit of cash or
208 security may be accepted in lieu of the surety bond. A claim reducing the face amount of the
209 bond shall be annually restored upon renewal of the registrant's registration.

210 Section 273. (a) No employee, director, officer, managing principal or agent of an
211 appraisal management company or any other third party acting as joint venture partner or
212 independent contractor shall influence or attempt to influence the development, reporting, result
213 or review of a real estate appraisal through coercion, extortion, collusion, compensation,
214 inducement, intimidation, bribery or in any other manner including, but not limited to:

215 (1) withholding or threatening to withhold timely payment for a real estate
216 appraisal report except in cases of breach of contract or substandard performance of services;

217 (2) withholding or threatening to withhold future business from a real estate
218 appraiser or demoting or terminating or threatening to demote or terminate a real estate
219 appraiser;

220 (3) expressly or impliedly promising future business, promotions or increased
221 compensation for a real estate appraiser;

222 (4) conditioning the ordering of a real estate appraisal report or the payment of a
223 real estate appraisal fee, salary, or bonus on the opinion, conclusion or valuation to be reached or
224 on a preliminary estimate requested from a real estate appraiser;

225 (5) requesting that a real estate appraiser provide an estimated, predetermined or
226 desired valuation in a real estate appraisal report or provide estimated values or comparable sales
227 at any time before the appraiser's completion of the appraisal report;

228 (6) providing to a real estate appraiser an anticipated, estimated, encouraged or
229 desired value for a subject property or a proposed or targeted amount to be loaned to the
230 borrower; provided, however, a real estate appraiser shall be provided with a copy of the sales
231 contract for purchase transactions, if available;

232 (7) providing to a real estate appraiser, or any entity or person related to the
233 appraiser, stock or other financial or non-financial benefits;

234 (8) allowing the removal of a real estate appraiser from a list of qualified
235 appraisers used by any entity without prior written notice stating the reason for removal to the
236 appraiser; provide, that said notice shall include written evidence if the appraiser is removed
237 from the list for illegal conduct, substandard performance or otherwise improper or
238 unprofessional behavior or any violation of the Uniform Standards of Professional Appraisal
239 Practice or licensing standards of the commonwealth;

240 (9) any other act or practice that impairs or attempts to impair a real estate
241 appraiser's independence, objectivity or impartiality; or

242 (10) requesting or requiring a real estate appraiser to collect a fee from, or be
243 compensated by, the borrower, homeowner, real estate agent, mortgage broker or any other third
244 party in the provision of real estate appraisal services.

245 (b) No employee, director, officer, managing principal or agent of an appraisal
246 management company or any other third party acting as joint venture partner or independent
247 contractor shall:

248 (1) alter, modify or otherwise change a completed appraisal report submitted by a
249 fee appraiser without the appraiser's written knowledge and consent;

250 (2) alter, modify or otherwise change a completed appraisal report submitted by a
251 fee appraiser and shall transmit a true and exact copy to the client and any intended users;

252 (3) use an appraisal report submitted by a fee appraiser for any other transaction;

253 (4) require a fee appraiser to sign any indemnification agreement that would
254 require the fee appraiser to defend and hold harmless the appraisal management company or any
255 of its agents, employees or independent contractors for any liability, damage, losses or claims
256 arising out of the services performed by the appraisal management company or its agents,
257 employees or independent contractors and not the services performed by the fee appraiser;

258 (5) require a fee appraiser to provide the company with the appraiser's digital
259 signature or seal;

260 (6) prohibit a fee appraiser from recording the fee that the fee appraiser was paid
261 for the performance of an appraisal assignment within the body of the appraisal report;

262 (7) require a fee appraiser to accept an appraisal assignment if the fee appraiser, in
263 the fee appraiser's own independent professional judgment believes that: (i) the fee appraiser
264 does not have the necessary expertise for the assignment or knowledge of the geographic area;
265 or (ii) that the time frame does not allow the appraiser the ability to meet all of the fee

266 appraiser's relevant legal or professional obligations; provided that the fee appraiser has
267 communicated such belief to the appraisal management company; or

268 (8) knowingly fail to compensate fee appraisers at a customary and reasonable
269 rate for appraisal services in the market area of the property being appraised, consistent with
270 section 129E of the federal Truth in Lending Act, 15 U.S.C. §1639e (i), and regulations
271 promulgated thereunder.

272 (c) Nothing in this section shall be construed as prohibiting an appraisal management
273 company from requesting that a fee appraiser:

274 (1) consider additional appropriate material property information;

275 (2) provide further detail, substantiation or explanation for the real estate
276 appraiser's value conclusion; or

277 (3) correct errors in the real estate appraisal report.

278 (d) An appraisal management company shall not refuse to assign requests or orders for
279 appraisals or reduce the number of assignments or otherwise penalize a fee appraiser who does
280 not accept an assignment or order in accordance with clause (7) of subsection (b), except that
281 nothing in this section shall require an appraisal management company to offer future appraisal
282 assignments of a particular nature or type to a fee appraiser who previously indicated a lack of
283 the necessary expertise or geographic knowledge for such assignments, except in the case where
284 the fee appraiser subsequently demonstrates, to the satisfaction of the appraisal management
285 company, that the fee appraiser has gained the required experience or geographic knowledge to
286 competently complete the assignments.

287 Section 274. (a) The board, pursuant to sections 61 to 65C, inclusive, may, by order,
288 deny, suspend, revoke or refuse to issue or renew a registration of an appraisal management
289 company or may restrict or limit activities of a controlling person or employee in charge if the
290 board determines that the controlling person or employee in charge has done any of the
291 following:

292 (1) filed an application for registration that, as of its effective date or as of any
293 date after filing, contained any statement that, in light of the circumstances under which it was
294 made, is false or misleading with respect to any material fact;

295 (2) violated or failed to comply with section 265, 267, 268, 269, 270, 272, 273 or
296 275 or any rule or regulation adopted by the board;

297 (3) been convicted of any felony or, within the past 5 years, been convicted of any
298 misdemeanor involving any activity related to the transfer of real property, including, but not
299 limited to, mortgage lending or real estate appraisal or any offense involving breach of trust,
300 moral turpitude or fraudulent or dishonest dealing;

301 (4) been permanently or temporarily enjoined by any court of competent
302 jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the
303 real estate appraisal management business;

304 (5) been the subject of an order of the board or any other state appraiser
305 regulatory agency denying, suspending or revoking the person's license as a real estate appraiser;

306 (6) acted as an appraisal management company while not properly licensed by the
307 board;

308 (7) structured an appraisal assignment or a contract with a fee appraiser to evade
309 sections 264 to 277, inclusive; or

310 (8) failed to pay the proper filing or renewal fee pursuant to sections 264 to
311 277,inclusive.

312 (b) The board may, pursuant to sections 61 to 65C, inclusive, by order, impose a civil
313 penalty upon a controlling person or employee in charge for any violation of sections 264 to 277,
314 inclusive. The civil penalty shall not exceed \$10,000 for each violation.

315 (c) In addition to other powers set forth in sections 264 to 277, inclusive, upon finding
316 that an action of a person is in violation of section 265, 267, 268, 269, 270, 272, 273 or 275, the
317 board may order the person to cease from the prohibited action. If the person subject to the order
318 fails to appeal the order of the board or the person appeals the order and the appeal is denied or
319 dismissed and the person continues to engage in the prohibited action in violation of the board's
320 order, the person shall be subject to a civil penalty of not more than \$25,000 for each violation of
321 the order. The penalties under this section shall be in addition to and not in lieu of any other law
322 applicable to a registrant for the registrant's failure to comply with an order of the board.

323 (d) Unless otherwise provided, all actions and hearings arising under sections 264 to 277,
324 inclusive, shall be governed by chapter 30A.

325 (e) If the board has reasonable grounds to believe that an appraisal management company
326 has violated section 265, 267, 268, 269, 270, 272, 273 or 275 or that facts exist that would be the
327 basis for an order against an appraisal management company, the board may at any time, either
328 personally or by a person duly designated by the board, investigate or examine the books,

329 accounts, records and files of any registrant or other person relating to the complaint or matter
330 under investigation.

331 (f) The board may issue subpoenas requiring the attendance of persons and the
332 production of papers and records before the board in any hearing, investigation, inquiry, or other
333 proceeding conducted by the board. Upon the production of any papers, records or documents,
334 the board may authorize true copies of the papers, records or documents to be substituted in the
335 permanent record of the matter in which the papers, records or documents shall have been
336 introduced in evidence.

337 Section 275. (a) The board shall maintain a list of all applicants for registration pursuant
338 to sections 264 to 277, inclusive, which shall include for each applicant, the date of application,
339 the name and primary business location of the applicant and whether the registration was granted
340 or refused.

341 (b) The board shall maintain a current roster, which shall list the names and places of
342 business of all registered appraisal management companies and list the appraisal management
343 companies' respective officers and directors. The rosters shall: (i) be kept on file in the office of
344 the board; (ii) contain information regarding all orders or other action taken against each
345 company, its officers and other persons; and (iii) be open to public inspection.

346 (c) Every registered appraisal management company shall maintain the records related to
347 services provided by the appraisal management company as prescribed in regulations adopted by
348 the board. All records shall be preserved for 5 years unless the board, by regulation, prescribes
349 otherwise for particular types of records.

350 (d) If the information contained in any document filed with the board is or becomes
351 inaccurate or incomplete in any material respect, the appraisal management company shall
352 promptly file a correcting amendment to the information contained in the document.

353 Section 276. The board may appear in its own name in superior court in actions for
354 injunctive relief to prevent any person from violating section 265, 267, 268, 269, 270, 272, 273
355 or 275 or regulations adopted by the board. The superior court shall have the power to grant an
356 injunction regardless of whether criminal prosecution has been or may be instituted as a result of
357 the violations or whether the person is the holder of a registration issued by the board pursuant to
358 sections 264 to 277, inclusive.

359 Section 277. (a) The board may conduct investigations and examinations, pursuant to
360 sections 61 to 65C, inclusive, for the purposes of:

361 (1) initial registration, registration renewal, registration suspension, registration
362 conditioning, registration revocation or termination or general or specific inquiry or investigation
363 to determine compliance with sections 265, 267, 268, 269, 270, 272, 273, 274 and 275; provided,
364 that the board may access, receive and use any books, accounts, records, files, documents,
365 information or evidence including, but not limited to: (i) criminal, civil and administrative
366 history information, including non-conviction data as specified in applicable general laws; and
367 (ii) any other documents, information or evidence the board deems relevant to the inquiry or
368 investigation regardless of the location, possession, control or custody of the documents,
369 information or evidence; and

370 (2) determining whether violations or complaints arising under sections 265, 267,
371 268, 269, 270, 272, 273, 274 and 275 are valid.

372 (b) If an applicant, registrant or managing principal's criminal history record check
373 reveals 1 or more convictions, the conviction shall not automatically bar registration; if the
374 conviction is unrelated to the transfer of real property. The board shall consider the following
375 factors regarding the conviction: (i) the level of seriousness of the crime; (ii) the date of the
376 crime; (iii) the age of the person at the time of the conviction; (iv) the circumstances surrounding
377 the commission of the crime, if known; (v) the nexus between the criminal conduct of the person
378 and the job duties of the position to be filled; and (vi) the person's prison, jail, probation, parole,
379 rehabilitation and employment records since the date the crime was committed.