

SENATE No. 452

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen J. Buoniconti

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act adopting the federal secure and fair enforcement for mortgage licensing act of 2008.

PETITION OF:

NAME:

Stephen J. Buoniconti

DISTRICT/ADDRESS:

Hampden

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:

CHAPTER 255F.

LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

7 “Commissioner”, the commissioner of banks.

8 “Depository institution”, the term “depository institution” has the same meaning as in section 3
9 of the 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
13 of the 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
16 includes 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 “Nationwide mortgage licensing system and registry”, a mortgage licensing system developed
62 and maintained by the Conference of State Bank Supervisors and the American Association of Residential
63 Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

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

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

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

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

70 (i) a depository institution;

71 (ii) a subsidiary that is—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

164 revocation.

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

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

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

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

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

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

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

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

184 (iii) foreclosures within the past 3 years;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

237 (3) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage

238 Licensing System and Registry from providing a test at the location of the employer of the applicant or

239 the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity

240 with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan

241 originator.

242 (4) (a) An individual shall not be considered to have passed a qualified written test unless the

243 individual achieves a test score of not less than 75 per cent correct answers to questions.

244 (b) An individual may retake a test 3 consecutive times with each consecutive taking occurring at

245 least 30 days after the preceding test.

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

247 test again.

248 (d) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5

249 years or longer shall retake the test, not taking into account any time during which such

250 individual is a registered mortgage loan originator.

251 Section 7. (1) The minimum standards for license renewal for mortgage loan originators shall

252 include the following:-

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

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

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

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

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

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

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

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

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

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

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

276 subsidiary or affiliate of such employer or entity.

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

279 (5) A licensed mortgage loan originator—

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

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

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

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

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

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

296 Section 9. In addition to any other duties imposed upon the commissioner by law, the
297 commissioner shall require mortgage loan originators to be licensed and registered through the

298 Nationwide Mortgage Licensing System and Registry. In order to carry out this requirement the
299 commissioner is authorized to participate in the Nationwide Mortgage Licensing System and
300 Registry. For this purpose, the commissioner may establish by regulation requirements as
301 necessary, including, but not limited to:-

302 (1) background checks for:-

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

304 (b) civil or administrative records;

305 (c) credit history; or

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

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

320 (3) the setting or resetting as necessary of renewal or reporting dates; and
321 (4) requirements for amending or surrendering a license or any other such activities as the
322 commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and
323 Registry.

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

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

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

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

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

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

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

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

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

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

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

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

351 (3) The maximum amount of penalty for each act or omission described in subsection (2) shall be
352 \$25,000.

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

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

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

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

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

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

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

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

384 (e) Except as consented to in writing by the commissioner, any person who, pursuant to an order
385 issued under paragraph (b) or (c), has been prohibited from participating in whole or in part as a mortgage
386 loan originator may not, while the order is in effect, continue or commence to perform in the capacity of a

387 mortgage loan originator, or otherwise participate in any manner, if so prohibited by order of the
388 commissioner, in the conduct of the affairs of:-

389 (i) any licensee under this chapter;

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

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

392

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

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

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

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

408 (c) The commissioner may promulgate rules or regulations with respect to the requirements for

409 such surety bonds as are necessary to accomplish the purposes of this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

454 (b) personal history and experience information including independent credit reports

455 obtained from a consumer reporting agency described in section 603(p) of the Fair Credit
456 Reporting Act; and

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

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

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

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

475 (a) accounting compilations;

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

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

479 (5) In making any examination or investigation authorized by this chapter, the commissioner
480 may control access to any documents and records of the licensee or person under examination or
481 investigation. The commissioner may take possession of the documents and records or place a person in
482 exclusive charge of the documents and records in the place where they are usually kept. During the period
483 of control, no individual or person shall remove or attempt to remove any of the documents and records
484 except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has
485 reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being
486 altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the
487 documents and records shall have access to the documents or records as necessary to conduct its ordinary
488 business affairs.

489 The commissioner shall preserve a full record of each such examination of a licensee. All records
490 of investigation and reports of examination by the commissioner, including work papers, information
491 derived from such reports or in response to such reports, and any copies thereof in the possession of any
492 licensee under the supervision of the commissioner, shall be confidential and privileged communications,
493 shall not be subject to subpoena and shall not be a public record under clause Twenty-sixth of section 7 of
494 chapter 4. For the purpose of this paragraph, records of investigation and reports of examinations shall
495 include records of investigation and reports of examinations conducted by any bank regulatory agency of
496 the federal government and any other state, and of any foreign government which are considered
497 confidential by such agency or foreign government and which are in possession of the commissioner. In
498 any proceeding before a court, the court may issue a protective order to seal the record protecting the
499 confidentiality of any such record, other than any such record on file with the court or filed in connection
500 with the court proceeding, and the court may exclude the public from any portion of a proceeding at
501 which any such record may be disclosed. Copies of such reports of examination shall be furnished to a
502 licensee for its use only and shall not be exhibited to any other person, organization or agency without

503 prior written approval by the commissioner. The commissioner may, in his discretion, furnish to
504 regulatory agencies of the federal government, of other states, or of foreign countries and any law
505 enforcement agency, such information, reports, inspections and statements relating to the licensees under
506 his supervision.

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

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

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

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

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

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

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

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

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

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

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

532 (3) obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

553 (11) make any payment, threat or promise, directly or indirectly, to any person for the purposes
554 of influencing the independent judgment of the person in connection with a residential mortgage loan, or
555 make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the
556 purposes of influencing the independent judgment of the appraiser with respect to the value of the
557 property;

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

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

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

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

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

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

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

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

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

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

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

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

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