

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

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**The Commonwealth of Massachusetts**

PRESENTED BY:

**Ronald Mariano**

*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:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

# 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  
3 chapter:

### CHAPTER 255F.

#### LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

8 “Commissioner”, the commissioner of banks.

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

11 “Division”, the division of banks.

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

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

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

19 “Individual”, a natural person.

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

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

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

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

31 (c) An individual engaging solely in loan processor or underwriter activities, shall not  
32 represent to the public, through advertising or other means of communicating or

33 providing information including the use of business cards, stationery, brochures, signs,  
34 rate lists, or other promotional items, that such individual can or will perform any of the  
35 activities of a mortgage loan originator

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

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

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

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

42 (iii) does not include a person or entity that only performs real estate brokerage  
43 activities and is licensed or registered in accordance with chapter 112, sections  
44 87PP to 87DDD1/2, inclusive, unless the person or entity is compensated by a  
45 lender, a mortgage broker, or other mortgage loan originator or by any agent of  
46 such lender, mortgage broker, or other mortgage loan originator; and

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

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

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

65

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

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

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

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

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

76 (i) a depository institution;

77 (ii) a subsidiary that is—

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

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

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

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

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

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

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

91

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

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

103 (a) For all individuals other than individuals described in subsection (b) shall be July 31,  
104 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban  
105 Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

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

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

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

112 (b) Any individual who offers or negotiates terms of a residential mortgage loan with or

113 on behalf of an immediate family member of the individual.

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

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

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

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

131

132 Section 3. (1) Applicants for a license shall apply in a form as prescribed by the commissioner.

133 Each such form shall contain content as set forth by rule, regulation, instruction or procedure of



134 the commissioner and may be changed or updated as necessary by the commissioner in order to  
135 carry out the purposes of this chapter.

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

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

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

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

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

- 154 (i) an independent credit report obtained from a consumer reporting agency  
155 described in section 603(p) of the Fair Credit Reporting Act; and
- 156 (ii) information related to any administrative, civil or criminal findings by any  
157 governmental jurisdiction.

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

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

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

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

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

175 revocation.

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

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

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

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

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

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

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

- 196 (ii) current outstanding tax liens or other government liens and filings;
- 197 (iii) foreclosures within the past 3 years;
- 198 (iv) a pattern of seriously delinquent accounts within the past 3 years.
- 199 (4) The applicant has completed the pre-licensing education requirement described in section 5.
- 200 (5) The applicant has passed a written test that meets the test requirement described in section 6.
- 201 (6) The applicant has met the surety bond requirement as required pursuant to section 12.
- 202 (7) A mortgage loan originator may be employed by 1 and not more than 1 entity. Each original  
203 license issued to a mortgage loan originator must be provided to and maintained by the  
204 employing entity at the entity's main office. If the employment of a mortgage loan originator is  
205 terminated, the employing entity shall return the mortgage loan originator's license to the  
206 division within 5 business days after termination. The reason for termination shall be given in a  
207 format determined by rules and regulations of the commissioner. For a period of 1 year after the  
208 termination of employment, the mortgage loan originator may request the re-assignment of the  
209 license to another entity by submitting an application to the division, along with a fee established  
210 by the division by rule. The return of the license of any mortgage loan originator to the division  
211 that is not re-assigned to another entity terminates the right of the mortgage loan originator to  
212 engage in any residential mortgage loan origination activity until division procedures have been  
213 followed to reactivate such license. The license of any mortgage loan originator that has been  
214 returned to the division and not re-assigned to another entity within 1 year of termination of  
215 employment shall be cancelled. Each license shall state the name of the mortgage loan originator

216 licensee and the name and main office address of the entity employing such mortgage loan  
217 originator.

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

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

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

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

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

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

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

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

239

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

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

248 (a) ethics;

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

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

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

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

257 business of a mortgage loan originator.

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

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

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

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

267

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

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

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

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

275

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

280

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

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

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

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

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

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



297 contract, or any subsidiary or affiliate of such employer or entity.

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

300 (5) A licensed mortgage loan originator—

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

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

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

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

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

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

319

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

326 (1) background checks for:-

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

328 (b) civil or administrative records;

329 (c) credit history; or

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

332 (2) the payment of fees to apply for or renew licenses through the Nationwide Mortgage  
333 Licensing System and Registry provided, however, that each application for a license shall be  
334 accompanied by an investigation fee and license fee provided, that investigation and license fees  
335 shall be determined annually by the secretary of administration under section 3B of chapter 7;  
336 provided, further, that such investigation and license fees shall not apply to any community

337 development corporation as defined in section 1 of chapter 40F and organized under the General  
338 Laws provided, further, that classifications or adjustments as deemed necessary may be made  
339 relative to fees for any nonprofit agency or corporation incorporated under the laws of the  
340 commonwealth for the purpose of assisting low to moderate income households in the purchase  
341 or rehabilitation of family residences of 4 units or less and which holds tax-exempt status granted  
342 under the provisions of Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as  
343 otherwise determined by the commissioner;

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

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

348

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

352

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

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

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

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

363 (d) Impose fines on persons subject to this chapter pursuant to subsections (2), (3) and  
364 (4).

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

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

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

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

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

377

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

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

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

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

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

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

397 or

398 (iii) to prohibit the person from any further participation, in any manner, as a mortgage loan  
399 originator in the commonwealth or to prohibit the person from being employed by, as agent of,

400 or operating on behalf of a licensee under this chapter or any other business which requires a  
401 license from the commissioner.

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

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

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

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

423 (i) any licensee under this chapter;  
424 (ii) any other business which requires a license from the commissioner; or  
425 (iii) any bank as defined under section 1 of chapter 167 or any subsidiary thereof.  
426 (6) The commissioner may suspend, revoke or refuse to renew the license of the entity  
427 employing any licensed mortgage originator if the commissioner finds that: (a) the entity knew  
428 or should have known that the mortgage loan originator violated this chapter or any rule or  
429 regulation promulgated hereunder, or any other law applicable to the conduct of its business; (b)  
430 the entity knew of any fact or condition to exist which, if it had existed at the time of the original  
431 application for such license, would have warranted the commissioner in refusing to issue such  
432 license; or (c) the mortgage loan originator committed any fraud, misappropriated funds or  
433 misrepresented any of the material particulars of a mortgage loan transaction approved by the  
434 entity.

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

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

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

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

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

447

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

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

451

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

454 (1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under  
455 any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any  
456 information or material provided to the Nationwide Mortgage Licensing System and Registry,  
457 and any privilege arising under federal or state law, including the rules of any federal or state  
458 court, with respect to such information or material, shall continue to apply to such information or  
459 material after the information or material has been disclosed to the Nationwide Mortgage  
460 Licensing System and Registry. Such information and material may be shared with all state and  
461 federal regulatory officials with mortgage industry oversight authority without the loss of  
462 privilege or the loss of confidentiality protections provided by federal law or said section 10 of  
463 chapter 66.

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



466 American Association of Residential Mortgage Regulators or other associations representing  
467 governmental agencies as established by rule, regulation or order of the commissioner.

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

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

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

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

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

485

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

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

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

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

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

501 (2) For the purposes of investigating violations or complaints arising under this chapter, or for  
502 the purposes of examination, the commissioner may review, investigate, or examine any  
503 licensee, individual or person subject to this chapter, as often as necessary in order to carry out  
504 the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of  
505 and examine under oath all persons whose testimony may be required about the loans or the  
506 business or subject matter of any such examination or investigation, and may direct, subpoena, or

507 order such person to produce books, accounts, records, files, and any other documents the  
508 commissioner deems relevant to the inquiry.

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

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

518 (a) accounting compilations;

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

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

522 (5) In making any examination or investigation authorized by this chapter, the commissioner  
523 may control access to any documents and records of the licensee or person under examination or  
524 investigation. The commissioner may take possession of the documents and records or place a  
525 person in exclusive charge of the documents and records in the place where they are usually  
526 kept. During the period of control, no individual or person shall remove or attempt to remove any  
527 of the documents and records except pursuant to a court order or with the consent of the

528 commissioner. Unless the commissioner has reasonable grounds to believe the documents or  
529 records of the licensee have been, or are at risk of being altered or destroyed for purposes of  
530 concealing a violation of this chapter, the licensee or owner of the documents and records shall  
531 have access to the documents or records as necessary to conduct its ordinary business affairs.

532         The commissioner shall preserve a full record of each such examination of a licensee.  
533 All records of investigation and reports of examination by the commissioner, including work  
534 papers, information derived from such reports or in response to such reports, and any copies  
535 thereof in the possession of any licensee under the supervision of the commissioner, shall be  
536 confidential and privileged communications, shall not be subject to subpoena and shall not be a  
537 public record under clause Twenty-sixth of section 7 of chapter 4. For the purpose of this  
538 paragraph, records of investigation and reports of examinations shall include records of  
539 investigation and reports of examinations conducted by any bank regulatory agency of the  
540 federal government and any other state, and of any foreign government which are considered  
541 confidential by such agency or foreign government and which are in possession of the  
542 commissioner. In any proceeding before a court, the court may issue a protective order to seal  
543 the record protecting the confidentiality of any such record, other than any such record on file  
544 with the court or filed in connection with the court proceeding, and the court may exclude the  
545 public from any portion of a proceeding at which any such record may be disclosed. Copies of  
546 such reports of examination shall be furnished to a licensee for its use only and shall not be  
547 exhibited to any other person, organization or agency without prior written approval by the  
548 commissioner. The commissioner may, in his discretion, furnish to regulatory agencies of the  
549 federal government, of other states, or of foreign countries and any law enforcement agency,

550 such information, reports, inspections and statements relating to the licensees under his  
551 supervision.

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

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

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

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

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

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

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

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

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

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

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

580 (3) obtain property by fraud or misrepresentation;

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

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

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

- 589 (7) fail to make disclosures as required by this chapter and any other applicable state or federal  
590 law including regulations thereunder;
- 591 (8) fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail  
592 to comply with any other state or federal law, including the rules and regulations thereunder,  
593 applicable to any business authorized or conducted under this chapter;
- 594 (9) make, in any manner, any false or deceptive statement or representation including, with  
595 regard to the rates, points, or other financing terms or conditions for a residential mortgage loan,  
596 or engage in bait and switch advertising;
- 597 (10) negligently make any false statement or knowingly and willfully make any omission of  
598 material fact in connection with any information or reports filed with a governmental agency or  
599 the Nationwide Mortgage Licensing System and Registry or in connection with any investigation  
600 conducted by the commissioner or another governmental agency;
- 601 (11) make any payment, threat or promise, directly or indirectly, to any person for the purposes  
602 of influencing the independent judgment of the person in connection with a residential mortgage  
603 loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a  
604 property, for the purposes of influencing the independent judgment of the appraiser with respect  
605 to the value of the property;
- 606 (12) collect, charge, attempt to collect or charge or use or propose any agreement purporting to  
607 collect or charge any fee prohibited by this chapter;
- 608 (13) cause or require a borrower to obtain property insurance coverage in an amount that  
609 exceeds the replacement cost of the improvements as established by the property insurer.

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

612

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

617

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

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

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

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



631 have completed all of the continuing education requirements for the year in which the license  
632 was last held.

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

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

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

637

638