

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Buoniconti, Stephen (SEN)

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:	DISTRICT/ADDRESS:
Buoniconti, Stephen (SEN)	Hampden

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

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

17 “Individual”, a natural person.

18 “Loan processor or underwriter”, (a) an individual who performs clerical or support duties as an
19 employee at the direction of and subject to the supervision and instruction of a person licensed,
20 or 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
40 activities and is licensed or registered in accordance with chapter 112, sections 87PP to
41 87DDD1/2, inclusive, unless the person or entity is compensated by a lender, a
42 mortgage broker, or other mortgage loan originator or by any agent of such lender,
43 mortgage broker, or other 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
48 activity 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
50 of real property;

51 (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange
52 of 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
58 law; and
- 59 (v) offering to engage in any activity, or act in any capacity, described in clauses (i), (ii),
60 (iii), or (iv) of this paragraph.

61

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

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

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

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

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

69 (i) a depository institution;

70 (ii) a subsidiary that is—

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

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

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

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

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

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

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

84

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

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

96 (a) For all individuals other than individuals described in subsection (b) shall be July 31, 2010, or
97 such later date approved by the Secretary of the U.S. Department of Housing and Urban Development,
98 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 chapter
100 shall be January 1, 2011, or such later date approved by the Secretary of the U.S. Department of Housing
101 and Urban Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

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

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

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

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

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

113 (4) A loan processor or underwriter who is an independent contractor may not engage in the activities
114 of a loan processor or underwriter unless such independent contractor loan processor or underwriter

115 obtains and maintains a license under subsection (1) of section 2. Each independent contractor loan
116 processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique
117 identifier issued by the Nationwide Mortgage Licensing System and Registry.

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

122

123 Section 3. (1) Applicants for a license shall apply in a form as prescribed by the commissioner. Each
124 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
126 the 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, the
132 commissioner is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or
133 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 shall, at a
136 minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning

137 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
145 in 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
150 loan 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 commissioner
157 may have to maintain for purposes of subclauses (i) and (ii) of clause (b) of subsection (4) the
158 commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent

159 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 commissioner
161 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 domestic,
166 foreign, or military court:

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

168 or

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

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

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

178 (a) For purposes of this subsection a person has shown that he or she is not financially
179 responsible when he or she has shown a disregard in the management of his or her own

180 financial condition. A determination that an individual has not shown financial responsibility
181 may include, but not be limited to:

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

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

185 (iii) foreclosures within the past 3 years;

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

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

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

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

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

201 that has been returned to the division and not re-assigned to another entity within 1 year of termination
202 of employment shall be cancelled. Each license shall state the name of the mortgage loan originator
203 licensee and the name and main office address of the entity employing such mortgage loan originator.

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

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

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

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

212 (2) For purposes of subsection (1), pre-licensing education courses shall be reviewed, and approved by
213 the Nationwide Mortgage Licensing System and Registry based upon reasonable standards. Review and
214 approval of a pre-licensing education course shall include review and approval of the course 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
218 such 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 System
222 and Registry in clauses (a), (b) and (c) of subsection (4) for any state shall be accepted as credit towards
223 completion of pre-licensing education requirements in the commonwealth.

224

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

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

233 (a) ethics;

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

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

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

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

242 originator.

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

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

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

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

252

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

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

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

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

260

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

264

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

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

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

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

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

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

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

282 (5) A licensed mortgage loan originator—

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

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

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

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

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

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

299

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

303 commissioner is authorized to participate in the Nationwide Mortgage Licensing System and
304 Registry. For this purpose, the commissioner may establish by regulation requirements as
305 necessary, including, but not limited to:-

306 (1) background checks for:-

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

308 (b) civil or administrative records;

309 (c) credit history; or

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

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

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

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

328

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

332

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

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

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

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

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

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

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

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

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

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

352

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

358 (3) The maximum amount of penalty for each act or omission described in subsection (2) shall be
359 \$25,000.

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

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

367 (i) to prohibit the person from performing in the capacity of a principal employee on behalf of any
368 licensee for a period of time that the commissioner considers necessary;
369 (ii) to prohibit the person from applying for or obtaining a license from the commissioner for a period
370 up to 36 months following the effective date of an order issued under paragraph (b) or (c); or
371 (iii) to prohibit the person from any further participation, in any manner, as a mortgage loan originator
372 in the commonwealth or to prohibit the person from being employed by, as agent of, or operating on
373 behalf of a licensee under this chapter or any other business which requires a license from the
374 commissioner.

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

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

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

390 (e) Except as consented to in writing by the commissioner, any person who, pursuant to an order issued

391 under paragraph (b) or (c), has been prohibited from participating in whole or in part as a mortgage loan
392 originator may not, while the order is in effect, continue or commence to perform in the capacity of a
393 mortgage loan originator, or otherwise participate in any manner, if so prohibited by order of the
394 commissioner, in the conduct of the affairs of:-

395 (i) any licensee under this chapter;

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

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

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

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

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

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

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

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

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

417

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

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

421

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

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

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

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

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

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

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

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

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

454

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

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

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

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

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

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

476 (3) Each licensee, individual or person subject to this chapter shall make available to the commissioner
477 upon request the books and records relating to the operations of such licensee, individual or person
478 subject to this chapter. The commissioner shall have access to such books and records and interview the

479 officers, principals, mortgage loan originators, employees, independent contractors, agents, and
480 customers of the licensee, individual or person subject to this chapter concerning their business.

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

484 (a) accounting compilations;

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

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

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

498 The commissioner shall preserve a full record of each such examination of a licensee. All
499 records of investigation and reports of examination by the commissioner, including work papers,
500 information derived from such reports or in response to such reports, and any copies thereof in the

501 possession of any licensee under the supervision of the commissioner, shall be confidential and
502 privileged communications, shall not be subject to subpoena and shall not be a public record under
503 clause Twenty-sixth of section 7 of chapter 4. For the purpose of this paragraph, records of investigation
504 and reports of examinations shall include records of investigation and reports of examinations
505 conducted by any bank regulatory agency of the federal government and any other state, and of any
506 foreign government which are considered confidential by such agency or foreign government and which
507 are in possession of the commissioner. In any proceeding before a court, the court may issue a
508 protective order to seal the record protecting the confidentiality of any such record, other than any such
509 record on file with the court or filed in connection with the court proceeding, and the court may exclude
510 the public from any portion of a proceeding at which any such record may be disclosed. Copies of such
511 reports of examination shall be furnished to a licensee for its use only and shall not be exhibited to any
512 other person, organization or agency without prior written approval by the commissioner. The
513 commissioner may, in his discretion, furnish to regulatory agencies of the federal government, of other
514 states, or of foreign countries and any law enforcement agency, such information, reports, inspections
515 and statements relating to the licensees under his supervision.

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

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

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

523 (c) use, hire, contract or employ public or privately available analytical systems, methods or

524 software to examine or investigate the licensee, individual or person subject to this chapter;

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

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

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

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

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

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

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

541 (3) obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

572

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

576

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

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

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

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

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

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

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

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