

HOUSE No. 980

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

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

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

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

- 74 (a) meets the definition of mortgage loan originator and is an employee of:
- 75 (i) a depository institution;
- 76 (ii) a subsidiary that is—
- 77 (A) owned and controlled by a depository institution; and
- 78 (B) regulated by a federal banking agency; or
- 79 (iii) An institution regulated by the Farm Credit Administration; and
- 80 (b) Is registered with, and maintains a unique identifier through, the Nationwide
- 81 Mortgage Licensing System and Registry.

82 “Residential mortgage loan”, any loan primarily for personal, family, or household use that is

83 secured by a mortgage, deed of trust, or other equivalent consensual security interest on a

84 dwelling as defined in section 103(v) of the Truth in Lending Act or residential real estate upon

85 which is constructed or intended to be constructed a dwelling as so defined.

86 “Residential real estate”, any real property located in the commonwealth, upon which is

87 constructed or intended to be constructed a dwelling.

88 “Unique identifier”, a number or other identifier assigned by protocols established by the

89 Nationwide Mortgage Licensing System and Registry.

90 Section 2. (1) An individual, unless specifically exempted from this chapter under subsection

91 (3) of this section, shall not engage in the business of a mortgage loan originator with respect to

92 any dwelling located in the commonwealth without first obtaining and maintaining annually a

93 license under this chapter. Each licensed mortgage loan originator must register with and

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

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

101 (a) For all individuals other than individuals described in subsection (b) shall be July 31,
102 2010, or such later date approved by the Secretary of the U.S. Department of Housing and Urban
103 Development, pursuant to the authority granted under Public Law 110-289, Section 1508(a).

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

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

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

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

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

114 (d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf

115 of a client as an ancillary matter to the attorney's representation of the client, unless the
116 attorney is compensated by a lender, a mortgage broker, or other mortgage loan
117 originator or by any agent of such lender, mortgage broker, or other mortgage loan
118 originator.

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

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

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

133 (2) In order to fulfill the purposes of this chapter, the commissioner is authorized to establish
134 relationships or contracts with the Nationwide Mortgage Licensing System and Registry or other
135 entities designated by the Nationwide Mortgage Licensing System and Registry to collect and

136 maintain records and process transaction fees or other fees related to licensees or other persons
137 subject to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

176 registration; or

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

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

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

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

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

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

194 (iii) foreclosures within the past 3 years;

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

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

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

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

199 (7) A mortgage loan originator may be employed by 1 and not more than 1 entity. Each original

200 license issued to a mortgage loan originator must be provided to and maintained by the

201 employing entity at the entity's main office. If the employment of a mortgage loan originator is

202 terminated, the employing entity shall return the mortgage loan originator's license to the

203 division within 5 business days after termination. The reason for termination shall be given in a

204 format determined by rules and regulations of the commissioner. For a period of 1 year after the

205 termination of employment, the mortgage loan originator may request the re-assignment of the

206 license to another entity by submitting an application to the division, along with a fee established

207 by the division by rule. The return of the license of any mortgage loan originator to the division

208 that is not re-assigned to another entity terminates the right of the mortgage loan originator to

209 engage in any residential mortgage loan origination activity until division procedures have been

210 followed to reactivate such license. The license of any mortgage loan originator that has been

211 returned to the division and not re-assigned to another entity within 1 year of termination of

212 employment shall be cancelled. Each license shall state the name of the mortgage loan originator

213 licensee and the name and main office address of the entity employing such mortgage loan

214 originator.

215 Section 5. (1) In order to meet the pre-licensing education requirement referred to in subsection

216 (4) of section 4 a person shall complete at least 20 hours of education approved in accordance

217 with subsection (2), which shall include at least:-

- 218 (a) 3 hours of federal and state law and regulations;
- 219 (b) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and
220 fair lending issues; and
- 221 (c) 2 hours of training related to lending standards for the nontraditional mortgage
222 product marketplace.

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

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

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

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

236 Section 6. (1) In order to meet the written test requirement referred to in subsection (5) of
237 section 4, an individual shall pass, in accordance with the standards established under this
238 section, a qualified written test developed by the Nationwide Mortgage Licensing System and

239 Registry and administered by a test provider approved by the Nationwide Mortgage Licensing
240 System and Registry based upon reasonable standards.

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

244 (a) ethics;

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

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

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

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

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

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

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

259 taking the test again.

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

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

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

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

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

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

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

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

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

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

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

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

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

293 (5) A licensed mortgage loan originator—

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

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

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

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

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

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

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

318 (1) background checks for:-

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

320 (b) civil or administrative records;

321 (c) credit history; or

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

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

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

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

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

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

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

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

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

353 (d) Impose fines on persons subject to this chapter pursuant to subsections (2), (3) and
354 (4).

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

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

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

361 (iii) Enter immediate temporary orders to cease business under a license or
362 interim license issued pursuant to the authority granted under subsection (5) of

363 section 2 if the commissioner determines that such license was erroneously
364 granted or the licensee is currently in violation of this chapter;

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

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

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

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

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

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

384 (ii) to prohibit the person from applying for or obtaining a license from the commissioner for a

385 period up to 36 months following the effective date of an order issued under paragraph (b) or (c);

386 or

387 (iii) to prohibit the person from any further participation, in any manner, as a mortgage loan

388 originator in the commonwealth or to prohibit the person from being employed by, as agent of,

389 or operating on behalf of a licensee under this chapter or any other business which requires a

390 license from the commissioner.

391 (b) A written notice issued under paragraph (a) shall contain a written statement of the facts that

392 support the prohibition and shall give notice of an opportunity for a hearing to be held

393 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service

394 upon the commissioner of the request for a hearing. If the person fails to submit a request for a

395 hearing within 20 days of service of notice under said paragraph (a), or otherwise fails to appear

396 in person or by a duly authorized representative, the party shall be considered to have consented

397 to the issuance of an order of prohibition in accordance with the notice.

398 (c) In the event that consent is granted by operation of paragraph (b), or if after a hearing the

399 commissioner finds that any of the grounds specified in the notice have been established, the

400 commissioner may issue an order of prohibition in accordance with paragraph (a) as the

401 commissioner finds appropriate.

402 (d) An order issued under paragraph (b) or (c) shall be effective upon service upon the

403 person. The commissioner shall also serve a copy of the order upon the licensee of which the

404 person is an employee or on whose behalf the person is performing. The order shall remain in

405 effect and enforceable until it is modified, terminated, suspended or set aside by the

406 commissioner or a court of competent jurisdiction.

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

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

412 (i) any licensee under this chapter;

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

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

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

416 employing any licensed mortgage originator if the commissioner finds that: (a) the entity knew

417 or should have known that the mortgage loan originator violated this chapter or any rule or

418 regulation promulgated hereunder, or any other law applicable to the conduct of its business; (b)

419 the entity knew of any fact or condition to exist which, if it had existed at the time of the original

420 application for such license, would have warranted the commissioner in refusing to issue such

421 license; or (c) the mortgage loan originator committed any fraud, misappropriated funds or

422 misrepresented any of the material particulars of a mortgage loan transaction approved by the

423 entity.

424 Section 12. (1) Each mortgage loan originator shall be covered by a surety bond in accordance

425 with this section. In the event that the mortgage loan originator is an employee or exclusive

426 agent of a person subject to chapter 255E, the surety bond of such person subject to this chapter

427 can be used in lieu of the mortgage loan originator's surety bond requirement.

428 (a) The surety bond shall provide coverage for each mortgage loan originator in an

429 amount as prescribed in subsection (2).

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

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

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

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

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

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

441 (1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under
442 any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any
443 information or material provided to the Nationwide Mortgage Licensing System and Registry,
444 and any privilege arising under federal or state law, including the rules of any federal or state
445 court, with respect to such information or material, shall continue to apply to such information or
446 material after the information or material has been disclosed to the Nationwide Mortgage
447 Licensing System and Registry. Such information and material may be shared with all state and
448 federal regulatory officials with mortgage industry oversight authority without the loss of
449 privilege or the loss of confidentiality protections provided by federal law or said section 10 of
450 chapter 66.

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

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

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

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

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

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

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

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