

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:

SECTION 1. The General Laws are hereby amended by striking out chapter 255F, as inserted by section 15 of chapter 206 of the acts of 2008, and inserting in place thereof the following chapter:

CHAPTER 255F.

LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

“Commissioner”, the commissioner of banks.

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

“Division”, the division of banks.

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

“Federal banking agencies”, the term “federal banking agencies” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the

Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

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

“Individual”, a natural person.

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

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

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

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

(c) An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator

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

(A) takes a residential mortgage loan application; or

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

- (ii) does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in subsection 4 of section 2;
- (iii) does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with chapter 112, sections 87PP to 87DDD1/2, inclusive, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
- (iv) does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of title 11, United States Code.

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

- (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (ii) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (iii) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);

(iv) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) offering to engage in any activity, or act in any capacity, described in clauses (i), (ii), (iii), or (iv) of this paragraph.

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

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

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

“Registered mortgage loan originator”, any individual who:

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

(i) a depository institution;

(ii) a subsidiary that is—

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

(B) regulated by a federal banking agency; or

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

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

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

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

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

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

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

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

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

(3) The following are exempt from this chapter:

- (a) Registered Mortgage Loan Originators are exempt from this chapter.
- (b) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
- (c) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
- (d) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.

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

(5) For the purposes of implementing an orderly and efficient licensing process the commissioner may establish licensing rules or regulations and interim procedures for licensing

and acceptance of applications. For previously registered or licensed individuals the commissioner may establish expedited review and licensing procedures.

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

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

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

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

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

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

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

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

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

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

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

- (1) The applicant has never had a mortgage loan originator license revoked in any governmental

jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.

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

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

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

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

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

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

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

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

(iii) foreclosures within the past 3 years;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

System and Registry based upon reasonable standards.

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

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

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

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

- (b) An individual may retake a test 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding test.
- (c) After failing 3 consecutive tests, an individual shall wait at least 6 months before taking the test again.
- (d) A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

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

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

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

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

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

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

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

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

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

(2) For purposes of subsection (1), continuing education courses shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable

standards. Review and approval of a continuing education course shall include review and approval of the course provider.

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

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

(5) A licensed mortgage loan originator—

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

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

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

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

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

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

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

(1) background checks for:-

- (a) criminal history through fingerprint or other databases;
- (b) civil or administrative records;
- (c) credit history; or
- (d) any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

or

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

(b) A written notice issued under paragraph (a) shall contain a written statement of the facts that support the prohibition and shall give notice of an opportunity for a hearing to be held

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

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

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

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

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

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

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

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

- (i) Any licensee under this chapter;
- (ii) Any other business which requires a license from the commissioner; or
- (iii) Any bank as defined under section 1 of chapter 167 or any subsidiary thereof.

(6) The commissioner may suspend, revoke or refuse to renew the license of the entity employing any licensed mortgage originator if the commissioner finds that (a) the entity knew or should have known that the mortgage loan originator violated this chapter or any rule or regulation promulgated hereunder, or any other law applicable to the conduct of its business; (b) the entity knew of any fact or condition to exist which, if it had existed at the time of the original

application for such license, would have warranted the commissioner in refusing to issue such license; or (c) the mortgage loan originator committed any fraud, misappropriated funds or misrepresented any of the material particulars of a mortgage loan transaction approved by the entity.

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

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

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

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

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

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

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

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

(1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any

information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or said section 10 of chapter 66.

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

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

- (a) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective State; or
- (b) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

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

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

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

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

HOUSE No. 4127

By Mr. Koutoujian of Waltham, for the committee on Financial Services, on Senate, No. 452 and House, No. 980, a Bill adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (House, No. 4127). June 3, 2009.



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15 Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit
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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
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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 (8) If the commissioner shall not issue a license, he shall notify the applicant of the denial.
219 Within 20 days thereafter, the commissioner shall enter upon the Division's records a written
220 decision and findings containing the reasons supporting the denial and shall forthwith give
221 written notice thereof by registered mail to the applicant. Within 30 days after receipt of such
222 notice, the applicant may seek judicial review of the denial in accordance with section 14 of
223 chapter 30A.

224
225 Section 5. (1) in order to meet the pre-licensing education requirement referred to in subsection
226 (4) of section 4, a person shall complete at least 20 hours of education approved in accordance
227 with subsection (2) of this section, which shall include at least:

- 228
229 (a) 3 hours of federal law and regulations;
230 (b) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and
231 fair lending issues;
232 (c) 2 hours of training related to lending standards for the nontraditional mortgage
233 product marketplace; and
234 (d) State law and regulation, which shall include instruction on state consumer protection
235 laws and other related statutes.

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

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

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

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

249

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

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

- 258 (a) ethics;
- 259 (b) federal law and regulation pertaining to mortgage origination;
- 260 (c) state law and regulation pertaining to mortgage origination; and
- 261 (d) federal and state law and regulation, including instruction on fraud, consumer
262 protection, the nontraditional mortgage marketplace, and fair lending issues.

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

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

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

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

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

277

278 Section 7. (1) The minimum standards for license renewal for mortgage loan originators shall
279 include the following:—

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

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

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

285

286 (2) The license of a mortgage loan originator failing to satisfy the minimum standards for
287 license renewal shall expire. The commissioner may adopt procedures for the reinstatement of

288 expired licenses consistent with the standards established by the Nationwide Mortgage Licensing
289 System and Registry.

290
291 Section 8. (1) In order to meet the annual continuing education requirements referred to in
292 clause (b) of subsection (1) of section 7, a licensed mortgage loan originator shall complete at
293 least 8 hours of education approved in accordance with subsection (2) of this section, which shall
294 include at least:

- 295 (a) 3 hours of federal law and regulation;
- 296 (b) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair
297 lending issues;
- 298 (c) 2 hours of training related to lending standards for the nontraditional mortgage product
299 marketplace; and
- 300 (d) State law and regulation, which shall include instruction on state consumer protection
301 laws and other related statutes.

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

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

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

- 312 (5) A licensed mortgage loan originator—
313 (a) except for subsection (2) of section 7 and subsection (9) of this section may only
314 receive credit for a continuing education course in the year in which the course is taken;
315 and
316 (b) may not take the same approved course in the same or successive years to meet the
317 annual requirements for continuing education.

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

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

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

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

331

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

338 (1) background checks for:-

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

340 (b) civil or administrative records;

341 (c) credit history; or

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

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

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

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

360

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

364

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

367 (a) Deny, suspend, revoke, condition or decline to renew a license for a violation of this

368 chapter, rules or regulations issued under this chapter or order or directive entered under
369 this chapter.

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

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

375 (d) Impose fines on persons subject to this chapter pursuant to subsections (2), (3) and
376 (4).

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

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

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

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

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

389

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

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

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

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

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

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

408 period up to 36 months following the effective date of an order issued under paragraph (b) or (c);
409 or
410 (iii) to prohibit the person from any further participation, in any manner, as a mortgage loan
411 originator in the commonwealth or to prohibit the person from being employed by, as agent of,
412 or operating on behalf of a licensee under this chapter or any other business which requires a
413 license from the commissioner.
414 (b) A written notice issued under paragraph (a) shall contain a written statement of the facts that
415 support the prohibition and shall give notice of an opportunity for a hearing to be held
416 thereon. The hearing shall be fixed for a date not more than 30 days after the date of service
417 upon the commissioner of the request for a hearing. If the person fails to submit a request for a
418 hearing within 20 days of service of notice under said paragraph (a), or otherwise fails to appear
419 in person or by a duly authorized representative, the party shall be considered to have consented
420 to the issuance of an order of prohibition in accordance with the notice.
421 (c) In the event that consent is granted by operation of paragraph (b), or if after a hearing the
422 commissioner finds that any of the grounds specified in the notice have been established, the
423 commissioner may issue an order of prohibition in accordance with paragraph (a) as the
424 commissioner finds appropriate.
425 (d) An order issued under paragraph (b) or (c) shall be effective upon service upon the
426 person. The commissioner shall also serve a copy of the order upon the licensee of which the
427 person is an employee or on whose behalf the person is performing. The order shall remain in
428 effect and enforceable until it is modified, terminated, suspended or set aside by the
429 commissioner or a court of competent jurisdiction.
430 (e) Except as consented to in writing by the commissioner, any person who, pursuant to an order
431 issued under paragraph (b) or (c), has been prohibited from participating in whole or in part as a
432 mortgage loan originator may not, while the order is in effect, continue or commence to perform
433 in the capacity of a mortgage loan originator, or otherwise participate in any manner, if so
434 prohibited by order of the commissioner, in the conduct of the affairs of:-
435 (i) any licensee under this chapter;
436 (ii) any other business which requires a license from the commissioner; or
437 (iii) any bank as defined under section 1 of chapter 167 or any subsidiary thereof.
438 (6) The commissioner may suspend, revoke or refuse to renew the license of the entity
439 employing any licensed mortgage originator if the commissioner finds that: (a) the entity knew
440 or should have known that the mortgage loan originator violated this chapter or any rule or
441 regulation promulgated hereunder, or any other law applicable to the conduct of its business; (b)
442 the entity knew of any fact or condition to exist which, if it had existed at the time of the original
443 application for such license, would have warranted the commissioner in refusing to issue such
444 license; or (c) the mortgage loan originator committed any fraud, misappropriated funds or
445 misrepresented any of the material particulars of a mortgage loan transaction approved by the
446 entity.

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

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

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

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

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

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

461 (4) Immediately upon recovery upon any action on the bond the licensee shall file a new bond.
462
463

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

466 (1) Except as otherwise provided in Public Law 110-289, Section 1512, the requirements under
467 any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any
468 information or material provided to the Nationwide Mortgage Licensing System and Registry,
469 and any privilege arising under federal or state law, including the rules of any federal or state
470 court, with respect to such information or material, shall continue to apply to such information or
471 material after the information or material has been disclosed to the Nationwide Mortgage
472 Licensing System and Registry. Such information and material may be shared with all state and
473 federal regulatory officials with mortgage industry oversight authority without the loss of
474 privilege or the loss of confidentiality protections provided by federal law or said section 10 of
475 chapter 66.

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

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

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

485 (b) subpoena or discovery, or admission into evidence, in any private civil action or
486 administrative process, unless with respect to any privilege held by the Nationwide

487 Mortgage Licensing System and Registry with respect to such information or material,
488 the person to whom such information or material pertains waives, in whole or in part, in
489 the discretion of such person, that privilege.

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

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

497
498 Section 14. In addition to any authority allowed under this chapter the commissioner shall have
499 the authority to conduct investigations and examinations as follows:-

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

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

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

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

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

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

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

530 (a) accounting compilations;

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

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

534 (5) In making any examination or investigation authorized by this chapter, the commissioner
535 may control access to any documents and records of the licensee or person under examination or
536 investigation. The commissioner may take possession of the documents and records or place a
537 person in exclusive charge of the documents and records in the place where they are usually
538 kept. During the period of control, no individual or person shall remove or attempt to remove any
539 of the documents and records except pursuant to a court order or with the consent of the
540 commissioner. Unless the commissioner has reasonable grounds to believe the documents or
541 records of the licensee have been, or are at risk of being altered or destroyed for purposes of
542 concealing a violation of this chapter, the licensee or owner of the documents and records shall
543 have access to the documents or records as necessary to conduct its ordinary business affairs.

544 The commissioner shall preserve a full record of each such examination of a licensee.
545 All records of investigation and reports of examination by the commissioner, including work
546 papers, information derived from such reports or in response to such reports, and any copies
547 thereof in the possession of any licensee under the supervision of the commissioner, shall be
548 confidential and privileged communications, shall not be subject to subpoena and shall not be a
549 public record under clause Twenty-sixth of section 7 of chapter 4. For the purpose of this
550 paragraph, records of investigation and reports of examinations shall include records of
551 investigation and reports of examinations conducted by any bank regulatory agency of the
552 federal government and any other state, and of any foreign government which are considered
553 confidential by such agency or foreign government and which are in possession of the
554 commissioner. In any proceeding before a court, the court may issue a protective order to seal
555 the record protecting the confidentiality of any such record, other than any such record on file
556 with the court or filed in connection with the court proceeding, and the court may exclude the
557 public from any portion of a proceeding at which any such record may be disclosed. Copies of
558 such reports of examination shall be furnished to a licensee for its use only and shall not be
559 exhibited to any other person, organization or agency without prior written approval by the
560 commissioner. The commissioner may, in his discretion, furnish to regulatory agencies of the
561 federal government, of other states, or of foreign countries and any law enforcement agency,
562 such information, reports, inspections and statements relating to the licensees under his
563 supervision.

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

565 (a) retain attorneys, accountants, or other professionals and specialists as examiners,
566 auditors, or investigators to conduct or assist in the conduct of examinations or

567 investigations;

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

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

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

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

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

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

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

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

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

592 (3) obtain property by fraud or misrepresentation;

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

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

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

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

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

- 606 (9) make, in any manner, any false or deceptive statement or representation including, with
607 regard to the rates, points, or other financing terms or conditions for a residential mortgage loan,
608 or engage in bait and switch advertising;
- 609 (10) negligently make any false statement or knowingly and willfully make any omission of
610 material fact in connection with any information or reports filed with a governmental agency or
611 the Nationwide Mortgage Licensing System and Registry or in connection with any investigation
612 conducted by the commissioner or another governmental agency;
- 613 (11) make any payment, threat or promise, directly or indirectly, to any person for the purposes
614 of influencing the independent judgment of the person in connection with a residential mortgage
615 loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a
616 property, for the purposes of influencing the independent judgment of the appraiser with respect
617 to the value of the property;
- 618 (12) collect, charge, attempt to collect or charge or use or propose any agreement purporting to
619 collect or charge any fee prohibited by this chapter;
- 620 (13) cause or require a borrower to obtain property insurance coverage in an amount that
621 exceeds the replacement cost of the improvements as established by the property insurer.
- 622 (14) fail to truthfully account for monies belonging to a party to a residential mortgage loan
623 transaction.

624

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

629

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

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

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

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

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

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

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

Chapter 44 of the Acts of 2009

AN ACT ADOPTING THE FEDERAL SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT OF 2008.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is forthwith to regulate mortgage loan originators, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public health and convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The General Laws are hereby amended by striking out chapter 255F and inserting in place thereof the following chapter:-

CHAPTER 255F. LICENSING OF MORTGAGE LOAN ORIGINATORS.

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

“Clerical or support duties”, may include subsequent to the receipt of an application: (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

“Commissioner”, the commissioner of the division of banks.

“Depository institution”, shall have the same meaning as in section 3 of the Federal Deposit Insurance Act, and shall include credit unions.

“Division”, the division of banks.

“Entity”, a person or entity that is a licensee under chapter 255E.

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

“Immediate family member”, a spouse, child, step child, adopted child, sibling, step sibling, adopted sibling, parent, step parent, adopted parent, grandparent, or grandchild.

“Individual”, a natural person.

“Loan processor or underwriter”, an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing under this chapter; provided, however, that said person shall not represent to the public, through advertising or other means of communicating or providing information including, but not limited to, the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual is licensed or otherwise authorized by law to perform any of the activities of a mortgage loan originator or that such person intends to perform any of the activities of a mortgage loan originator.

“Mortgage loan originator”, a person who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates terms of a residential mortgage loan.

“Nationwide mortgage licensing system and registry”, a mortgage licensing system developed and

maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators.

"Nontraditional mortgage product", any mortgage product other than a 30-year fixed rate mortgage.

"Person", a natural person, corporation, company, limited liability company, partnership, or association.

"Real estate brokerage activity", any activity involving offering or providing real estate brokerage services to the public, including without limitation: (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property; (ii) facilitating the sale, purchase, lease, rental, or exchange of real property; (iii) negotiating, on behalf of any person, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction; (iv) engaging in any activity for which a registration or license as a real estate agent or real estate broker is required; and (v) offering to engage in any activity, or act in any capacity, described in clauses (i) to (iv), inclusive.

"Registered mortgage loan originator", any individual who: (a) meets the definition of mortgage loan originator and is an employee of: (i) a depository institution; (ii) a subsidiary that is (A) owned and controlled by a depository institution; and (B) regulated by a federal banking agency; or (iii) an institution regulated by the Farm Credit Administration; and (b) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

"Residential mortgage loan", any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in section 103(v) of the Truth in Lending Act, 15 U.S.C. section 1602(v) or residential real estate upon which is constructed or intended to be constructed a dwelling as so defined.

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

"Unique identifier", a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

Section 2. (a) No individual shall act as a mortgage loan originator with respect to any dwelling unless such person has first obtained a mortgage loan originator license from the commissioner or is exempt from the licensure requirement under subsection (b). No person shall knowingly employ or retain a mortgage loan originator unless the mortgage loan originator is licensed under this chapter or is exempt from the licensure requirement under subsection (b). Each licensed mortgage loan originator shall register with the Nationwide Mortgage Licensing System and Registry and shall maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(b) The following shall not be required to obtain a license pursuant to subsection (a): (i) registered mortgage loan originators; (ii) any person offering or negotiating a residential mortgage loan with or on behalf of an immediate family member; (iii) any person offering or negotiating a residential mortgage loan secured by a dwelling that served as the individual's primary residence; (iv) any person admitted to practice law in the commonwealth negotiating the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the person's representation of the client, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; (v) any person engaged solely as a loan processor or underwriter unless said person is acting as an independent contractor; (vi) any person that performs only real estate brokerage activities and is licensed or registered pursuant to sections 87PP to 87DDD1/2, inclusive, of chapter 112, unless the person is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and (vii) any person solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. section 101(53D).

(c) The commissioner may promulgate rules and regulations for the administration and enforcement of this chapter.

Section 3. (a) Any person seeking a mortgage loan originator's license pursuant to this chapter shall

file an application, accompanied by the appropriate fee, with the division. Said application shall be made on a form to be furnished by the division, and shall require the applicant to state his name, the name and address of his employer, if any, and such other information as the division may require. The applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including: (i) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a state, national and international criminal history background check; and (ii) personal history and experience in a form prescribed by the Nationwide Mortgage Licensing System and Registry, including the submission of authorization for the Nationwide Mortgage Licensing System and Registry and the commissioner to obtain: (1) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and (2) information related to any administrative, civil or criminal findings by any governmental entity.

(b) The commissioner may enter into agreements with the Nationwide Mortgage Licensing System and Registry or other entities designated by the Nationwide Mortgage Licensing System and Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) The commissioner may, for the purpose of participating in the Nationwide Mortgage Licensing System and Registry, waive or modify any requirement of this chapter and may establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System and Registry.

(d) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting information from the Federal Bureau of Investigation for the purposes of clause (i) and subclause (2) of clause (ii) of subsection (a) and distributing information to the Department of Justice or any governmental agency.

(e) The commissioner may use the Nationwide Mortgage Licensing System and Registry as a channeling agent for requesting and distributing information to and from any source for the purposes of subclauses (1) and (2) of clause (ii) of subsection (a) as so directed by the commissioner.

Section 4. (a) The commissioner shall issue a mortgage loan originator license to an applicant therefore unless the applicant: (i) has had a mortgage loan originator license revoked in any governmental jurisdiction; provided, however, that a subsequent formal vacation of such revocation shall not be deemed a revocation; (ii) has been convicted of, or pled guilty, admitted to sufficient facts or nolo contendere to, a felony in a domestic, foreign, or military court: (a) during the 7-year period preceding the date of the application for licensing and registration; (b) at any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering; or (c) has other convictions or admissions to sufficient facts involving fraud, dishonesty, or a breach of trust, or that the applicant has had any adverse civil judgments involving fraudulent dealings; provided, however, that a pardon of a conviction shall not be a conviction for purposes of this subsection; (iii) has failed to demonstrate financial responsibility, character, reputation, integrity and general fitness such as to command the confidence of the community and to warrant a determination that such applicant will operate honestly, fairly, soundly and efficiently in the public interest, consistent with the purposes of this chapter if the applicant is granted a license; provided, however, that for purposes of this clause a person shall have shown that he or she is not financially responsible when he or she has shown a disregard in the management of his or her own financial condition; and provided further, that a determination that an individual has not shown financial responsibility may include, but shall not be limited to: (a) current outstanding judgments, except judgments solely as a result of medical expenses; (b) current outstanding tax liens or other government liens and filings; (c) foreclosure within the past 3 years; or (d) a pattern of seriously delinquent accounts within the past 3 years; (iv) failure to complete the pre-licensing education requirement described in section 5; (v) failure to pass a written test that meets the test requirement described in section 6; or (vi) has failed to meet the surety bond requirement as required pursuant to section 12. The commissioner shall either grant or deny an application within a

reasonable period of such filing. If the commissioner denies an application for licensure, he shall notify the applicant of the denial, in writing, within 10 days of such denial. Within 20 days thereafter, the commissioner shall enter upon the division's records a written decision and findings containing the reasons supporting the denial and shall forthwith give written notice thereof by registered mail to the applicant. Within 30 days after receipt of such notice, the applicant may seek judicial review of the denial in accordance with section 14 of chapter 30A.

(b) A mortgage loan originator may be employed by no more than 1 entity. Each license issued to a mortgage loan originator shall be provided to, and maintained by, the employing entity at the employing entity's main office. If the employment of a mortgage loan originator is terminated, the employing entity shall return the mortgage loan originator's license to the division within 5 business days after termination. The reason for termination shall be provided to the commissioner. For a period of 1 year after the termination of employment, the mortgage loan originator may request the re-assignment of the license to another employing entity by submitting an application, together with a re-assignment fee as established by the commissioner, to the division. The return of the license of any mortgage loan originator to the division that is not re-assigned to another employing entity shall terminate the right of the mortgage loan originator to engage in any residential mortgage loan origination activity until reactivation of said license. The license of any mortgage loan originator that has been returned to the division and not re-assigned to another employing entity within 1 year of termination of employment shall be cancelled; provided, however, that the person holding the license may reapply to the division for licensure pursuant to this chapter. Each license shall state the name of the mortgage loan originator licensee and the name and main office address of the entity employing such mortgage loan originator.

Section 5. (a) An applicant for a mortgage loan originator's license shall complete a minimum of 20 hours of pre-licensing education approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards which shall include, without limitation: (i) 3 hours of federal law and regulations; (ii) 3 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; (iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace; and (iv) state law and regulation, which shall include instruction on state consumer protection laws and other related statutes.

Section 6. (a) An applicant for a mortgage loan originator's license shall pass, in accordance with the standards established under this section, a qualified written examination developed by the Nationwide Mortgage Licensing System and Registry and administered by a test provider approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards.

(b) A written examination shall not be considered a qualified written examination for purposes of this section unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including, but not limited to: (i) ethics; (ii) federal law and regulation pertaining to mortgage origination; (iii) state law and regulation pertaining to mortgage origination; and (iv) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) No person shall be considered to have passed the qualified written examination unless the person achieves a test score of not less than 75 per cent correct answers to questions. A person may retake the qualified written examination 3 consecutive times with each consecutive taking occurring at least 30 days after the preceding examination. Upon failing 3 consecutive written examinations, a person shall not be eligible to sit for another written examination for a period of at least 6 months. A licensed mortgage loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered mortgage loan originator.

Section 7. (a) A mortgage loan originator's license issued pursuant to this chapter shall be valid for a period of not more than 1 year. The division may renew a mortgage loan originator's license upon the

submission of documents showing that: (i) the mortgage loan originator remains in compliance with this chapter; (ii) the mortgage loan originator has satisfied the annual continuing education requirements pursuant to section 8; and (iii) the mortgage loan originator has paid all required fees for renewal of the license. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire.

(b) The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the Nationwide Mortgage Licensing System and Registry. A mortgage loan originator licensed pursuant to this chapter who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

Section 8. (a) A mortgage loan originator licensed pursuant to this chapter shall, annually, complete a minimum of 8 hours of continuing education approved by the Nationwide Mortgage Licensing System and Registry based upon reasonable standards, which shall include, without limitation: (i) 3 hours of federal law and regulation; (ii) 2 hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; (iii) 2 hours of training related to lending standards for the nontraditional mortgage product marketplace; and (iv) state law and regulation, which shall include instruction on state consumer protection laws and other related statutes. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit to satisfy such licensed mortgage loan originator's annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

(b) A mortgage loan originator licensed pursuant to this chapter shall: (i) only receive credit for a continuing education course in the year in which the course is taken; and (ii) not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

Section 9. The commissioner may participate in the Nationwide Mortgage Licensing System and Registry and shall require mortgage loan originators to be licensed and registered through the Nationwide Mortgage Licensing System and Registry. The commissioner may establish by regulation requirements including, but not limited to: (i) background checks for: (1) criminal history through a database that utilizes the fingerprint of the subject or other databases; (2) civil or administrative records; (3) credit history; or (4) any other information as deemed necessary by the Nationwide Mortgage Licensing System and Registry; (ii) the payment of fees to apply for or renew licenses through the Nationwide Mortgage Licensing System and Registry; provided, however, that each application for a license shall be accompanied by an investigation fee and license fee provided, that investigation and license fees shall be determined annually by the secretary of administration under section 3B of chapter 7; provided, further, that such investigation and license fees shall not apply to any community development corporation as defined in section 1 of chapter 40F and organized under the General Laws; and provided further, that classifications or adjustments as deemed necessary may be made relative to fees for any nonprofit agency or corporation incorporated under the laws of the commonwealth for the purpose of assisting low to moderate income households in the purchase or rehabilitation of family residences of 4 units or less and which holds tax-exempt status granted under the provisions of section 501(c)(3) or 501(c)(4) of the Internal Revenue Code or as otherwise determined by the commissioner; (iii) the setting or resetting as necessary of renewal or reporting dates; and (iv) requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the Nationwide Mortgage Licensing System and Registry.

Section 10. The commissioner shall establish a process whereby mortgage loan originators may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the commissioner; provided, however, that anyone aggrieved by a decision of the commissioner may appeal said decision in accordance with chapter 30A.

Section 11. (a) The commissioner may for the administration and enforcement of this chapter, pursuant to chapter 30A: (i) deny, suspend, revoke, condition or decline to renew a license for a violation of this chapter, or of any rule or regulation issued under this chapter or of any order or directive entered under this chapter; (ii) deny, suspend, revoke, condition or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 4 or section 7, or withholds information or makes a material misstatement in an application for a license or renewal of a license; (iii) order restitution against persons subject to this chapter for violations of this chapter; (iv) impose fines on persons subject to this chapter pursuant to subsections (b) and (c); (v) order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist; (vi) order or direct persons subject to this chapter to cease any activities inconsistent with or in violation of this chapter, including immediate temporary orders to cease and desist; (vii) enter immediate temporary orders to cease business under a license if the commissioner determines that such license was erroneously granted or the licensee is currently in violation of this chapter; or (viii) order or direct such other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose a civil assessment on a person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that such person has violated or failed to comply with any requirement of this chapter or any regulation promulgated or order issued by the commissioner.

(c) The maximum amount of a civil assessment imposed by the commissioner for violation of this chapter shall not exceed \$25,000; provided, however, that each violation or failure to comply with any directive or order of the commissioner shall constitute separate and distinct violations or failures for purposes of imposing civil assessments.

(d)(i) Whenever the commissioner determines that any person has, directly or indirectly, violated this chapter or any rule or regulation promulgated hereunder or any order issued by the commissioner pursuant to this chapter or any written agreement entered between the licensee and the commissioner, the commissioner may serve upon that person a written notice of intent to: (1) prohibit the person from performing in the capacity of a principal employee on behalf of any licensee for a period of time that the commissioner considers necessary; (2) prohibit the person from obtaining a license from the commissioner for a period up to 36 months following the effective date of an order issued under clause (ii) or (iii); or (3) prohibit the person from any further actions, in any manner, as a mortgage loan originator or to prohibit the person from being employed by, as agent of, or operating on behalf of a licensee under this chapter or any other business which requires a license from the commissioner.

(ii) A written notice issued under clause (i) shall contain a written statement of the facts that support the prohibition and shall give notice of an opportunity for a hearing to be held thereon. The hearing shall occur not more than 30 days after the date of service upon the commissioner requesting a hearing. If the person fails to submit a request for a hearing within 20 days of service of notice under clause (i), or otherwise fails to appear in person or by a duly authorized representative, the party shall be considered to have consented to the issuance of an order of prohibition in accordance with the notice.

(iii) In the event that consent is granted by operation of clause (ii), or if after a hearing the commissioner finds that any of the grounds specified in the notice have been established, the commissioner may issue an order of prohibition in accordance with clause (i) as the commissioner finds appropriate.

(iv) An order issued under clauses (ii) or (iii) shall be effective upon service upon the person who is the subject of the order. The commissioner shall also serve a copy of the order upon the licensee of which the person is an employee or on whose behalf the person is performing. The order shall remain in effect and enforceable until it is modified, terminated, suspended or set aside by the commissioner or a court of competent jurisdiction.

(v) Except as consented to in writing by the commissioner, any person who, pursuant to an order issued under clauses (ii) or (iii) has been prohibited from participating in whole or in part as a mortgage loan originator shall not, while the order is in effect, continue or commence to perform in the capacity of a mortgage loan originator, or otherwise participate in any manner, if so prohibited by order of the

commissioner, in the conduct of the affairs of: (1) a mortgage loan originator licensed under this chapter; (2) any other business which requires a license from the commissioner; or (3) any bank as defined under section 1 of chapter 167 or any subsidiary thereof.

(e) The commissioner may suspend, revoke or refuse to renew the license of the entity employing any licensed mortgage originator upon finding that: (i) the entity knew or reasonably should have known that the mortgage loan originator violated this chapter or any rule or regulation promulgated hereunder, or any other law applicable to the conduct of its business; (ii) the entity knew of any fact or condition which, if it had existed at the time of the original application for such license, would have warranted the commissioner in refusing to issue such license; or (iii) the mortgage loan originator committed any fraud, misappropriated funds or misrepresented any of the material particulars of a mortgage loan transaction approved by the entity.

(f) Nothing in this chapter shall preclude the prosecution of a criminal action arising from an act or omission for which a civil assessment has been imposed.

Section 12. (a) Each mortgage loan originator shall be covered by a surety bond in accordance with this section. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection (b) and shall be in a form prescribed by the commissioner. If a mortgage loan originator is an employee or exclusive agent of an entity, the surety bond of said entity may be used to satisfy the mortgage loan originator's surety bond requirement.

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

(c) Upon commencement of an action on a licensee's bond the commissioner may require the filing of a new bond. The commissioner shall, immediately upon recovery upon any action on the bond, require that the licensee file a new bond.

Section 13. (a) Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law or section 10 of chapter 66 regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System and Registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or said section 10 of chapter 66.

(b) For the purposes described in subsection (a), the commissioner may enter agreements or sharing arrangements with other governmental agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators or other associations representing governmental agencies as established by rule, regulation or order of the commissioner.

(c) Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to: (i) disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective State; or (ii) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

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

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

public.

Section 14. (a) The commissioner shall have the authority to conduct investigations and examinations for: (i) purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner shall have the authority to access, receive and use any books, accounts, records, files, documents, information or evidence including, but not limited to: (1) criminal, civil and administrative history information, including non-conviction data as specified in applicable provisions of the General Laws; (2) personal history and experience information including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and (3) any other documents, information or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control or custody of such documents, information or evidence; and (ii) the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee, individual or person subject to this chapter, in order to carry out the purposes of this chapter.

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

(c) Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including, but not limited to: (i) accounting compilations; (ii) information lists and data concerning loan transactions in a format prescribed by the commissioner; or (iii) such other information deemed necessary to carry out the purposes of this section.

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

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

commissioner may furnish to regulatory agencies of the federal government, of other states, or of foreign countries and any law enforcement agency, such information, reports, inspections and statements relating to the licensees under his supervision.

(e) In order to carry out the purposes of this section, the commissioner may: (i) retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations; (ii) enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information or evidence obtained under this section; (iii) use, hire, contract or employ public or privately available analytical systems, methods or software to examine or investigate the licensee, individual or person subject to this chapter; (iv) accept and rely on examination or investigation reports made by other government officials, within or without the commonwealth; or (v) accept audit reports made by an independent certified public accountant for the licensee, individual or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation or other writing of the commissioner.

(f) No person subject to this chapter shall knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information unless otherwise authorized by law or regulation.

Section 15. It shall be a violation of this chapter for any person to: (a) directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person; (b) engage in any unfair or deceptive practice toward any person; (c) obtain property by fraud or misrepresentation; (d) solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower; (e) solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting; (f) conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter; (g) fail to make disclosures as required by this chapter and any other applicable state or federal law including regulations thereunder; (h) fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter; (i) make, in any manner, any false or deceptive statement or representation including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising; (j) make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the commissioner or another governmental agency; (k) make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property; (l) collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter; (m) cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or (n) fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

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

information as the Nationwide Mortgage Licensing System and Registry may require.

Section 17. The commissioner shall report violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in section 13, in conformance with Pub. Law 110-289, section 1512.

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

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

SECTION 2. Section 17 and section 18 of chapter 206 of the acts of 2007 are hereby repealed.

SECTION 3. Notwithstanding any general or special law to the contrary, a person licensed under chapter 255F of the General Laws prior to the effective date of this act shall prove that they have completed all of the continuing education requirements to the satisfaction of the commissioner.

SECTION 4. Section 19 of chapter 255F of the General Laws, inserted by section 1, shall take effect upon its passage. The remainder of section 1 shall take effect on July 31, 2009; provided, however, that subsection (a) of section 2 of chapter 255F of the General Laws, as appearing in section 1, shall apply on January 1, 2011 or such later date, as approved by the Secretary of the United States Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, section 1508, to persons who are licensed mortgage loan originators on July 31, 2009; and provided further, that said subsection (a) of said section 2 of said chapter 255F of the General Laws, as appearing in section 1, shall apply to all other persons on July 31, 2010 or such later date, as approved by the said Secretary, pursuant to the authority granted under said Public Law 110-289, section 1508.

Approved July 29, 2009

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News Release

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For Immediate Release

December 16, 2009

MTF Forecast: Limited Revenue Growth in Fiscal 2011; Large Structural Deficit Remains

State tax revenues for fiscal 2011 will total \$18.953 billion, a \$674 million increase over the fiscal 2010 revised benchmark, according to a new forecast released today by the Massachusetts Taxpayers Foundation.

MTF President Michael J. Widmer presented the Foundation's economic and revenue forecast to members of the House and Senate Ways and Means Committees and the Secretary of Administration and Finance at their annual consensus revenue hearing at the State House today.

Summary	Baseline Revenues	Sales Tax Increase	Total State Tax Revenues
2008 Actual	20,888		20,888
2009 Actual	18,259		18,259
2010 Revised Benchmark	17,389	890	18,279
2011 MTF Forecast	17,913	1,040	18,953

"Even with this revenue growth, the state faces an estimated \$3 billion structural deficit in fiscal 2011," Mr. Widmer said. "Balancing the 2011 budget will require significant cuts across all of state government."

The Foundation projects that the beginning of an economic recovery in Massachusetts will produce growth in baseline tax revenues of \$524 million or 3 percent in fiscal 2011. In addition, a full year of the sales tax increase (compared to 10 months in 2010) will generate another \$150 million in 2011.

	FY 08 Actual	FY 09 Actual	FY 10 Benchmark	FY 11 MTF Forecast
Income	12,487	10,577	10,178	10,517
Sales - Baseline	4,088	3,869	3,586	3,663
Sales Tax Increase			890	1,040
Corporate and Business	2,551	2,099	1,973	2,034
All Other	1,762	1,714	1,652	1,699
Total	20,888	18,259	18,279	18,953

Several factors shape MTF's projections:

Employment

MTF forecasts that Massachusetts will add 27,000 jobs in fiscal 2011 after bottoming out in mid-2010. The unemployment rate will continue to climb from the current 8.9 percent to an average of 9.5 percent in fiscal 2011.

Personal Income

After averaging less than 1 percent annual growth for the past two years, MTF forecasts that Massachusetts personal income will increase by 2.2 percent in fiscal 2011. Despite the improvement, 2.2 percent is roughly one-third of the annual rate of growth from fiscal 2006 through 2008.

Sales Taxes

MTF forecasts that baseline sales tax revenues will grow \$77 million or 2 percent, which is more than the average annual increase from 2000 to 2009. Most of the jump in sales tax revenues results from a full year's increase in the sales tax rate.

Business Taxes

MTF projects corporate tax revenues will increase \$125 million to \$1.3 billion in 2011—a 10 percent increase over fiscal 2010. Other business taxes will increase roughly 2 percent, bringing total corporate and business taxes to \$2.034 billion in 2011.

The Massachusetts Taxpayers Foundation is an independent, nonprofit organization that conducts research on state and local taxes, government spending, and the economy. Founded in 1932, the Foundation has won numerous prestigious national awards over the last decade for its work on business costs, capital spending, state finances, MBTA restructuring, state government reform, and health care.

MASSACHUSETTS TAXPAYERS FOUNDATION
FISCAL YEAR FORECAST SUMMARY

GLOBAL INSIGHT NATIONAL FORECAST

					<<< History		Forecast >>>	
December 2010	2004	2005	2006	2007	2008	2009	2010	2011
Personal Income (billions of 2000 \$)	8,835	9,085	9,364	9,687	9,902	9,717	9,737	10,015
% change	2.5	2.8	3.1	3.4	2.2	-1.9	0.2	2.9
Employment (millions)	130.5	132.5	135.0	137.0	137.8	134.7	131.1	131.8
% change	0.3	1.5	1.9	1.4	0.6	-2.2	2.7	0.6
Unemployment Rate	5.8	5.3	4.8	4.5	5.0	7.5	10.0	10.0
CPI (% change)	2.2	3.0	3.8	2.6	3.7	1.0	0.8	2.2
PPI (% change)	4.8	6.9	7.7	2.9	9.0	-2.2	-7.9	1.8
Federal Discount Rate	2.0	3.2	5.2	6.3	4.3	1.2	0.5	1.1
Prime Commercial Rate	4.0	5.2	7.2	8.3	6.7	3.9	3.3	3.8
Standard & Poor's 500 Index (% change*)	-3.2	17.3	6.8	8.6	12.7	-17.3	-22.5	21.0

					<<< History		Forecast >>>	
MTF MASS. ECONOMIC FORECAST	2004	2005	2006	2007	2008	2009	2010	2011
Personal Income (billions of current \$)	260.8	272.6	289.2	307.3	324.7	325.5	329.2	336.5
% change	4.2	4.5	6.1	6.3	5.7	0.2	1.1	2.2
Personal Income (billions of 2000 \$)	239.2	242.5	248.7	256.7	265.3	260.7	262.1	264.9
% change	1.7	1.4	2.6	3.2	3.3	-1.7	0.5	1.1
Total Employment (000s)	3,190	3,202	3,228	3,264	3,294	3,228	3,166	3,193
% change	-1.1	0.4	0.8	1.1	0.9	-2.0	-1.9	0.8
Unemployment Rate	5.6	4.9	4.8	4.6	4.6	7.0	9.4	9.5

					<<< History		Forecast >>>	
MTF MASS. TAX FORECAST	2004	2005	2006	2007	2008	2009	2010	2011
Income Tax (millions \$)	8,830	9,690	10,483	11,391	12,493	10,584	10,178	10,517
% change	10.0	9.7	8.2	8.7	9.7	-15.3	-3.8	3.3
Sales Tax	3,749	3,886	4,004	4,066	4,086	3,869	4,484	4,703
% change	1.1	3.7	3.0	1.5	0.5	-5.3	15.9	4.9
Corporations Tax	998	1,063	1,391	1,585	1,512	1,549	1,176	1,303
% change	24.8	6.5	30.9	14.0	-4.6	2.4	-24.1	10.8
TOTAL TAXES**	15,953	17,087	18,487	19,732	20,888	18,259	18,279	18,953
% change	6.6	7.1	8.2	6.7	5.9	-12.6	0.1	3.7
TOTAL TAXES FOR BUDGET***	13,867	14,368	16,011	17,105	17,967	15,425	15,487	16,045
% change	-2.9	3.6	11.4	6.8	5.0	-14.1	0.4	3.6

* Percent change in index for prior calendar year.

** Includes collections from other tax sources not detailed above.

*** Tax revenues available for appropriation in the budget exclude a portion of sales tax receipts dedicated to the MBTA and school building construction, tax revenues dedicated to pension funding, and net revenues in excess of permissible tax revenues.