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Number(s)	<input type="text" value="h980"/>	

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H980 - An Act adopting the federal secure and fair enforcement for mortgage licensing act of 2008.

Date	Chamber	Entry
01/20/2009	H	Referred to the committee on Joint Committee on Financial Services
01/20/2009	S	Senate concurred Public Hearing date 5/6 at 1:00 PM in Hearing Room A2
06/03/2009	H	Accompanied a new draft, see see H4127

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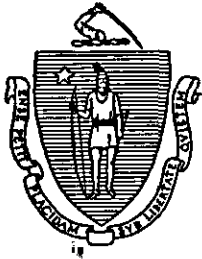
Type	Bill Number	Docket Number
Number(s)	<input type="text" value="h4178"/>	

[View Bill History](#)

H4178 - An Act adopting the federal secure and fair enforcement for Mortgage Licensing Act of 2008.

Date	Chamber	Entry
07/28/2009	H	Reported from the committee on House Committee On Ways and Means
07/28/2009	H	New draft of H4127
07/28/2009	H	Substituted for H4127
07/28/2009	H	Ordered to a third reading - 155 YEAS to 0 NAYS (See Yea and Nay in Supplement, No. 175)
07/28/2009	H	Rules suspended
07/28/2009	H	Read third and passed to be engrossed
07/29/2009	S	Read; and referred to the committee on Senate Committee On Ways and Means
07/29/2009	S	Rules suspended
07/29/2009	S	Read second, ordered to a third reading, read third and passed to be engrossed
07/29/2009	H	Emergency preamble adopted
07/29/2009	S	Emergency preamble adopted
07/29/2009	H	Enacted
07/29/2009	S	Enacted and laid before the Governor
07/31/2009	G	Signed by the Governor, Chapter 44 of the Acts of 2009.

(SA) H 980 A



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: JAN 6, 2009

If you would like to present oral testimony or be recorded on any legislation, please provide the following information:

Testimony on Bill #: H 980
S 452

ORAL TESTIMONY: In support of () In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No () After

NAME (please print): Kevin M. Coff

ORGANIZATION AND ADDRESS: MASS. MORTGAGE BANKERS ASSOC.
76 Canal - Boston

TELEPHONE #: 617/570-9114

Please submit this completed form to committee staff prior to hearing.

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: 5/6/09

If you would like to present oral testimony or be recorded on any legislation, please provide the following information:

Testimony on Bill #: H 980
S 452

ORAL TESTIMONY: In support of () In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No ()

NAME (please print): David Floren

ORGANIZATION AND ADDRESS: Mass. Bankers Assn. 73 Tremont St
Boston

TELEPHONE #: 617-523-7595

Please submit this completed form to committee staff prior to hearing.

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: May 6, 2009

If you would like to present oral testimony or be recorded on any legislation, please provide the following information:

Testimony on Bill #: H _____
S 452

ORAL TESTIMONY: In support of () In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No ()

NAME (please print): STEVEN L. ANTONAKES
DAVID J. COTNEY

ORGANIZATION AND ADDRESS: Commissioner of Banks

TELEPHONE #: _____

Please submit this completed form to committee staff prior to hearing:

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: May 6 2009

If you would like to present oral testimony or be recorded on any legislation, please provide the following information:

Testimony on Bill #: H 980
S _____

ORAL TESTIMONY: In support of () In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No ()

NAME (please print): STEVEN L. ANTONAKES
DAVID J COONEY

ORGANIZATION AND ADDRESS: Commissioner & Bank

TELEPHONE #: (617) 956-1510

Please submit this completed form to committee staff prior to hearing.

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair

(SA) H980 A SA A



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: 5/6/09

If you would like to present oral testimony or be recorded on any legislation, please provide the following information:

Testimony on Bill #: H 980
S 542

ORAL TESTIMONY: In support of () in part In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No ()

NAME (please print): Denise Leonard

ORGANIZATION AND ADDRESS: Massachusetts Mortgage Association

TELEPHONE #: 781-521-9975

Please submit this completed form to committee staff prior to hearing.

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair

(SA) H980
S452

A



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: 5/6/09

If you would like to present oral testimony or be recorded on any legislation; please provide the following information:

Testimony on Bill #: H 980
S 452

ORAL TESTIMONY: In support of () In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No ()

NAME (please print): Mary Ann Haney

ORGANIZATION AND ADDRESS: MA Ull League 845 Donald
Carol Blvd
Marblehead
01752

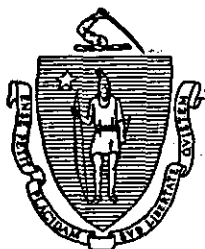
TELEPHONE #: 508 4816755

Please submit this completed form to committee staff prior to hearing:

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair

(SA) H 980 IA



**Massachusetts General Court
Joint Committee on Financial Services
2009-2010**

HEARING TESTIMONY FORM

*PLEASE COMPLETE ONE SHEET FOR EACH PIECE OF LEGISLATION YOU INTEND TO TESTIFY ON.

Hearing Date: 5-6-09

If you would like to present oral testimony or be recorded on any legislation, please provide the following information:

Testimony on Bill #: H 980
S 952

ORAL TESTIMONY: In support of In opposition to ()

TO BE RECORDED ONLY: In support of () In opposition to ()

WILL YOU BE SUBMITTING ANY WRITTEN TESTIMONY? Yes () No ()

NAME (please print): Kevin Cuff

ORGANIZATION AND ADDRESS: MMTBA

TELEPHONE #: 617-570-9114

Please submit this completed form to committee staff prior to hearing.

Thank you,

Senator Stephen J. Buoniconti, Senate Chair
Representative Peter J. Koutoujian, House Chair



Testimony before the Joint Committee on Financial Services in Support of S. 452,
An Act Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008

Submitted By:

Sean Caron
Director of Public Policy
May 6, 2009

Dear Chairman Buoniconti, Chairman Koutoujian, and Members of the Committee:

My name is Sean Caron and I am Director of Public Policy at Citizens' Housing and Planning Association (CHAPA). CHAPA is a statewide affordable housing advocacy organization committed to bolstering community stabilization in neighborhoods impacted by foreclosures.

In 2006 and 2007, we were part of a broad coalition of organizations that partnered with the legislature to develop Ch. 206 of the Acts of 2007, a significant piece of legislation that has helped reduce foreclosures in Massachusetts. The licensure of mortgage loan originators was a key component of Ch. 206. However, this provision is in jeopardy unless S. 452 or its companion bill filed by Assistant Majority Leader Mariano is promptly passed.

The licensure of loan originators has given the Division of Banks (DOB) an effective tool to regulate a critical aspect of mortgage loan making. By licensing mortgage industry representatives at the front lines of lending, the DOB will be able to ensure that loan originators are qualified to match the correct mortgage products with qualified buyers. In addition, the mortgage licensing fees have funded the DOB to help meet the overwhelming workload created by the foreclosure crisis and have funded grants for foreclosure prevention counseling and first-time homebuyer counseling.

Without legislative action to make Massachusetts law compliant with the SAFE Mortgage Licensing Act, DOB's ability to license and collect fees from mortgage loan originators will be preempted by the United States Department of Housing and Urban Development. The preemption will occur on August 1st absent legislative action so we ask that you work to expedite S. 452's passage.

Please don't hesitate to contact me to discuss this legislation or other proposals to improve neighborhoods impacted by foreclosures. Thank you for your leadership and support.

Massachusetts Bankers Association

**Statement of the Massachusetts Bankers Association
in support for S 452 and H 980,
An Act Adopting the Federal Secure and Fair Enforcement
for Mortgage Licensing Act of 2008
Committee on Financial Services
May 6, 2009**

Good afternoon. I am David Floreen, Senior Vice President, Massachusetts Bankers Association and appear this afternoon on behalf the nearly 200 commercial, cooperative and savings banks doing business in Massachusetts. Our Association and its member banks, which originate tens of thousands of mortgage loans annually in the Commonwealth, have been and continue to be strong supporters of state and national efforts to reform and strengthen the regulatory environment governing mortgage lending in Massachusetts.

The legislation before you today, S 452 and H 980, seeks to update existing law governing mortgage loan originators, found in chapter 255F, M. G. L. to ensure that Massachusetts remains in compliance with recently enacted federal law.

The basic thrust of S 452 and H 980 is to implement in Massachusetts, the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) by requiring all mortgage originators to be licensed or registered through the Nationwide Mortgage Licensing System and Registry (NMLS). Under the SAFE Act, all states are required to enact laws implementing this process by July 31, 2009, less than three months from today.

We are pleased that the Massachusetts Division of Banks has been a national leader in developing the NMLS and in implementing major state legislation approved by this Committee in 2007 to mandate the licensing of non-bank mortgage originators. Our Association has long supported efforts by this Legislature and the Congress to implement reasonable nationwide licensing and registration standards to ensure appropriate tracking mechanisms for all parties who originate loans. Experience has clearly demonstrated that being able to identify those individuals who were responsible for originating questionable or potentially fraudulent loans has helped regulators crack-down on some of the more egregious practices that have occurred in the marketplace over the last several years.

The Division of Banks has submitted extensive written information highlighting the background and necessity for this legislation. The Massachusetts Bankers Association is pleased to support this legislation and urges the Committee not only to give H 980 and S 452 your strong endorsement, but work aggressively with key legislative leaders to ensure that the bill reaches the desk of Governor Deval Patrick well before the July 31 deadline.



Massachusetts Mortgage Bankers Association

In support of S 452 and H 980 an Act to Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) act of 2008

Joint Committee on Financial Services

Wednesday May 5, 2009

Senator Stephen J. Buoniconti
Representative Peter J. Koutoujian
Co-Chairs
Massachusetts Joint Committee on Financial Services

The Massachusetts Mortgage Bankers Association represents roughly 375 lenders from depository institutions commercial, savings and cooperative banks and federal savings and loan associations as well as Massachusetts Credit Unions and all non-depository institutions national and state chartered mortgage lenders and mortgage brokers. The Association is in a unique position of serving equally the lending constituencies of depository and non-depository lenders within the Commonwealth. Having said that, we believe that we are in an experienced position of offering the Committee insight, analysis and opinion on the overall fallout as a result of the current issues facing the capital markets, credit, banking and lending industries. The MMBA tremendously appreciates the opportunity to provide you with our full support for Senate Bill 452 and House Bill 980 adopting the Federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) act of 2008.

The MMBA supports the efforts of the Massachusetts Division of Banks and Commissioner of Banks through their hard work and leadership by using the Massachusetts licensing statute as a template for the national (SAFE) model. SAFE Act compliance is respectfully under a timeline to assure federal compliance. The MMBA has no intention of disrupting that critical timeline however, having been afforded the year-long opportunity of working within the new Massachusetts statutory licensing requirement through Chapter 255F as a part of the Chapter 206 of the Acts of 2007, the MMBA has the observed the following which may lend itself to useful application of the SAFE standards:

Grandfathering:

The Massachusetts Division of Banks was granted discretion to transition current mortgage loan originators into licensed status upon the passing of Chapter 206 back in early 2008. This "grandfathering" provided appropriate transition assistance to those loan originators who were currently employed by a mortgage lender and sufficiently passed all of the background and credit, etc. requirements. Equally, it might be a great transition assistance to allow all sitting LO licensee's easy SAFE compliance since they would have complied under Chapter 206. The proposed transition under SAFE calls for 20 hours of education and the passing of a national examination. Having just gone through the Massachusetts licensing process (grandfathered or otherwise), the MMBA would ask for some consideration of adopting all current licensees as SAFE compliant.

Education:

SAFE Act compliance calls for 20 hours of total education. Two hours of which must be on non-traditional loan products. With the exception of adjustable rate mortgage (ARM) products, currently there are not any non-

traditional loan products being originated within the Commonwealth. The MMBA would ask for the allowance of the Massachusetts Division of Banks and their interpretation of how and what best to offer as continuing education based upon the (ongoing) current market conditions.

The SAFE Act education program can be either in a classroom or on-line. Having conducted introductory residential mortgage education programs and continuing education programs under the current Massachusetts Chapter 255F, the MMBA strongly believes in the importance and reliability of in classroom education. Likewise, and although SAFE allows local (Massachusetts) education providers such as the MMBA, we would strongly encourage the endorsement of Massachusetts developed educational programs presented by Massachusetts lenders, bankers and brokers to all Massachusetts licensee applicants. We have heard too many complaints against the national education providers of not having the necessary competencies to provide effective programming.

Credit:

The Massachusetts Division of Banks effectively and sufficiently applied a subjective credit review process for all license applicants. In fact, the MMBA believes that their discretionary approach provided ample information and opportunity for credit compliance. Moving forward, the MMBA fully endorses the DOB credit review process but might ask for simple guidelines to assist applicants in understanding compliance. We receive many requests from broker, lender and banker alike all seeking licensing information who asks, "Will I pass the credit review"? Having some rough guidelines, which may assure compliance, might assist applicants in understanding what is expected before they take an introductory course and pay the applicable fees.

Contradictory / Discriminatory standards between depository and non-depository:

Seven years ago, the MMBA lead a comprehensive and broad-based dialogue supporting the professionalization and licensing of all residential mortgage originators conducting business throughout the Commonwealth. These discussions included applicable representation from banker, lender and broker and it included a dialogue with and without depository exemptions. Part of the concerns at that time of setting up a two-tiered system was that licensed individuals might use marketing approaches to their advantage ("Deal with a broker, they are licensed".) In addition, that a discriminatory (for lack of a better term) standard toward responsibility would be established between a broker / lender owner and a bank. It appears through the application of this standard, that the regulator believes that the banker has the responsibility to oversee the activities of their loan originator (registration) whereas the broker / lender owner does not possess the responsibility to oversee the activities of their loan originators (licensing).

In a less pernicious example, we have received hundreds of inquiries from depository loan originators interested in enhancing their personal loan origination careers by obtaining a license. Under this current SAFE standard, the only way a depository loan originator may obtain a license would be to resign from the depository relationship and to be hired by the non-depository lender.

The MMBA would suggest a continued study of the SAFE differences between licensing and registration and to consider additional portability standards that may allow a bank originator the option in obtaining a license or a registration and still fulfill the spirit of SAFE compliance.

Conclusion

The MMBA applauds the leadership of the Massachusetts Division of Banks and we fully recognize the importance and timeliness of federal compliance. We embrace any opportunity to continue to work with the Division in exercising all of our collective experience from a current Massachusetts licensing statute. If we can be of any further assistance to the Committee, please do not hesitate to contact us.

Thank you for the opportunity to testify before the Joint Committee on Financial Services.

Sincerely,

Kevin M. Cuff, MPA
Executive Director
For the Board / Membership

The Massachusetts Mortgage Bankers Association (MMBA) is the Commonwealth's trade association representing the real estate finance industry. Founded in 1974, the MMBA is the largest mortgage association in New England and is one of the most successful in the country. The association works to ensure the continued strength of the Commonwealth's residential real estate markets; to expand homeownership prospects through affordability; and to extend access to affordable housing. The MMBA promotes fair and ethical lending practices and promotes excellence and integrity among real estate finance professionals through a wide range of educational programs, advocacy and industry-wide publication. Its membership of approximately 400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, insurance companies, appraisers, etc. and others in the mortgage lending field. For additional information, visit MMBA's Web site: www.massmba.com.



Senate 452 and House 980

Acts to Adopt the Federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) act of 2008

Joint Committee on Financial Services

Wednesday May 6, 2009

Chairman Stephen J. Buoniconti
Chairman Peter J. Koutoujian
Massachusetts Joint Committee on Financial Services

The Massachusetts Mortgage Association (MMA) represents roughly 350 mortgage brokers, lenders, credit unions and industry affiliated companies. Our Association has been an active supporter and advocate of regulatory oversight of our industry and appreciates the opportunity to provide our insight as to the soundness and effectiveness of these comparable pieces of legislation. We support the majority of both Senate Bill 452 and House Bill 980, and are in opposition to only two areas of concern which relate to character and fitness determination and the denial appeals process.

The MMA fully supports the efforts of the Commissioner of Banks, Steve Antonakes, and the Massachusetts Division of Banks in contending with the incredible challenges that face our industry today. They have done an extraordinary job in transforming the administrative oversight they provide to comply with the arduous mandates placed upon them as a result of various state and federal legislation. They have been at the forefront of increased industry protection through early participation in the Nationwide Mortgage Licensing System, implementation of loan officer licensing for non-depository institutions, promulgation of additional regulations to bolster consumer protections and assist distressed homeowners, and extensive examinations and enforcement actions, etc.

In conjunction with the Conference of State Bank Supervisors (CSBS), Commissioner Antonakes organized a working group comprised of industry stakeholders, referred to as the Mortgage Advisory Council (MAC) to develop a Model State Law (MSL) that could be utilized by individual states as a uniform baseline guide for implementation and compliance of the SAFE Act. Our Association is a member of the MAC, and as such, has been an active contributor in that developmental process. We commend the Commissioner's efforts and that of the Mortgage Advisory Council in their timely completion of the MSL. With that being said, it is important to note that we are dismayed to find ourselves in a position to have to disagree with any portion of Senate Bill 452 or House Bill 980 as proposed, but would be negligent to ignore the areas of the bills that are deemed to be unconstitutional and therefore stand to have grave unintended consequences.

Background

In 2002 the National Association of Mortgage Brokers introduced a Model State Statute (similar to the Model State Law introduced by CSBS/AARMR), that could be utilized as a uniform standard for all states for the licensing of loan originators. In 2003 the MMA filed a loan officer licensing bill in the Commonwealth that included both depository and non-depository institutions. The bill was lobbied against by the depositories, and subsequently died. Because of the MMA and NAMB's position that there was a vital need for increased uniform standards and licensing for loan originators, the MMA, with the sponsorship of Senator Brian Joyce, again filed a loan officer licensing bill. The only difference was that the 2007 bill provided an exemption for depository institutions. We did so to try and ensure passage of the bill and achieve our goal of attaining higher standards to protect the

members we represent and the consumers we serve. Fortunately, the vast majority of our 2007 bill was incorporated into Chapter 206 of the Acts of 2007 which became law on November 29, 2007. Section 15 of that law established Chapter 255F, "Licensing of Mortgage Loan Originators". Chapter 255F, as it currently stands, is SAFE compliant with the exception of testing for non-depository licensees and the re-cataloging of some of the continuing education requirements.

Character & Fitness

Under Chapter 255F, approximately 5600 loan officers have obtained licenses. The statute states: *"If the commissioner finds that the financial responsibility, character, reputation, integrity and general fitness of the applicant is such as to warrant belief that the applicant will act honestly, fairly, soundly and efficiently in the public interest, consistent with the purposes of this chapter, the commissioner shall issue the applicant a license to engage in the business of a mortgage loan originator upon payment of the required fees"*. Section 1505 (b)(3) of The SAFE Mortgage Licensing Act similarly states that an applicant must demonstrate financial responsibility, character and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly and efficiently within the purposes of the SAFE Act.

The Division of Banks was granted discretion under Chapter 255F to make the determination of financial responsibility, character, reputation, integrity and general fitness of the applicant as does the SAFE Act. The Division fairly and objectively utilized its authority in reviewing an applicant's credit history as part of its credit review process. In addition, due to their ability to make individual decisions based on individual circumstances, they were able to grant an extension of time for potential licensees to provide them (the Division) with additional information relating to their particular financial circumstance and to re-evaluate the initial determination to deny that particular applicant. We applaud the Division for the impartial, non-discriminatory and fair-minded approach they took with each and every applicant and we appreciate their efforts throughout that process.

Therefore, it our position that the language that now exists in Senate Bill 452 and House Bill 980 that expands the section of determining character and fitness by adding: *"(a) for purposes of this subsection a person has shown that he or she is not financial 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 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 three years"* narrowly restricts the effective authority and discretion of the Division and presents an unconstitutional approach to loan officer licensing.

The dichotomy that exists currently in terms of regulation and legislation continues to provide an obstacle to true parity amongst all mortgage distributors and therefore, we believe limits consumer protection. While the SAFE Act goes a long way to eliminate that disparity and provide improved consumer protections throughout the mortgage industry, we do not believe it goes far enough. The disparate treatment of depository and non-depository institutions with regard to licensing stands to create a riskier environment for depository institutions. For example, registered (vs. licensed) loan originators do not have to submit to having their credit pulled as part of their registration and employment process. It is left up to the employing entity to determine whether or not they choose to utilize such a tool in their decision making process and make their own judgment call. However, for licensed loan originators, that criteria has been added as part of their overall licensing process and it is up to the regulators to make a determination as to their character and fitness, without any weigh in from the employing entity. While that approach in and of itself is considered unjust by us, we still believe that the standards that have been set are good and sound and have been utilized fairly thus far, and we support them. We, therefore, propose that the authoritative judgment of the Division remain through a regulatory process versus a statutory mandate, and as such we offer the following language as a viable, constitutional alternative to replace Section (a) referred to above: *"The*

Commissioner shall not utilize an applicant's credit report or credit history to solely determine the applicant's financial responsibility. In addition, the Commissioner shall not, in whole, base a license denial on an applicant's credit score."

The system that is currently in place works; it works well, and it is SAFE compliant. There is no mandate under the SAFE Act to place these additional restrictive, non-discretionary and unconstitutional criteria in our state licensing law.

License Denials

The only appeal process that is now afforded an applicant who has been denied a license is to within 30 days after receipt of such notice; seek judicial review of that denial in accordance with section 14 of Chapter 30A. We believe that there should be a review and appeal process established within the Division of Banks (absent any industry oversight Board) as is afforded to other licensees in the Commonwealth (i.e., lawyers, doctors, realtors, etc.).

Conclusion

The MMA understands the urgency of this legislation as it relates to federal compliance, and in no way desires to be an obstacle to that fruition, however, we feel that these two areas of concern (most notably with regard to character and fitness determination) are significant enough to warrant consideration of an amendment to House 980 and Senate 452 before final consideration.

We reverently applaud the leadership of the Massachusetts Division of Banks and we respectfully offer our willingness and ability to assist in a timely resolve, and ask that you contact us if we can be of further assistance to the Committee or the Division in that regard.

Sincerely,

Denise M. Leonard
Executive Director



MASSACHUSETTS CREDIT UNION LEAGUE, INC.

JOINT COMMITTEE ON FINANCIAL SERVICES
PUBLIC HEARING
MAY 6, 2009

STATEMENT IN SUPPORT OF HOUSE 980 AND SENATE 452

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

The Massachusetts Credit Union League, Inc. ("League") is the state credit union trade association, serving 206 federally and state-chartered credit unions that are cooperatively owned by 2.4 million consumers as members and operating as part of the Credit Union National Association (CUNA). On behalf of the Massachusetts credit union movement, the League supports the concepts protecting homeownership underlying House 980 and Senate 452.

Residential mortgage loans are complex transactions that require a consumer to pay significant fees and share their most intimate financial information with third parties. A home mortgage is the largest financial transaction, both the largest asset and largest liability, entered into by Massachusetts consumers. These facts, coupled with the recent increase in Massachusetts foreclosure filings, the decline of home values, the increase in rates and subprime loans, and the corresponding increase in interest-only and stated income loans, together with the repricing of certain adjustable-rate mortgages, are current factors which help create the perfect storm in the mortgage lending arena. In

bills and proudly placed Massachusetts as a leader in the forefront of this nationwide issue. Subsequent to such local legislative action by the Massachusetts General Court, Congress passed the *Housing and Economic Recovery Act of 2008*. Public Law 110-289. Title V of that law, referred to as the *Secure and Fair Enforcement Mortgage Licensing Act of 2008 (S.A.F.E. Act)*, requires all mortgage loan originators to be licensed or registered through the National Mortgage Licensing System ("NMLS").

The League notes that the Massachusetts Division of Banks and Loan Agencies was a leader in the development of the NMLS. This new federal law necessitates changes to our state law to ensure compliance with the S.A.F.E. Act. Without swift and final action prior to July 31, 2009, our existing state law will be preempted and the U. S. Department of Housing and Urban Development will possess primary licensing responsibility for non-bank loan originators. One lesson clearly learned has been the value of local regulation in this area. As a result, Massachusetts would lose its key role in this type of regulation without timely passage of House 980 and Senate 452.

Both of the pending proposals before the Committee today contain various provisions intended to protect consumers by addressing certain mortgage practices. The League offers its support of the following provisions set forth in the proposed bills:

B) Licensing Exemption

The League strongly urges this Committee to adopt the exemption language contained in section 3(a) in any final proposal. Since both state and federally-chartered credit unions presently maintain an exemption from mortgage broker and lender licensing, the League believes that the extension of this exemption is warranted for loan originator licensing as the same principles are applicable. Credit unions are already heavily regulated and examined in the mortgage lending arena, have been for decades and are now subject to federal registration requirements. *Licensing of credit union loan originators would greatly increase the administrative burden imposed on such institutions without a demonstrated need for additional scrutiny.*

The League appreciates the opportunity to offer comments to the Committee on these important issues and remains available to assist whenever possible in the final deliberations on House 980 and Senate 452.



Massachusetts Mortgage Bankers Association

In support of S 452 and H 980 an *Act to Adopting the Federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) act of 2008*

Joint Committee on Financial Services

Wednesday May 5, 2009

Senator Stephen J. Buoniconti
Representative Peter J. Koutoujian
Co-Chairs
Massachusetts Joint Committee on Financial Services

The Massachusetts Mortgage Bankers Association represents roughly 375 lenders from depository institutions commercial, savings and cooperative banks and federal savings and loan associations as well as Massachusetts Credit Unions and all non-depository institutions national and state chartered mortgage lenders and mortgage brokers. The Association is in a unique position of serving equally the lending constituencies of depository and non-depository lenders within the Commonwealth. Having said that, we believe that we are in an experienced position of offering the Committee insight, analysis and opinion on the overall fallout as a result of the current issues facing the capital markets, credit, banking and lending industries. The MMBA tremendously appreciates the opportunity to provide you with our full support for Senate Bill 452 and House Bill 980 adopting the Federal Secure and Fair Enforcement for Mortgage Licensing (SAFE) act of 2008.

The MMBA supports the efforts of the Massachusetts Division of Banks and Commissioner of Banks through their hard work and leadership by using the Massachusetts licensing statute as a template for the national (SAFE) model. SAFE Act compliance is respectfully under a timeline to assure federal compliance. The MMBA has no intention of disrupting that critical timeline however, having been afforded the year-long opportunity of working within the new Massachusetts statutory licensing requirement through Chapter 255F as a part of the Chapter 206 of the Acts of 2007, the MMBA has observed the following which may lend itself to useful application of the SAFE standards:

Grandfathering:

The Massachusetts Division of Banks was granted discretion to transition current mortgage loan originators into licensed status upon the passing of Chapter 206 back in early 2008. This "grandfathering" provided appropriate transition assistance to those loan originators who were currently employed by a mortgage lender and sufficiently passed all of the background and credit, etc. requirements. Equally, it might be a great transition assistance to allow all sitting LO licensee's easy SAFE compliance since they would have complied under Chapter 206. The proposed transition under SAFE calls for 20 hours of education and the passing of a national examination. Having just gone through the Massachusetts licensing process (grandfathered or otherwise), the MMBA would ask for some consideration of adopting all current licensees as SAFE compliant.

Education:

SAFE Act compliance calls for 20 hours of total education. Two hours of which must be on non-traditional loan products. With the exception of adjustable rate mortgage (ARM) products, currently there are not any non-

traditional loan products being originated within the Commonwealth. The MMBA would ask for the allowance of the Massachusetts Division of Banks and their interpretation of how and what best to offer as continuing education based upon the (ongoing) current market conditions.

The SAFE Act education program can be either in a classroom or on-line. Having conducted introductory residential mortgage education programs and continuing education programs under the current Massachusetts Chapter 255F, the MMBA strongly believes in the importance and reliability of in classroom education. Likewise, and although SAFE allows local (Massachusetts) education providers such as the MMBA, we would strongly encourage the endorsement of Massachusetts developed educational programs presented by Massachusetts lenders, bankers and brokers to all Massachusetts licensee applicants. We have heard too many complaints against the national education providers of not having the necessary competencies to provide effective programming.

Credit:

The Massachusetts Division of Banks effectively and sufficiently applied a subjective credit review process for all license applicants. In fact, the MMBA believes that their discretionary approach provided ample information and opportunity for credit compliance. Moving forward, the MMBA fully endorses the DOB credit review process but might ask for simple guidelines to assist applicants in understanding compliance. We receive many requests from broker, lender and banker alike all seeking licensing information who asks, "Will I pass the credit review"? Having some rough guidelines, which may assure compliance, might assist applicants in understanding what is expected before they take an introductory course and pay the applicable fees.

Contradictory / Discriminatory standards between depository and non-depository:

Seven years ago, the MMBA lead a comprehensive and broad-based dialogue supporting the professionalization and licensing of all residential mortgage originators conducting business throughout the Commonwealth. These discussions included applicable representation from banker, lender and broker and it included a dialogue with and without depository exemptions. Part of the concerns at that time of setting up a two-tiered system was that licensed individuals might use marketing approaches to their advantage ("Deal with a broker, they are licensed".) In addition, that a discriminatory (for lack of a better term) standard toward responsibility would be established between a broker / lender owner and a bank. It appears through the application of this standard, that the regulator believes that the banker has the responsibility to oversee the activities of their loan originator (registration) whereas the broker / lender owner does not possess the responsibility to oversee the activities of their loan originators (licensing).

In a less pernicious example, we have received hundreds of inquiries from depository loan originators interested in enhancing their personal loan origination careers by obtaining a license. Under this current SAFE standard, the only way a depository loan originator may obtain a license would be to resign from the depository relationship and to be hired by the non-depository lender.

The MMBA would suggest a continued study of the SAFE differences between licensing and registration and to consider additional portability standards that may allow a bank originator the option in obtaining a license or a registration and still fulfill the spirit of SAFE compliance.

Conclusion

The MMBA applauds the leadership of the Massachusetts Division of Banks and we fully recognize the importance and timeliness of federal compliance. We embrace any opportunity to continue to work with the Division in exercising all of our collective experience from a current Massachusetts licensing statute. If we can be of any further assistance to the Committee, please do not hesitate to contact us.

Thank you for the opportunity to testify before the Joint Committee on Financial Services.

Sincerely,

Kevin M. Cuff, MPA
Executive Director
For the Board / Membership

The Massachusetts Mortgage Bankers Association (MMBA) is the Commonwealth's trade association representing the real estate finance industry. Founded in 1974, the MMBA is the largest mortgage association in New England and is one of the most successful in the country. The association works to ensure the continued strength of the Commonwealth's residential real estate markets; to expand homeownership prospects through affordability; and to extend access to affordable housing. The MMBA promotes fair and ethical lending practices and promotes excellence and integrity among real estate finance professionals through a wide range of educational programs, advocacy and industry-wide publication. Its membership of approximately 400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, insurance companies, appraisers, etc. and others in the mortgage lending field. For additional information, visit MMBA's Web site: www.massmba.com.

Exhibit 1

Prepared by the Division of Banks
May 6, 2009

HOUSE 980 AND SENATE 452

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

Section-by-Section Summary and Comparison

The following is a summary and comparison of differences between the Proposed Chapter 255F and Existing Chapter 255F, and enhancements to the SAFE Act/Model Law. This summary provides a section-by-section summary of the bill and a comparison of changes to Existing Chapter 255F, and identifies enhancements to the SAFE Act/Model Law.

Both the House and Senate bills consist of 5 SECTIONS. The first SECTION completely rewrites Existing Chapter 255F of the General Laws, governing mortgage loan originators. The remaining 4 SECTIONS provide related changes or negate what are now unnecessary provisions of Chapter 206 of the Acts of 2007.

Note: While both House 980 and Senate 452 are substantially similar, the House version incorporates final language changes that were made while this matter was pending at the end of the last Legislative session. For ease of reading, all references hereafter will be to House 980.

Index of Terminology:

- “Proposed Chapter 255F” refers to the language set forth in House 980.
- “Existing Chapter 255F” refers to Massachusetts General Laws chapter 255F, as set forth in Chapter 206 of the Acts of 2007.
- “SAFE Act” refers to a 2008 federal statute, the Secure and Fair Enforcement for Mortgage Licensing Act, which is part of the Housing and Economic Recovery Act of 2008, Title V, Public Law 110-298.
- “SAFE Act/Model Law” refers to model legislation for uniform implementation of the SAFE Act by individual states, which was developed by a working group convened by the Conference of State Bank Supervisors and chaired by the Massachusetts Commissioner of Banks.
- “Nationwide Mortgage Licensing System and Registry” (“NMLSR”) refers to a nationwide mortgage licensing system for the licensing and registration of licensed mortgage loan originators, which was developed and is maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

Massachusetts General Laws chapter 255E must obtain a license under Proposed Chapter 255F unless exempted. A mortgage loan originator who is an employee of a depository institution or a subsidiary of a depository institution must only be registered, not licensed, with the Nationwide Mortgage Licensing System and Registry in order to engage in the business of a mortgage loan originator.

- ***Differences from Existing Chapter 255F***

House 980 requires each licensed mortgage loan originator to register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

It requires an individual who is an employee of a person who is exempt from licensing under said chapter 255E to be licensed as a mortgage loan originator.

A mortgage loan originator who is an employee of a depository institution or a subsidiary of a depository institution must be registered, not licensed, with NMLSR to engage in the business of a mortgage loan originator.

Note: Under Existing Chapter 255F, mortgage loan originators who are employed by banks or credit unions are exempt from licensing and registration.

House 980 includes a list of 4 specific licensing exemptions to the mortgage loan originator licensing requirement.

House 980 also includes the dates for compliance with the licensing requirement.

- ***Enhancements to SAFE Act/Model Law***

House 980 adds the provision described above to the SAFE Act/Model Law that requires an individual who is an employee of an exempt person under chapter 255E of the General Laws and who is not exempt under this section to be licensed as a mortgage loan originator.

Section 3. State License Application

The application for a mortgage loan originator license shall be in a form prescribed by the Commissioner of Banks. The Commissioner is authorized to establish relationships or contracts to participate in the Nationwide Mortgage Licensing System and Registry and to contract with NMLSR to collect and maintain applications and process application and other fees related to licensees. The applicant shall furnish to NMLSR fingerprints for submission to the FBI, a CORI check, a personal history and experience form, a credit report, as well as other information related to any administrative, civil or criminal proceedings by any governmental jurisdiction.

- ***Differences from Existing Chapter 255F***

House 980 adopts most of the application language of the SAFE Act/Model Law.

It deletes language on investigation and license fees being determined annually by the secretary of administration as well as the language stating that investigation and license fees shall not apply to any community development corporation.

Existing Chapter 255F contains a denial process and an appeal process to Superior Court when an applicant has been denied a license by the Commissioner. Proposed Chapter 255F does not contain either provision. However, the Division is proposing an amendment which would re-insert the denial process and the appeal process to Superior Court into the Proposed Chapter 255F.

- ***Enhancements to SAFE Act/Model Law***

House 980 adds language from Existing Chapter 255F to the criteria for licensing in the SAFE Act/Model Law. These criteria consist of the "reputation and integrity" of the applicant and that he/she will act "soundly and efficiently in the public interest" and are consistent with the criteria for licensing other Massachusetts licensees.

House 980 also retains the exclusivity requirement in Existing Chapter 255F that a mortgage loan originator be employed by one and not more than one entity.

House 980 retains the existing language in Existing Chapter 255F relative to the termination of employment of a mortgage loan originator, and the process for returning the loan originator's license to the Division as well as the process for re-assignment of the license.

Section 5. Pre-Licensing and Re-Licensing Education of Loan Originators

This section establishes a pre-licensing education requirement for mortgage loan originators of 20 hours of specified education courses approved by the Nationwide Mortgage Licensing System and Registry. These courses may be offered in a classroom or online. It states that completion of education courses in one state shall be accepted in all other states.

House 980 adopts the exact language of the SAFE Act/Model Law.

- ***Differences from Existing Chapter 255F***

Section 3(b) of Existing Chapter 255F requires the applicant to only have completed a pre-licensure residential mortgage lending course approved by the Division of Banks not later than 2 years prior to the date of the application.

Section 6. Testing of Loan Originators

This section sets forth the requirement that an individual must pass a written test developed and approved by NMLSR with a passing score of 75% prior to obtaining a license as a mortgage loan originator.

House 980 adopts the exact language of the SAFE Act/Model Law.

- ***Differences from Existing Chapter 255F***

There is currently no pre-licensing testing requirement in Existing Chapter 255F.

NOTE: Pursuant to SECTION 17 of Chapter 206 of the Acts of 2007, the Division is directed to have in place regulations by December 1, 2009 to produce an examination for loan originators upon completion of a residential mortgage lending course.

Section 10. Nationwide Mortgage Licensing System and Registry Information Challenging Process

The Commissioner of Banks shall establish a process whereby mortgage loan originators may challenge information entered into the NMLSR.

House 980 adopts the exact language of the SAFE Act/Model Law.

- ***Differences from Existing Chapter 255F***

There is no comparable provision in Existing Chapter 255F.

Section 11. Enforcement Authorities, Violations and Penalties

This section provides the Commissioner the authority to deny, suspend, revoke, condition or decline to renew a license for a mortgage loan originator, as well as the authority to issue cease and desist orders and impose fines on licensees. He may impose a civil penalty of up to a maximum of \$25,000 for violations of this chapter. This section also authorizes the Commissioner to suspend, revoke or refuse to renew the license of a licensed mortgage lender or mortgage broker if the entity knew or should have known that a mortgage loan originator employed by the entity violated any provision of this chapter.

- ***Differences from Existing Chapter 255F***

House 980 deletes language from Existing Chapter 255F, section 13, which authorizes the Commissioner to suspend, revoke or refuse to renew a license of an employing mortgage lender or mortgage broker licensed pursuant to chapter 255E of the General Laws if the entity fails to submit an annual report detailing the origination activity of each loan originator.

- ***Enhancements to SAFE Act/Model Law***

House 980 retains the language of Existing Chapter 255F, section 13, which authorizes the Commissioner to suspend, revoke, or refuse to renew the license of the mortgage lender or mortgage broker employing any licensed mortgage loan originator if the Commissioner finds that:

- the entity knew or should have known the loan originator violated this chapter or any rule or regulation promulgated thereunder;
- the entity knew of any fact or condition to exist which, if it existed at the time of the original application would have warranted the Commissioner in refusing such a license; or
- the mortgage loan originator committed any fraud, misappropriated funds or misrepresented any of the material particulars of a mortgage loan transactions approved by the mortgage lender or mortgage broker.

- ***Differences from Existing Chapter 255F***

The Commissioner has no authority under Existing Chapter 255F to examine individual mortgage loan originators. The Commissioner examines the conduct of each loan originator through the examination process of the loan originator's employing entity, either a mortgage lender or mortgage broker licensed under chapter 255E.

Note: Although not specified in Existing Chapter 255F, as a matter of policy, the Division would examine the actions of mortgage loan originators through the examination of licensed mortgage lenders and mortgage brokers.

- ***Enhancements to SAFE Act/Model Law***

A paragraph is added with enhanced confidentiality provisions for Reports of Examination, which is carried over from existing provisions of Massachusetts law for certain entities within the jurisdiction of the Division, including mortgage lenders and brokers.

Note: For Reports of Examination of banks and credit unions, the enhanced confidentiality provisions were contained in SECTION 5 of Chapter 5 of the Acts of 2009. For Reports of Examination of licensed mortgage lenders and mortgage brokers, the enhanced confidentiality provision was set out in SECTION 5 of Chapter 223 of the Acts of 2007.

- **Section 15. Prohibited Acts and Practices**

This section sets forth 14 different actions which are prohibited activities for licensed mortgage loan originators and engaging in any of these activities will subject the licensee to enforcement actions by the Commissioner.

House 980 adopts the exact language of the SAFE Act/Model Law, with an optional add-on provision provided in the SAFE Act/Model Law relative to 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."

- ***Differences from Existing Chapter 255F***

There is no comparable provision in Existing Chapter 255F.

- **Section 16. Mortgage Call Reports**

Each licensee is required to submit a report of condition to NMLSR in such form and with such information as NMLSR may require.

House 980 adopts the exact language of the SAFE Act/Model Law.

SECTION 2. Provision Relative to Persons Previously Licensed under Proposed Chapter 255F.

A person licensed as a mortgage loan originator subsequent to the effective date of Proposed Chapter 255F, applying to be licensed again, must document that they have completed all of the continuing education requirements for the year in which the license was last held.

SECTION 3. Repeal of Two Provisions of Chapter 206 Relative to Residential Mortgage Lending Courses – Study and Regulations.

This section repeals two provisions of Chapter 206 of the Acts of 2007. The first provision is SECTION 17 of Chapter 206, requiring the Division to conduct a study on residential mortgage lending courses, and authorizing the Division to have regulations in place to produce an examination for loan originators. The second provision is SECTION 18 of Chapter 206, requiring the Division to adopt rules and regulations for the testing of an applicant for his or her initial mortgage loan originator license. These SECTIONS are no longer necessary since passage of this legislation will put into statute the SAFE Act/Model Law education and testing requirements. (See sections 5 and 8 of Proposed Chapter 255F.)

SECTION 4. Effective Date of Section 19 of Proposed Chapter 255F.

Section 19 of Proposed Chapter 255F of the General Laws, authorizing the Commissioner to issue rules and regulations, shall take effect upon its passage.

SECTION 5. Effective Date of SECTIONS 1 and 2

SECTIONS 1 and 2 shall take effect on July 31, 2009.

Exhibit 1

Prepared by the Division of Banks
May 6, 2009

HOUSE 980 AND SENATE 452

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

Section-by-Section Summary and Comparison

The following is a summary and comparison of differences between the Proposed Chapter 255F and Existing Chapter 255F, and enhancements to the SAFE Act/Model Law. This summary provides a section-by-section summary of the bill and a comparison of changes to Existing Chapter 255F, and identifies enhancements to the SAFE Act/Model Law.

Both the House and Senate bills consist of 5 SECTIONS. The first SECTION completely rewrites Existing Chapter 255F of the General Laws, governing mortgage loan originators. The remaining 4 SECTIONS provide related changes or negate what are now unnecessary provisions of Chapter 206 of the Acts of 2007.

Note: While both House 980 and Senate 452 are substantially similar, the House version incorporates final language changes that were made while this matter was pending at the end of the last Legislative session. For ease of reading, all references hereafter will be to House 980.

Index of Terminology:

- "Proposed Chapter 255F" refers to the language set forth in House 980.
- "Existing Chapter 255F" refers to Massachusetts General Laws chapter 255F, as set forth in Chapter 206 of the Acts of 2007.
- "SAFE Act" refers to a 2008 federal statute, the Secure and Fair Enforcement for Mortgage Licensing Act, which is part of the Housing and Economic Recovery Act of 2008, Title V, Public Law 110-298.
- "SAFE Act/Model Law" refers to model legislation for uniform implementation of the SAFE Act by individual states, which was developed by a working group convened by the Conference of State Bank Supervisors and chaired by the Massachusetts Commissioner of Banks.
- "Nationwide Mortgage Licensing System and Registry" ("NMLSR") refers to a nationwide mortgage licensing system for the licensing and registration of licensed mortgage loan originators, which was developed and is maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

Note: Throughout this document, the appropriate references to the applicable General Laws, were made as necessary. Additional changes, such as the substitution of the word "chapter" instead of "act", were also incorporated.

SECTION 1. Proposed Chapter 255F of the General Laws

SECTION 1 replaces the Existing Chapter 255F of the General Laws, relative to the licensing of mortgage loan originators; with the following Proposed Chapter 255F, which contains 19 internal sections as follows:

Section 1. Definitions

Section 1 contains 16 definitions defining the key terms relative to the licensing of mortgage loan originators in the Commonwealth. The most important definitions are "mortgage loan originator", "registered mortgage loan originator", "depository institution", "Nationwide Mortgage Licensing System and Registry" and "unique identifier".

- ***Differences from Existing Chapter 255F:***

House 980 adds the following definitions to the definitions in the Existing Chapter 255F, which are included in the SAFE Act/Model Law:

- "Depository institution"
- "Federal banking agencies"
- "Immediate family member"
- "Individual"
- "Loan processor or underwriter"
- "Mortgage loan originator" (uses SAFE Act/Model Law definition vs. Existing Chapter 255F definition)
- "Nationwide mortgage licensing system and registry"
- "Non-traditional mortgage product"
- "Person"
- "Registered mortgage loan originator"
- "Residential mortgage loan"
- "Residential real estate"
- "Unique identifier"

- ***Technical Additions to SAFE Act/Model Law:***

House 980 retains the definitions of "Commissioner of Banks", "Division" and "Entity" from Existing Chapter 255F for consistency with Massachusetts law.

Section 2. License and Registration Required

An individual, unless specifically exempted, shall not engage in the business of a mortgage loan originator with respect to residential property in the Commonwealth without first obtaining a license from the Commissioner. 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

Massachusetts General Laws chapter 255E must obtain a license under Proposed Chapter 255F unless exempted. A mortgage loan originator who is an employee of a depository institution or a subsidiary of a depository institution must only be registered, not licensed, with the Nationwide Mortgage Licensing System and Registry in order to engage in the business of a mortgage loan originator.

- ***Differences from Existing Chapter 255F***

House 980 requires each licensed mortgage loan originator to register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

It requires an individual who is an employee of a person who is exempt from licensing under said chapter 255E to be licensed as a mortgage loan originator.

A mortgage loan originator who is an employee of a depository institution or a subsidiary of a depository institution must be registered, not licensed, with NMLSR to engage in the business of a mortgage loan originator.

Note: Under Existing Chapter 255F, mortgage loan originators who are employed by banks or credit unions are exempt from licensing and registration.

House 980 includes a list of 4 specific licensing exemptions to the mortgage loan originator licensing requirement.

House 980 also includes the dates for compliance with the licensing requirement.

- ***Enhancements to SAFE Act/Model Law***

House 980 adds the provision described above to the SAFE Act/Model Law that requires an individual who is an employee of an exempt person under chapter 255E of the General Laws and who is not exempt under this section to be licensed as a mortgage loan originator.

Section 3. State License Application

The application for a mortgage loan originator license shall be in a form prescribed by the Commissioner of Banks. The Commissioner is authorized to establish relationships or contracts to participate in the Nationwide Mortgage Licensing System and Registry and to contract with NMLSR to collect and maintain applications and process application and other fees related to licensees. The applicant shall furnish to NMLSR fingerprints for submission to the FBI, a CORI check, a personal history and experience form, a credit report, as well as other information related to any administrative, civil or criminal proceedings by any governmental jurisdiction.

- ***Differences from Existing Chapter 255F***

House 980 adopts most of the application language of the SAFE Act/Model Law.

It deletes language on investigation and license fees being determined annually by the secretary of administration as well as the language stating that investigation and license fees shall not apply to any community development corporation.

Note: The fee language is inserted in a different section of Proposed Chapter 255F. (See section 9.)

House 980 also deletes paragraph (b) relative to the completion of a residential mortgage lending course approved by the Division by an applicant.

Note: Education course requirements are found in section 5 of Proposed Chapter 255F.

- ***Enhancements to SAFE Act/Model Law***

House 980 retains the language of Existing Chapter 255F authorizing the Commissioner to obtain CORI information on an applicant from the criminal history system board.

Section 4. Issuance of License

The Commissioner shall issue a license to an applicant if he finds that the financial responsibility, character, reputation, integrity and general fitness warrant belief that the applicant will act honestly, fairly, soundless and efficiently in the public interest. The licensing standards prohibit the Commissioner from issuing a license if: 1) the applicant has had a mortgage loan originator license revoked in any jurisdiction; 2) the applicant has been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign or military court during the 7-year period preceding the date of the application for licensing and registration or at any time preceding the date of application if the felony involved an act of fraud, dishonesty or a breach of trust, or money laundering; or 3) the applicant has no other convictions or admissions to sufficient facts involving fraud, dishonesty, or breach of trust, or the applicant has not had any adverse civil judgments involving fraudulent dealings.

The Commissioner shall not issue a license unless the applicant has completed the pre-licensing education requirements, has passed a written test and has met the surety bond requirement of Proposed Chapter 255F.

A mortgage loan originator may transact business only for one employing entity. Each original license must be maintained by the employing entity at its main office. If the mortgage loan originator is terminated, the employing entity shall return the license to the Division within 5 business days.

- ***Differences from Existing Chapter 255F***

House 980 adopts the standard set forth in the SAFE Act/Model Law which disqualifies a person from being licensed as a mortgage loan originator who has been convicted, pled guilty or nolo contendere to a felony in a domestic, foreign or military court during the 7-year period preceding the date of application for licensing or registration or at any time preceding the date of application if the felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering.

Note: Existing Chapter 255F disqualifies a person from licensing for any felony conviction at any time prior to the application for licensing.

Existing Chapter 255F contains a denial process and an appeal process to Superior Court when an applicant has been denied a license by the Commissioner. Proposed Chapter 255F does not contain either provision. However, the Division is proposing an amendment which would re-insert the denial process and the appeal process to Superior Court into the Proposed Chapter 255F.

- ***Enhancements to SAFE Act/Model Law***

House 980 adds language from Existing Chapter 255F to the criteria for licensing in the SAFE Act/Model Law. These criteria consist of the "reputation and integrity" of the applicant and that he/she will act "soundly and efficiently in the public interest" and are consistent with the criteria for licensing other Massachusetts licensees.

House 980 also retains the exclusivity requirement in Existing Chapter 255F that a mortgage loan originator be employed by one and not more than one entity.

House 980 retains the existing language in Existing Chapter 255F relative to the termination of employment of a mortgage loan originator, and the process for returning the loan originator's license to the Division as well as the process for re-assignment of the license.

Section 5. Pre-Licensing and Re-Licensing Education of Loan Originators

This section establishes a pre-licensing education requirement for mortgage loan originators of 20 hours of specified education courses approved by the Nationwide Mortgage Licensing System and Registry. These courses may be offered in a classroom or online. It states that completion of education courses in one state shall be accepted in all other states.

House 980 adopts the exact language of the SAFE Act/Model Law.

- ***Differences from Existing Chapter 255F***

Section 3(b) of Existing Chapter 255F requires the applicant to only have completed a pre-licensure residential mortgage lending course approved by the Division of Banks not later than 2 years prior to the date of the application.

Section 6. Testing of Loan Originators

This section sets forth the requirement that an individual must pass a written test developed and approved by NMLSR with a passing score of 75% prior to obtaining a license as a mortgage loan originator.

House 980 adopts the exact language of the SAFE Act/Model Law.

- ***Differences from Existing Chapter 255F***

There is currently no pre-licensing testing requirement in Existing Chapter 255F.

NOTE: Pursuant to SECTION 17 of Chapter 206 of the Acts of 2007, the Division is directed to have in place regulations by December 1, 2009 to produce an examination for loan originators upon completion of a residential mortgage lending course.

Section 7. Standards for License Renewal

A mortgage loan originator applying for a license renewal must continue to meet minimum standards for licensing, have completed the continuing education requirement, and have paid all required fees prior to renewal of the license.

- *Differences from Existing Chapter 255F*

The substance of this provision is similar to the standard for renewal set forth in section 7 of Existing Chapter 255F, although the wording used is different.

- *Enhancements to SAFE Act/Model Law*

House 980 adopts the exact language of the SAFE Act/Model Law.

Section 8. Continuing Education for Mortgage Loan Originators

In order to meet the annual continuing education requirement, a mortgage loan originator shall complete 8 hours of education courses approved by NMLSR, but there is no testing requirement for the renewal of a license.

House 980 adopts the exact language of the SAFE Act/Model Law.

- *Differences from Existing Chapter 255F*

Section 6 of Existing Chapter 255F requires 8 hours of residential mortgage lending continuing education courses, but over a 3-year period.

Section 9. Authority to Require License

This section authorizes the Commissioner of Banks to require all mortgage loan originators in the Commonwealth to be licensed or registered with the Nationwide Mortgage Licensing System and Registry. It authorizes the Commissioner, by regulation, to establish requirements for licensing, including but not limited to, background checks, CORI reports, fingerprinting and credit history. This section also authorizes the Secretary of Administration to establish investigation and license fees for mortgage loan originators.

Note: Classifications or adjustments as deemed necessary may be made relative to investigation and license fees for nonprofit agencies or corporations incorporated in the Commonwealth which hold tax-exempt status under the IRS code.

- *Enhancements to SAFE Act/Model Law*

House 980 retains a provision, Existing Chapter 255F, section 3, setting forth that the investigation and license fees will not be applied to community development corporations and to make some adjustments for certain non-profit organizations which are granted tax-exempt status by the IRS.

Section 10. Nationwide Mortgage Licensing System and Registry Information Challenging Process

The Commissioner of Banks shall establish a process whereby mortgage loan originators may challenge information entered into the NMLSR.

House 980 adopts the exact language of the SAFE Act/Model Law.

- ***Differences from Existing Chapter 255F***

There is no comparable provision in Existing Chapter 255F.

Section 11. Enforcement Authorities, Violations and Penalties

This section provides the Commissioner the authority to deny, suspend, revoke, condition or decline to renew a license for a mortgage loan originator, as well as the authority to issue cease and desist orders and impose fines on licensees. He may impose a civil penalty of up to a maximum of \$25,000 for violations of this chapter. This section also authorizes the Commissioner to suspend, revoke or refuse to renew the license of a licensed mortgage lender or mortgage broker if the entity knew or should have known that a mortgage loan originator employed by the entity violated any provision of this chapter.

- ***Differences from Existing Chapter 255F***

House 980 deletes language from Existing Chapter 255F, section 13, which authorizes the Commissioner to suspend, revoke or refuse to renew a license of an employing mortgage lender or mortgage broker licensed pursuant to chapter 255E of the General Laws if the entity fails to submit an annual report detailing the origination activity of each loan originator.

- ***Enhancements to SAFE Act/Model Law***

House 980 retains the language of Existing Chapter 255F, section 13, which authorizes the Commissioner to suspend, revoke, or refuse to renew the license of the mortgage lender or mortgage broker employing any licensed mortgage loan originator if the Commissioner finds that:

- the entity knew or should have known the loan originator violated this chapter or any rule or regulation promulgated thereunder;
- the entity knew of any fact or condition to exist which, if it existed at the time of the original application would have warranted the Commissioner in refusing such a license; or
- the mortgage loan originator committed any fraud, misappropriated funds or misrepresented any of the material particulars of a mortgage loan transactions approved by the mortgage lender or mortgage broker.

House 980 retains the enhanced penalty provision from Existing Chapter 255F, section 12, which includes the ability to ban an individual:

- from performing in the capacity of a mortgage loan originator for a period of time;
- from applying for or obtaining a license for a period of up to 36 months; or
- banning an individual from the industry for life.

It also establishes an individual's right to a hearing before the Commissioner in the event of such an order.

Section 12. Surety Bond

This section establishes a surety bond requirement for mortgage loan originators and authorizes the Commissioner, by rule or regulation, to set forth the requirements for such surety bonds. The amount of the surety bond shall be an amount that reflects the dollar amount of loans originated as determined by the Commissioner.

House 980 adopts the exact language of the SAFE Act/Model Law, with the insertion of the applicable Massachusetts statutory reference.

- ***Differences from Existing Chapter 255F***

There is presently no surety bond requirement for mortgage loan originators under Existing Chapter 255F and regulation 209 CMR 41.00 *et seq.*

Section 13. Confidentiality

This section establishes confidentiality of information and material that has been disclosed to the Nationwide Mortgage Licensing System and Registry. It also authorizes the sharing of information with other government agencies.

House 980 adopts the exact language of the SAFE Act/Model Law, with the insertion of the applicable Massachusetts statutory reference.

- ***Differences from Existing Chapter 255F***

There is no comparable section in Existing Chapter 255F.

Section 14. Investigation and Examination Authority

This section provides the Commissioner with the authority to investigate and examine licensees under this chapter and states that he shall have access to all books and records of the licensee in order to determine if the licensee is complying with all laws and regulations relating to the business of a mortgage loan originator.

- ***Differences from Existing Chapter 255F***

The Commissioner has no authority under Existing Chapter 255F to examine individual mortgage loan originators. The Commissioner examines the conduct of each loan originator through the examination process of the loan originator's employing entity, either a mortgage lender or mortgage broker licensed under chapter 255E.

Note: Although not specified in Existing Chapter 255F, as a matter of policy, the Division would examine the actions of mortgage loan originators through the examination of licensed mortgage lenders and mortgage brokers.

- ***Enhancements to SAFE Act/Model Law***

A paragraph is added with enhanced confidentiality provisions for Reports of Examination, which is carried over from existing provisions of Massachusetts law for certain entities within the jurisdiction of the Division, including mortgage lenders and brokers.

Note: For Reports of Examination of banks and credit unions, the enhanced confidentiality provisions were contained in SECTION 5 of Chapter 5 of the Acts of 2009. For Reports of Examination of licensed mortgage lenders and mortgage brokers, the enhanced confidentiality provision was set out in SECTION 5 of Chapter 223 of the Acts of 2007.

Section 15. Prohibited Acts and Practices

This section sets forth 14 different actions which are prohibited activities for licensed mortgage loan originators and engaging in any of these activities will subject the licensee to enforcement actions by the Commissioner.

House 980 adopts the exact language of the SAFE Act/Model Law, with an optional add-on provision provided in the SAFE Act/Model Law relative to 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."

- ***Differences from Existing Chapter 255F***

There is no comparable provision in Existing Chapter 255F.

Section 16. Mortgage Call Reports

Each licensee is required to submit a report of condition to NMLSR in such form and with such information as NMLSR may require.

House 980 adopts the exact language of the SAFE Act/Model Law.

- *Differences from Existing Chapter 255F*

Existing Chapter 255F, section 15 requires only the employing entity of the mortgage loan originator to file an annual report to the Commissioner of Banks. Individual loan originators are not required to file annual reports.

Section 17. Report to Nationwide Mortgage Licensing System and Registry

This section requires the Commissioner to regularly report violations of this chapter, enforcement actions and other relevant information to NMLSR.

House 980 adopts the exact language of the SAFE Act/Model Law, with the insertion of the applicable Massachusetts statutory reference.

- *Differences from Existing Chapter 255F*

There is no comparable provision in Existing Chapter 255F.

Section 18. Unique Identifier Shown

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

House 980 adopts the exact language of the SAFE Act/Model Law.

- *Differences from Existing Chapter 255F*

There is no comparable provision of Existing Chapter 255F because the unique identifier is a term that originated in the SAFE Act.

Section 19. Regulations

The Commissioner may adopt, amend or repeal rules and regulations, to aid in the administration and enforcement of this chapter.

- *Differences from Existing Chapter 255F*

The Commissioner has the same authority in Existing Chapter 255F, section 5.

- *Enhancements to SAFE Act/Model Law*

This provision adds a new section authorizing the commissioner to adopt, amend or repeal regulations, which is made effective upon passage pursuant to SECTION 4 of House 980, below.

SECTION 2. Provision Relative to Persons Previously Licensed under Proposed Chapter 255F.

A person licensed as a mortgage loan originator subsequent to the effective date of Proposed Chapter 255F, applying to be licensed again, must document that they have completed all of the continuing education requirements for the year in which the license was last held.

SECTION 3. Repeal of Two Provisions of Chapter 206 Relative to Residential Mortgage Lending Courses – Study and Regulations.

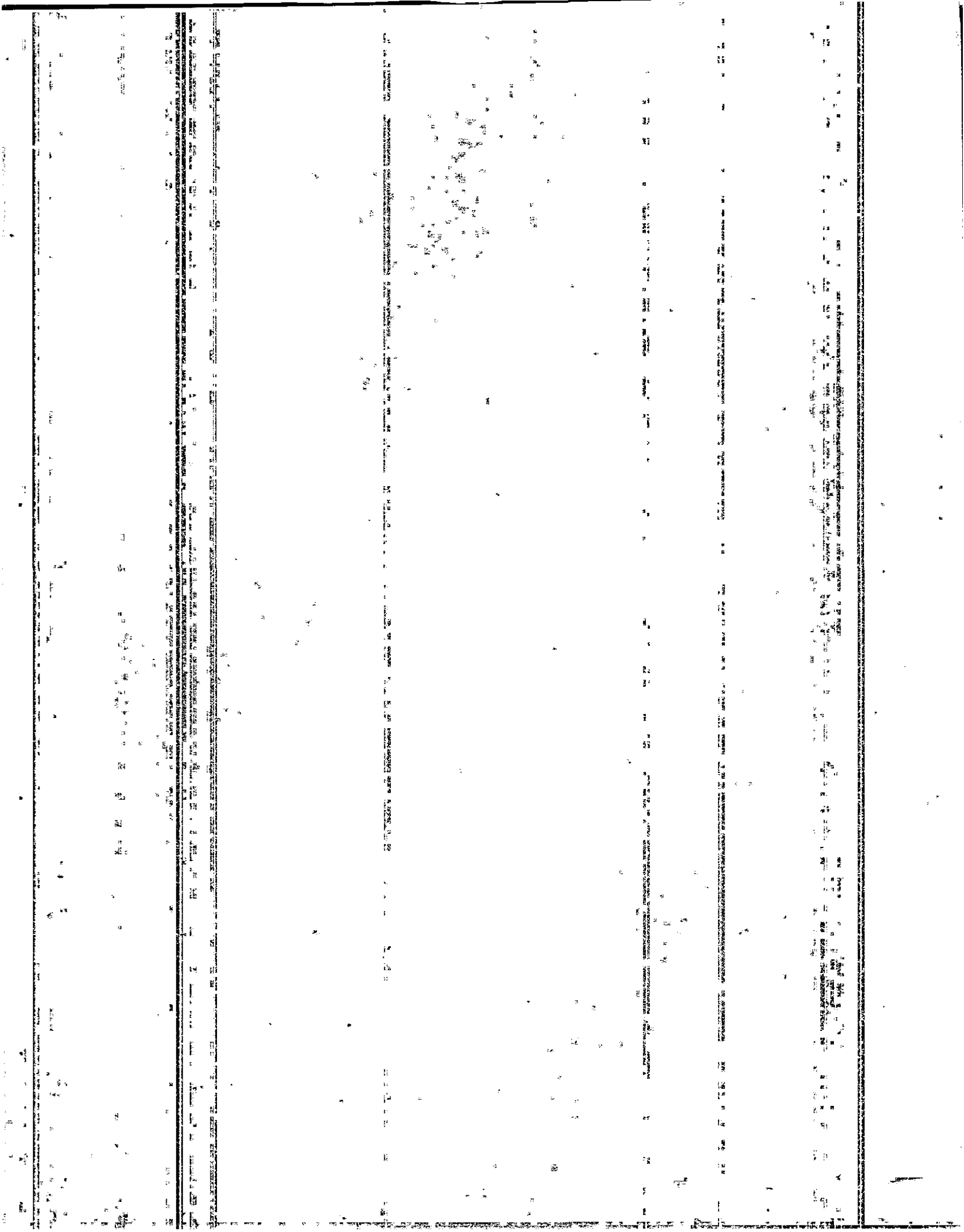
This section repeals two provisions of Chapter 206 of the Acts of 2007. The first provision is SECTION 17 of Chapter 206, requiring the Division to conduct a study on residential mortgage lending courses, and authorizing the Division to have regulations in place to produce an examination for loan originators. The second provision is SECTION 18 of Chapter 206, requiring the Division to adopt rules and regulations for the testing of an applicant for his or her initial mortgage loan originator license. These SECTIONS are no longer necessary since passage of this legislation will put into statute the SAFE Act/Model Law education and testing requirements. (See sections 5 and 8 of Proposed Chapter 255F.)

SECTION 4. Effective Date of Section 19 of Proposed Chapter 255F.

Section 19 of Proposed Chapter 255F of the General Laws, authorizing the Commissioner to issue rules and regulations, shall take effect upon its passage.

SECTION 5. Effective Date of SECTIONS 1 and 2

SECTIONS 1 and 2 shall take effect on July 31, 2009.



J. Michael Norton
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June 5, 2009

The Honorable Peter J. Koutoujian
House Chairman of the Joint Committee on Financial Services
State House, Room 254
Boston, MA 02133

The undersigned citizen respectfully petitions for the passage of House Bill 980

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

It is my belief that I may have become an unintended result of a law written and passed during a time when Mortgage Brokers were thought to have been the cause of the sub prime mortgage meltdown that ultimately turned into the second great depression. This law supported the current DOB consensus that mortgage brokerages were an unnecessary evil. A belief also supported by the State's Attorney General.

The applicable section of the Licensing Law comes from

SECTION 15. The General Laws are hereby amended by inserting after chapter 255E the following chapter:-

CHAPTER 255F. LICENSING OF MORTGAGE LOAN ORIGINATORS.

The changes were authorized by HR4387 passed in 2007 effective for 2008

The applicable section reads as follows:

"If the commissioner finds that the financial responsibility, character, reputation, integrity and general fitness of the applicant is such as to warrant belief that the applicant will act honestly, fairly, soundly and efficiently in the public interest, consistent with the purposes of this chapter, the commissioner shall issue the applicant a license to engage in the business of a mortgage loan originator upon payment of the required fees. If the commissioner shall not so find, or if the applicant's criminal history demonstrates any felony convictions or other convictions or admissions to sufficient facts involving fraud or if the applicant has had any adverse civil judgments involving fraudulent dealings, the commissioner shall not issue a license and shall notify the applicant of the 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."

In my case I believe that the Licensing Law is over reaching. The interpretation of the language in the recently enacted law is open to subjective interpretation. The DOB and States Attorney General chose to add a virtual comma in the language to allow the law to have excessively far reaching results. Additionally the law is inconsistent with other MA Licensing requirements and Federal guidelines. The elimination of licensees for prior criminal activity has here to fore been limited to relevancy in time and relevancy in nature of the crime. In my case a felony criminal conviction in 1978 for drug possession an event occurring more than 30 years ago for an unrelated criminal activity at a time when drug use was viewed less harshly.

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I currently have a MA real estate License and have held in the recent past a securities registered representative license, an insurance sales license and have been active full time in the Mortgage Business since 1990. In fact I was owner of a MA Licensed Lender ML0237 in 1991 - 1993. Also as a principle in a Mortgage Brokerage Firm from 1993 to 2001. In 2001 I became a Loan Originator and have been employed as such without public complaint nor have there been any defaults or foreclosures for any loan originated by myself or any business that I owned or controlled.

My record of ethical and compliant activity in the Mortgage Brokerage profession should support my contention that I should not be denied a Loan Origination License especially when I practice under the supervision and control of a duly licensed broker.

Fairness is requested here as I am stunned by the fact that a profession that I have dutifully executed for nearly twenty years has its Government enact legislation that has barred me from employment in that profession. The law has somehow reached back and barred me from my profession. Is that fair public policy? It was not the activity that became illegal it was the person. Now I am paying twice for my mistake.

Apparently it will take Legislative amendment or a successful court action to overturn my personal dilemma. My criminal record has been sealed by court order and thus there is no public record of my criminal past. As it stands there would never have been an issue if I had just relied on my sealed record to answer the licensing question on past criminal records in the negative and it was only after a direct request for information from the DOB that they had sufficient self disclosed evidence that I should not be issued a Loan Originator License. Perhaps complete honesty may not always be the best course of action, but here I remain in limbo unable to support myself and unemployed.

I appeal to your logic, reason and empathy in restoring fairness to the laws governing participation in the Mortgage Brokerage business.

Very truly yours,

J. Michael Norton

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