

No. 2013-38

AN ACT

HB 1124

Amending Title 7 (Banks and Banking) of the Pennsylvania Consolidated Statutes, further providing for definitions, for license requirements, for exceptions to license requirements, for general requirements, for mortgage loan business prohibitions, for requirements as to open-end loans, for application for license, for prelicensing and continuing education, for licensee requirements, for licensee limitations, for surrender of license, for authority of department, for suspension, revocation or refusal, for penalties, for applicability and for procedure for determination of noncompliance with Federal law.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Sections 6102, 6111(a), 6112 and 6121(2), (8) and (13) of Title 7 of the Pennsylvania Consolidated Statutes are amended to read:

§ 6102. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative or clerical tasks." *The receipt, collection and distribution of information common for the processing or underwriting of a mortgage loan and communication with a consumer to obtain information necessary for the processing or underwriting of a mortgage loan.*

"Advance fee." Any funds requested by or to be paid to a person in advance of or during the processing of a mortgage loan application, excluding those fees paid by a consumer directly to a credit agency reporting bureau, title company or real estate appraiser.

"Applicant." A person who applies for a license under this chapter.

"Application." *A request, in any form, for an offer, or a response to a solicitation of an offer, of mortgage loan terms, and the information about the borrower or prospective borrower that is customary or necessary in a decision on whether to make such an offer.*

"Banking institution." Any of the following:

- (1) A State-chartered bank, bank and trust company, savings bank or private bank.
- (2) A national bank.
- (3) A federally chartered or State-chartered savings association.
- (4) A subsidiary of any of the entities listed under this definition.

"Billing cycle." In respect to open-end mortgage loans, the time interval between periodic billing dates. A billing cycle shall be considered to be a monthly cycle if the closing date of the cycle is the same date each month or does not vary by more than four days from that date.

"Bona fide nonprofit organization." *A person that:*

(1) Has the status of a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 501(c)(3)).

(2) Promotes affordable housing or provides homeownership education, or similar services.

(3) Conducts its activities in a manner that serves public or charitable purposes.

(4) Receives funding and revenue and charges fees in a manner that does not incentivize it or its employees to act other than in the best interests of its clients.

(5) Compensates its employees in a manner that does not incentivize employees to act other than in the best interests of its clients.

(6) Provides or identifies for the borrower mortgage loans with terms favorable to the borrower and comparable to mortgage loans and housing assistance provided under government housing assistance programs.

(7) Meets other standards as determined by the department.

"Branch." An office or other place of business, other than the principal place of business, where a person engages in the mortgage loan business subject to this chapter. *The term does not include a location where the licensee-sponsored mortgage originator contacts consumers or processes mortgage loans, provided that the location is not:*

(1) owned or controlled by a licensee. For purposes of this definition, a location is not considered to be owned or controlled by a licensee if the location is under the control of a subsidiary or affiliate of the licensee, is primarily used by the subsidiary or affiliate and is only used by the licensee on an incidental basis for the convenience of a consumer;

(2) advertised or represented to consumers as an operating location of the mortgage originator or the mortgage originator's sponsor; or

(3) a place where records regarding the licensee's mortgage loan business are stored.

"Branch manager." The supervisor of a branch.

"Clerical or support duties." Any of the following:

(1) The receipt, collection, distribution and analysis of information common for the processing or underwriting of a mortgage loan.

(2) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a mortgage loan, to the extent that the communication does not include:

(i) offering or negotiating mortgage loan rates or terms; or

(ii) counseling consumers about mortgage loan rates or terms.

"Commercial context." Acting for the purpose of obtaining anything of value for an individual, or for an entity or individual for which the individual acts, rather than exclusively for public, charitable or family purposes.

"Commission." The Banking and Securities Commission of the Commonwealth, as established under Subarticle C of Article XI-A of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking and Securities Code.

"Consumer discount company." A licensee under the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act.

"Department." The Department of Banking *and Securities* of the Commonwealth.

"Dwelling." As defined in section 103(v) of the Truth in Lending Act (Public Law 90-321, 15 U.S.C. § 1602(v)).

"Employee."

(1) An individual:

(i) Whose manner and means of performance of work are subject to the right of control of or are controlled by a person.

(ii) Whose compensation for Federal income tax purposes is reported or required to be reported on a W-2 form issued by the controlling person.

(2) The term includes such binding definition as may be issued by the Federal banking agencies in connection with their implementation of their responsibilities under the S.A.F.E. Mortgage Licensing Act of 2008 (110 Stat. 289, 12 U.S.C. § 5101 et seq.).

"Federal banking agency." Any of the following:

(1) The Board of Governors of the Federal Reserve System.

(2) The Office of the Comptroller of the Currency.

[(3) The Office of Thrift Supervision.

(4)] (3) The National Credit Union Administration.

[(5)] (4) The Federal Deposit Insurance Corporation.

"Finder's fee." Any payment of money or other consideration for the referral of a mortgage loan to a licensee, except for consideration paid for goods or facilities actually furnished or services actually performed.

"First mortgage loan." A loan which is:

(1) made primarily for personal, family or household use; and

(2) secured by any first lien mortgage, deed of trust or equivalent consensual security interest on a dwelling or on residential real estate.

"First mortgage loan business." The mortgage loan business as applied to first mortgage loans.

"Habitually and repeatedly." Engaging in any activity at least four times in a calendar year.

"Holder." As defined in section 3 of the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

"Immediate family." A parent, spouse, child, brother or sister.

"Installment sales contract." As defined in section 3(10) of the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

"Installment seller." As defined in section 3 of the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

"Lease-purchase agreement."

(1) A deferred purchase of a dwelling or residential real estate whereby:

(i) An individual makes installment payments to the seller of the dwelling or residential real estate.

(ii) The seller retains title to the dwelling or residential real estate until some or all of the installment payments are completed.

(2) The term does not include an agreement whereby:

(i) An individual is not obligated to purchase the dwelling or residential real estate.

(ii) The final payment approximates the fair value of the dwelling or residential real estate or the anticipated fair value of the dwelling or residential real estate and is not a nominal amount.

"Licensee." A person who is licensed under this chapter.

"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].**

"Lock-in agreement." An agreement between a mortgage lender and a consumer whereby the mortgage lender guarantees, until a specified date, the availability of a specified rate of interest or specified formula by which the rate of interest and a specific number of discount points will be determined, if the mortgage loan is approved and closed by the specified date. If a specified date is not determinable, the mortgage lender may fulfill the requirement of this definition by setting forth with specificity the method by which the duration of the lock-in period will be determined.

"Manufactured home." Both of the following:

(1) A manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974 (Public Law 93-383, 42 U.S.C. § 5402(6)).

(2) A mobile home as defined in 75 Pa.C.S. § 102 (relating to definitions).

"Mortgage broker." A person who engages in the mortgage loan business by directly or indirectly negotiating or placing mortgage loans for others in the primary market for consideration.

"Mortgage lender." A person who engages in the mortgage loan business by directly or indirectly originating and closing mortgage loans with its own funds in the primary market for consideration.

"Mortgage loan." A first or secondary mortgage loan, or both, **a lease-purchase agreement or a mortgage loan modification**, as the context may require.

"Mortgage loan business." The business of advertising, causing to be advertised, soliciting, negotiating or arranging in the ordinary course of business or offering to make or making mortgage loans.

"Mortgage loan correspondent." A person who engages in the mortgage loan business by directly or indirectly originating and closing mortgage loans in his or her own name utilizing funds provided by a wholesale table funder or other funding sources under the circumstances described under section 6123(6) (relating to mortgage loan business prohibitions) and simultaneously assigning the mortgage loans to the wholesale table funder.

"Mortgage loan modification." An agreement that revises the terms of an existing mortgage loan, including an agreement to reduce mortgage loan payment amounts, balance or interest rate or to waive any accrued or prospective mortgage loan charges. The term does not include any agreement to refinance a mortgage loan into a new mortgage loan.

"Mortgage originator."

[(1) An individual who takes a mortgage loan application or offers or negotiates terms of a mortgage loan for compensation or gain.

(2) The term does not include any of the following:

(i) An individual engaged solely as a loan processor or underwriter consistent with section 6112(8) (relating to exceptions to license requirements).

(ii) A person or entity solely involved in extensions of credit relating to timeshare plans. As used in this paragraph, the term "timeshare plan" has the meaning given in 11 U.S.C. § 101(53D) (relating to definitions).

(3) Except as set forth in paragraph (4), the term does not include an employee of a licensee or person exempt or excepted from licensure under this chapter who solely renegotiates terms for existing mortgage loans held or serviced by that licensee or person and who does not otherwise act as a mortgage originator.

(4) The exclusion under paragraph (3) shall not apply if the United States Department of Housing and Urban Development or a court of competent jurisdiction determines that the S.A.F.E. Mortgage Licensing Act of 2008 (110 Stat. 289, 12 U.S.C. § 5101 et seq.) requires such an employee to be licensed as a mortgage originator under state laws implementing the S.A.F.E. Mortgage Licensing Act of 2008. This paragraph is subject to section 6154 (relating to procedure for determination of noncompliance with Federal law).]

(1) An individual who, in a commercial context and habitually and repeatedly, does any of the following:

(i) Takes a mortgage loan application.

(ii) Offers or negotiates terms of a mortgage loan for compensation or gain.

(iii) Represents 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 the individual can or will perform the activities described in subparagraphs (i) and (ii).

(2) The term does not include any of the following:

(i) An individual who is involved only in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. § 101(53D) (relating to definitions).

(ii) An individual who performs only clerical or support duties and meets any of the following requirements:

(A) Who does so at the direction of and subject to the supervision and instruction of an individual who:

(I) Is licensed and registered in accordance with this chapter.

(II) Is not required to be licensed in accordance with section 6112(9) (relating to exceptions to license requirements).

(B) Who performs such duties solely with respect to transactions for which the individual who acts as a mortgage originator is not required to be licensed, in accordance with subparagraph (i), (v) or (vi).

(iii) An individual who performs only purely administrative or clerical tasks on behalf of a mortgage originator.

(iv) An individual who is a registered mortgage loan originator.

(v) An individual employed by an agency or instrumentality of the Federal Government or a corporation otherwise created by an act of the Congress of the United States or an agency or instrumentality of a state or local government, the District of Columbia or any territory of the United States, including the Pennsylvania Housing Finance Agency and other government housing finance agencies, who acts as a mortgage originator within the scope of employment.

(vi) An individual who is employed by a bona fide nonprofit organization who acts as a mortgage originator within the scope of employment.

(vii) An individual employed by a licensee or person exempt or excepted from licensure under this chapter who solely engages in mortgage loan modifications for existing mortgage loans held or serviced by that licensee or person and who does not otherwise act as a mortgage originator.

(viii) A loan processor or underwriter employed by a licensee or person exempt or excepted from licensure under this chapter, provided that the loan processor or underwriter:

(A) Is under the direct supervision and control of a licensed mortgage originator or registered mortgage loan originator.

(B) Acts as a loan processor or underwriter solely for the individual's employer.

(C) Does 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 the person can or will perform any of the activities of a mortgage originator.

(ix) An individual who is all of the following:

(A) An employee of a broker-dealer registered under section 301 of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972.

(B) Registered as a securities agent under section 301 of the Pennsylvania Securities Act of 1972.

(C) Engaged in recommending, referring or steering a borrower or prospective borrower in the manner provided under paragraph (1)(iii) of the definition of "offer or negotiate terms of a mortgage loan for compensation or gain" to a banking institution, licensed mortgage lender, licensed mortgage loan correspondent, licensed mortgage broker or person exempt from licensing in a manner incidental to and in the normal course of his or her securities brokerage activities.

(D) Not otherwise acting as a mortgage originator as defined in paragraph (1)(i), (ii) or (iii).

(E) Not in receipt of any compensation or gain for such activities from the person making or brokering the loan, or a borrower or prospective borrower.

(x) An individual who is all of the following:

(A) An employee of an insurance agency licensed under the act of May 17, 1921 (P.L. 789, No. 285), known as The Insurance Department Act of 1921.

(B) Registered as an insurance agent or broker under The Insurance Department Act of 1921.

(C) Engaged in recommending, referring or steering a borrower or prospective borrower in the manner provided under paragraph (1)(iii) of the definition of "offer or negotiate terms of a mortgage loan for compensation or gain" to a banking institution, licensed mortgage lender, licensed mortgage loan correspondent, licensed mortgage broker or person exempt from licensing in a manner incidental to and in the normal course of his or her insurance activities.

(D) Not otherwise acting as a mortgage originator as defined in paragraph (1)(i), (ii) or (iii).

(E) Not in receipt of any compensation or gain for such activities from the person making or brokering the loan, or a borrower or prospective borrower.

"Nationwide Mortgage Licensing System and Registry." The licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

"Net worth." Assets less liabilities and assets unacceptable to the United States Department of Housing and Urban Development for purposes of complying with 24 CFR § 202.5(n) (relating to general approval standards) or 202.8(b)(1) (relating to loan correspondent lenders and mortgagees), as applicable.

"Nonoriginating person." A person, other than an individual, that does not engage in the mortgage loan business but is required to have loan processors or underwriters employed or supervised and controlled by the person licensed as mortgage originators.

"Nontraditional mortgage loan." A mortgage loan other than a 30-year fixed rate mortgage loan.

"Offer or negotiate terms of a mortgage loan for compensation or gain."

(1) (i) Presenting for consideration by a borrower or prospective borrower particular mortgage loan terms;

(ii) communicating directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective mortgage loan terms; or

(iii) recommending, referring or steering a borrower or prospective borrower to a particular lender or set of mortgage loan

terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower.

(2) Receiving or expecting to receive payment of money or anything of value in connection with the activities described in paragraph (1) or as a result of any mortgage loan terms entered into as a result of those activities.

"Open-end loan." A mortgage loan made by a mortgage lender under this chapter pursuant to an agreement between the mortgage lender and the consumer whereby all of the following apply:

(1) The mortgage lender may permit the consumer to obtain advances of money from the licensee from time to time or the mortgage lender may advance money on behalf of the consumer from time to time as directed by the consumer.

(2) The amount of each advance, interest and permitted charges and costs are debited to the consumer's account and payments and other credits are credited to the same account.

(3) Interest is computed on the unpaid principal balance or balances of the account outstanding from time to time.

(4) The consumer has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the open-end loan agreement.

"Person." An individual, association, joint venture or joint-stock company, partnership, limited partnership, limited partnership association, limited liability company, business corporation, nonprofit corporation or any other group of individuals, however organized.

"Primary market." The market wherein mortgage loans are originated between a lender and a consumer.

"Principal place of business." The primary office of a person [which is **staffed on a full-time basis and**] at which the person's books, records, accounts and documents are maintained.

"Purchase-money mortgage loan." A mortgage loan that is a residential mortgage transaction as defined in 12 CFR 226.2(a)(24) (relating to definitions and rules of construction).

"Qualifying individual." An individual identified by a mortgage broker, mortgage lender or mortgage loan correspondent in the Nationwide Mortgage Licensing System and Registry who:

(1) Is a mortgage originator or meets the licensing requirements of a mortgage originator.

(2) Is a management-level officer assigned to the principal place of business of a mortgage broker, mortgage lender or mortgage loan correspondent.

"Registered mortgage loan originator." An individual who complies with all of the following paragraphs:

(1) Meets the definition of mortgage originator and is an employee of:

(i) a banking institution or federally chartered or State-chartered credit union;

(ii) a subsidiary owned and controlled by a federally chartered or State-chartered credit union and supervised by a Federal banking agency; or

(iii) an institution regulated by the Farm Credit Administration.

(2) Is registered with and maintains a unique identifier through the

Nationwide Mortgage Licensing System and Registry.

"Residential real estate." Real property upon which is constructed or intended to be constructed a dwelling.

"Secondary mortgage loan." A loan which is:

(1) made primarily for personal, family or household use; and

(2) secured by any secondary lien mortgage, deed of trust or equivalent consensual security interest on a dwelling or on residential real estate.

"Secondary mortgage loan business." The mortgage loan business as applied to secondary mortgage loans.

"Service mortgage loan." A collecting or remitting payment for another, or the right to collect or remit payments for another, of principal, interest, tax, insurance or other payment under a mortgage loan.

"Take a mortgage loan application." Receiving a mortgage loan application for the purpose of facilitating a decision whether to extend an offer of mortgage loan terms to a borrower or prospective borrower or to accept the terms offered by a borrower or prospective borrower in response to a solicitation, whether the application is received directly or indirectly from the borrower or prospective borrower.

"Unique identifier." A number or other identifier assigned by the Nationwide Mortgage Licensing System and Registry.

"Wholesale table funder." A licensed mortgage lender or person exempt under section 6112(1) or (7) (relating to exceptions to license requirements) who, in the regular course of business, provides the funding for the closing of mortgage loans through mortgage loan correspondents and who by assignment obtains title to the mortgage loans.

§ 6111. License requirements.

(a) General rule.—Except as provided under subsections (b) and (c) and section 6112 (relating to exceptions to license requirements), on and after the effective date of this section, no person shall engage in the mortgage loan business in this Commonwealth without being licensed as a mortgage broker, mortgage lender, mortgage loan correspondent or mortgage originator as provided under this chapter. A mortgage originator may not engage in the mortgage loan business unless the mortgage originator is **[employed and supervised] sponsored in the Nationwide Mortgage Licensing System and Registry** by a licensed mortgage broker, mortgage lender or mortgage loan correspondent, person excepted from this chapter or person excepted from licensure under section 6112 **and is under the direct supervision and control of the sponsoring licensee or excepted person.**

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§ 6112. Exceptions to license requirements.

The following persons shall not be required to be licensed under this chapter in order to conduct the mortgage loan business:

(1) A banking institution or a federally chartered or State-chartered credit union, if the primary regulator of the banking institution or federally chartered or State-chartered credit union supervises the banking institution or federally chartered or State-chartered credit union. *A banking institution or a federally chartered or State-chartered credit union may register with the department for the purpose of having individuals under its direct supervision and control licensed as mortgage originators, provided that the registered entity meet any of the following requirements:*

(i) In the same manner as a mortgage lender, obtains and maintains bond coverage for mortgage originators consistent with section 6131(c)(5) (relating to application for license) and files a periodic report consistent with section 6135(a)(3) (relating to licensee requirements).

(ii) Annually, in a form acceptable to the department, demonstrates to the department that all of the mortgage originators employed by or under the direct supervision and control of the entity have obtained and maintained the bond coverage required under section 6131(f)(4).

(2) An attorney at law not otherwise engaged in or holding himself or herself out to the public as being engaged in the mortgage loan business who acts as a mortgage broker or a mortgage originator in negotiating or placing a mortgage loan in the normal course of legal practice. The exception under this paragraph shall not apply if the attorney is compensated by any of the following:

(i) A mortgage broker.

(ii) A mortgage lender.

(iii) A mortgage loan correspondent.

(iv) A person excepted from licensure under this section.

(v) A mortgage originator.

(vi) An agent of a person listed in subparagraphs (i), (ii), (iii), (iv) and (v).

(3) A person who **[offers or negotiates terms of a mortgage loan with or on behalf of or makes a mortgage loan to a member of the person's immediate family.] originates or negotiates less than four mortgage loans in a calendar year, unless determined to be engaged in the mortgage loan business by the department.**

(4) Any agency or instrumentality of the Federal Government or a corporation otherwise created by an act of the United States Congress, including the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans' Administration, the Federal Home Loan Mortgage Corporation and the Federal Housing Administration, **and employees thereof acting within the scope of their employment. [To qualify for the exception under this paragraph, the agency or instrumentality must ensure employees required to be licensed as mortgage originators have completed the requirements under section 6131.1 (relating to prelicensing and continuing education), have obtained the required mortgage originator license and:**

(i) in the same manner as a mortgage lender, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5) (relating to application for license) and file an annual report consistent with section 6135(a)(3) (relating to licensee requirements); or

(ii) annually, in a form acceptable to the department, demonstrate to the department that all of the mortgage originators employed by the agency or instrumentality have obtained and maintained the bond coverage required by section 6131(f)(4).]

(5) Any agency or instrumentality of a state or local government, the District of Columbia or any territory of the United States, including the Pennsylvania Housing Finance Agency and other government housing finance agencies, *and employees thereof acting within the scope of their employment*. [To qualify for the exception under this paragraph, the agency or instrumentality must ensure employees required to be licensed as mortgage originators have completed the requirements under section 6131.1, have obtained the required mortgage originator license and:

(i) in the same manner as a mortgage lender, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5) and file an annual report consistent with section 6135(a)(3); or

(ii) annually, in a form acceptable to the department, demonstrate to the department that all of the mortgage originators employed by the agency or instrumentality have obtained and maintained the bond coverage required by section 6131(f)(4).]

(6) Consumer discount companies, except that a consumer discount company that acts as a mortgage broker, mortgage lender or mortgage loan correspondent [other than under the provisions of the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act], shall be subject to the provisions of Subchapter C (relating to mortgage loan business restrictions and requirements) and sections 6131(c)(2), (3) and (5), 6135, 6138 (relating to authority of department) and 6140(b) (relating to penalties). Employees *or individuals under the direct supervision and control* of licensees under the *act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act*, that act as mortgage originators shall be subject to the licensing requirements of this chapter. Consumer discount companies that employ *or directly supervise and control* mortgage originators shall be subject to the same requirements as mortgage lenders in regard to the employment and supervision of mortgage originators.

(7) Affiliates of banking institutions and subsidiaries and affiliates of federally chartered or State-chartered credit unions. The exception under this paragraph does not apply to consumer discount companies. Notwithstanding the exception under this paragraph, subsidiaries and affiliates of federally chartered or State-chartered credit unions and affiliates of banking institutions shall:

(i) be subject to the provisions of Subchapter C and sections 6135(a)(2), (3) and (4), (b) and (c), 6138 and 6140(b);

(ii) deliver as required to the department annually copies of financial reports made to all supervisory agencies;

(iii) be registered with the department;

(iv) in the same manner as a mortgage lender, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5); and

(v) ensure employees required to be licensed as mortgage originators have completed the requirements under section 6131.1 (*relating to preclicensing and continuing education*) and have obtained the required mortgage originator license.

(8) Employees *or individuals under the direct supervision and control* of a mortgage broker, mortgage lender or mortgage loan correspondent, or a person excepted from licensure under this section, who[:

(i) engage solely in loan processor or underwriter activities, and do 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 they can or will perform any of the activities of a mortgage originator; or

(ii)] are not otherwise required to be licensed as mortgage originators.

(9) Registered mortgage loan originators when acting on behalf of their employers.

(11) [Nonprofit corporations not otherwise engaged in or holding themselves out to the public as being engaged in the mortgage loan business making mortgage loans to promote home ownership or improvements for the disadvantaged. To qualify for the exception under this paragraph, the nonprofit corporation must ensure employees required to be licensed as mortgage originators have completed the requirements under section 6131.1, have obtained the required mortgage originator license and:

(i) in the same manner as a mortgage lender, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5) and file an annual report consistent with section 6135(a)(3); or

(ii) annually, in a form acceptable to the department, demonstrate to the department that all of the mortgage originators employed by the nonprofit corporation have obtained and maintained the bond coverage required by section 6131(f)(4).] *A bona fide nonprofit organization and employees of the organization acting within the scope of their employment, unless otherwise deemed to be engaged in the mortgage loan business by the department, provided that:*

(i) *The organization shall be subject to the provisions of Subchapter C and sections 6135(a)(2), (3) and (4) and (c), 6138 and 6140(b).*

(ii) The organization shall be registered with the department.

(iii) As required under 24 CFR § 3400.103(e)(7)(iii) (relating to individuals required to be licensed by states), the department must periodically examine the books and activities of an organization it determines is a bona fide nonprofit organization and revoke its status as a bona fide nonprofit organization if it does not continue to meet the criteria under 24 CFR § 3400.103(e)(7)(ii).

(iv) For residential mortgage loans to have terms that are favorable to the borrower, the department must determine that the terms are consistent with loan origination in a public or charitable context, rather than a commercial context.

(v) The department shall make the list of bona fide nonprofit organizations available on its Internet website.

[(12) A nonprofit corporation not otherwise engaged in or holding itself out to the public as being engaged in the mortgage loan business which meets all of the following subparagraphs:

(i) Does not make more than 12 mortgage loans in a calendar year with its own funds, not including funds borrowed through warehouse lines of credit or other sources for the purpose of making mortgage loans.

(ii) Makes mortgage loans which are retained in the corporation's own portfolios and not regularly sold to others and are made to promote and advance the cultural traditions and lifestyles of bona fide religious organizations.

(iii) Does either of the following:

(A) In the same manner as a mortgage lender, obtains and maintains bond coverage for mortgage originators consistent with section 6131(c)(5) and files an annual report consistent with section 6135(a)(3).

(B) Annually, in a form acceptable to the department, demonstrates to the department that all of the mortgage originators employed by the nonprofit corporation have obtained and maintained the bond coverage required by section 6131(f)(4).

(iv) Ensures employees required to be licensed as mortgage originators have completed the requirements under section 6131.1 and have obtained the required mortgage originator license.]

(13) An installment seller of, or holder of installment sales contracts secured by, manufactured homes who is licensed under the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act, provided the installment seller or holder only engages in the mortgage loan business regarding installment sales contracts secured by manufactured homes that are purchase-money mortgage loans. To qualify for the exception under this paragraph, the installment seller or holder must:

(i) Obtain a license as a mortgage originator, if licensed as an individual under the Motor Vehicle Sales Finance Act.

(ii) Be registered with the department.

(iii) Do either of the following:

(A) In the same manner as a mortgage lender or mortgage broker, as applicable depending upon whether the installment seller or holder makes or brokers installment sales contracts secured by manufactured homes that are purchase-money mortgage loans, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5) or (e)(3) and file **[an annual] a periodic** report consistent with section 6135(a)(3); or

(B) Annually demonstrate to the department that the mortgage originators employed by *or under the direct supervision and control of* the installment seller or holder have obtained and maintained the bond coverage required by section 6131(f)(4) in a form acceptable to the department.

(iv) Ensure employees *or individuals under the direct supervision and control of the installment seller or holder* required to be licensed as mortgage originators have completed the requirements under section 6131.1 and have obtained the required mortgage originator license.

(14) A nonoriginating person, unless otherwise deemed to be engaged in the mortgage loan business by the department, except that the nonoriginating person shall:

(i) Be subject to the provisions of Subchapter C and sections 6135(a)(2), (3) and (4) and (c), 6138 and 6140(b).

(ii) Be registered with the department.

(iii) In the same manner as a mortgage broker, obtain and maintain bond coverage for mortgage originators consistent with section 6131(c)(5).

(iv) Ensure employees or individuals under the direct supervision and control of the person required to be licensed as mortgage originators have completed the requirements under section 6131.1 and have obtained the required mortgage originator license.

(15) Notwithstanding section 6151 (relating to applicability), a mortgage originator licensed by one or more other states and physically located in this Commonwealth that does not engage in any transactions involving Pennsylvania consumers, dwellings or residential real estate.

(16) A person who engages in mortgage loan modifications for existing mortgage loans held or serviced by that person or that person's employer and who does not otherwise engage in the mortgage loan business.

§ 6121. General requirements.

A licensee shall do all of the following:

* * *

(2) Comply with *all applicable State law, including* the provisions of the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, that are applicable to the licensee *and the act of December 9, 2002 (P.L.1530, No.197), known as the Mortgage Satisfaction Act.*

* * *

(8) If a mortgage loan is paid in full and, in the case of an open-end loan, the mortgage lender is no longer obligated to make future advances to the consumer, the mortgage lender shall do all of the following:

(i) Cancel any insurance provided by the licensee in connection with the mortgage loan and refund to the consumer, in accordance with regulations promulgated by the Insurance Department, any unearned portion of the premium for the insurance.

(ii) Stamp or write on the face of the mortgage loan agreement or promissory note evidencing the mortgage loan "Paid in Full" or "Canceled," the date paid and, within 60 days, return the mortgage loan agreement or promissory note to the consumer.

(iii) Release any lien on **[real property] the dwelling or residential real estate** and cancel the same of record and, at the time the mortgage loan agreement or promissory note evidencing the mortgage loan is returned, deliver to the consumer good and sufficient assignments, releases or any other certificate, instrument or document as may be necessary to evidence the release.

* * *

(13) In the case of a mortgage broker, mortgage lender or mortgage loan correspondent, do all of the following:

(i) Maintain supervision and control of and responsibility for the acts and omissions of all mortgage originators **[employed] sponsored** by the licensee.

(ii) Maintain a list of all current and former mortgage originators **[employed] sponsored** by the licensee and the dates of the **[employment] sponsorship**.

(iii) In the event that a licensee believes that a mortgage originator **[employed] sponsored** by the licensee has engaged in any activity that is illegal or in violation of this chapter or any regulation or statement of policy promulgated under this chapter, the licensee shall provide the department with written notification of the belief and the licensee's proposed corrective measures within 30 days. A licensee shall not be liable to a mortgage originator in connection with the notification.

* * *

Section 2. Section 6123(8) of Title 7 is amended and the section is amended by adding a paragraph to read:

§ 6123. Mortgage loan business prohibitions.

A licensee engaging in the mortgage loan business shall not:

* * *

(8) In the case of a mortgage originator, accept any fees from consumers in the mortgage originator's own name. A mortgage originator may accept fees payable to the mortgage originator's **[employer] sponsoring** licensee and fees payable to third-party entities on behalf of the mortgage originator's **[employer] sponsoring** licensee. A mortgage originator may not accept advance fees payable to the mortgage originator's **[employer] sponsoring** licensee unless the licensee is authorized to collect advance fees under this chapter.

(9) In the case of a mortgage originator, engage in the mortgage loan business other than on behalf of the single mortgage broker, mortgage lender or mortgage loan correspondent or a person excepted from this chapter or a person excepted from licensure under section 6112 (relating to exceptions to license requirements) that sponsors the mortgage originator.

Section 3. Sections 6126(7), 6131, 6131.1(b), (c) and (d), 6135(a) and (b), 6136(a), 6137, 6138(b), (d), (e) and (f), 6139(a), 6140(b) and 6151 of Title 7 are amended to read:

§ 6126. Requirements as to open-end loans.

The following shall apply:

* * *

(7) Notwithstanding any other provisions in this chapter to the contrary, a mortgage lender may retain any security interest in **a dwelling or** real or personal property until the open-end loan is terminated, provided that, if there is no outstanding balance in the account and there is no commitment by the licensee to make advances, the mortgage lender shall, within ten days following written demand by the consumer, deliver to the consumer a release of the mortgage, indenture, deed of trust or any other similar instrument or document on any **[real property] dwelling or residential real estate** taken as security for the open-end loan. The mortgage lender shall include on all billing statements provided in connection with an open-end loan a statement that the licensee retains a security interest in the consumer's **[real property] dwelling or residential real estate** whenever the security interest has not been released.

* * *

§ 6131. Application for license.

(a) Contents.—An application for a license under this chapter shall be on a form prescribed and provided by the department. Consistent with sections 202 E and 405 F(1) of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking **and Securities** Code, all applicants and licensees shall use the Nationwide Mortgage Licensing System and Registry to obtain and maintain licenses under this chapter.

(1) In the case of a mortgage broker, mortgage lender or mortgage loan correspondent, the application shall include the following:

(i) The name of the applicant.

(ii) The address of the principal place of business **and any branches** of the applicant **[and the address or addresses where the applicant's mortgage loan business is to be conducted]**.

(iii) The full name, official title and business address of each director and principal officer of the mortgage loan business.

(iv) Any other information that may be required by the department.

(2) In the case of a mortgage originator, the application shall include the following:

(i) The name of the applicant.

(ii) The name of the **[employer licensee] sponsoring licensee or excepted person** of the applicant and location of the **[employer**

licensee] *excepted person or licensed location of the licensee* to which the applicant is assigned.

(iii) Any other information that may be required by the department.

(3) An applicant shall demonstrate to the department that policies and procedures have been developed to receive and process consumer inquiries and grievances promptly and fairly.

(a.1) Licensing of principal place of business and branches.—All applicants and licensees must establish and maintain a separate license for the principal place of business and each branch.

(b) Duty to update.—All applicants and licensees shall be required to provide the department with written notice of the change in any information contained in an application for a license or for any renewal of a license within ten days of an applicant or licensee becoming aware of the change.

(c) Mortgage lender license.—The department shall issue a mortgage lender license applied for under this chapter if the applicant has:

(1) Been approved by or meets the current criteria for approval of at least one of the following:

(i) Federal National Mortgage Association.

(ii) Federal Home Loan Mortgage Corporation.

(iii) Federal Housing Administration.]

(2) Been approved for and will continue to maintain as a licensee a line of credit, repurchase agreement or equivalent mortgage-funding capability of not less than \$1,000,000.

(3) Established a minimum net worth of \$250,000 at the time of application and will, at all times thereafter, maintain the minimum net worth.

(4) Been approved for and will continue to maintain as a licensee fidelity bond coverage in accordance with the guidelines established by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(5) Obtained and will maintain a surety bond in an amount that will provide coverage for the mortgage originators **[employed] sponsored** by the applicant or licensee, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The following shall apply:

(i) The amount of the bond shall be:

(A) \$100,000 for an applicant or licensee whose mortgage originators will originate or originated less than \$30,000,000 in mortgage loans secured by Pennsylvania **[real property] dwellings or residential real estate** in a calendar year;

(B) \$200,000 for an applicant or licensee whose mortgage originators will originate or originated \$30,000,000 to \$99,999,999.99 in mortgage loans secured by Pennsylvania **[real property] dwellings or residential real estate** in a calendar year;

(C) \$300,000 for an applicant or licensee whose mortgage originators will originate or originated \$100,000,000 to \$249,999,999.99 in mortgage loans secured by Pennsylvania **[real**

property] dwellings or residential real estate in a calendar year; and

(D) \$500,000 for an applicant or licensee whose mortgage originators will originate or originated \$250,000,000 or more in mortgage loans secured by Pennsylvania **[real property] dwellings or residential real estate** in a calendar year.

(ii) For an initial license applicant, the amount of the bond shall be determined by the applicant's anticipated amount of mortgage loans secured by Pennsylvania **dwellings or residential real estate** originated by its mortgage originators in the first calendar year of licensing. For a licensee, the amount of the bond shall be determined annually by the department based upon the amount of mortgage loans secured by Pennsylvania **dwellings or residential real estate** originated by the licensee's mortgage originators as indicated on the licensee's **[annual] periodic** report.

(iii) The bond shall run to the Commonwealth and shall be for the use of the Commonwealth and for the use of any consumer who is injured by the acts or omissions of the licensee's mortgage originators that are related to the mortgage loan business regulated by this chapter. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

(6) Designated an individual as the qualifying individual for the principal place of business and separate individuals as branch managers for each branch, as applicable.

(d) Mortgage loan correspondent license.—The department shall issue a loan correspondent's license applied for under this chapter if the applicant:

(1) Obtains and will maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall run to the Commonwealth and shall be for the use of the Commonwealth and any person or persons who obtain a judgment against the mortgage loan correspondent for failure to carry out the terms of any provision for which advance fees are paid. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. A mortgage loan correspondent who can demonstrate to the satisfaction of the department that the correspondent does not and will not accept advance fees shall be exempt from the bond requirement of this paragraph.

(2) Establishes a minimum net worth of \$100,000 at the time of application and will, at all times thereafter, maintain the minimum net worth.

(3) Obtains and will maintain a surety bond in an amount that will provide coverage for the mortgage originators **[employed] sponsored** by

the applicant or licensee, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The following shall apply:

(i) The amount of the bond shall be \$100,000 for an applicant or licensee whose mortgage originators will originate or originated less than \$30,000,000 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$200,000 for an applicant or licensee whose mortgage originators will originate or originated \$30,000,000 to \$99,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$300,000 for an applicant or licensee whose mortgage originators will originate or originated \$100,000,000 to \$249,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; and \$500,000 for an applicant or licensee whose mortgage originators will originate or originated \$250,000,000 or more in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year.

(ii) For an initial license applicant, the amount of the bond shall be determined by the applicant's anticipated amount of mortgage loans secured by Pennsylvania *dwelling*s or residential real estate originated by its mortgage originators in the first calendar year of licensing. For a licensee, the amount of the bond shall be determined annually by the department based upon the amount of mortgage loans secured by Pennsylvania *dwelling*s or residential real estate originated by the licensee's mortgage originators as indicated on the licensee's **[annual] periodic** report.

(iii) The bond shall run to the Commonwealth and shall be for the use of the Commonwealth and for the use of any consumer who is injured by the acts or omissions of the licensee's mortgage originators that are related to the mortgage loan business regulated by this chapter. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

(4) Designates an individual as the qualifying individual for the principal place of business and separate individuals as branch managers for each branch, as applicable.

(e) Mortgage broker license.—

(1) The department shall issue a mortgage broker license applied for under this chapter if the applicant obtains and will maintain a bond in the amount of \$100,000, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall be a penal bond conditioned on compliance with this chapter and subject to forfeiture by the department and shall run to the Commonwealth for its use. The bond shall also be for the use of any person against the mortgage broker for failure to carry out the terms of any provision for which advance fees are paid. If the person

is aggrieved, the person may, with the written consent of the department, recover advance fees and costs from the bond by filing a claim with the surety company or maintaining an action on the bond. In the alternative, an aggrieved person may recover advance fees and costs by filing a formal complaint against the mortgage broker with the department which shall adjudicate the matter. The adjudication shall be binding upon the surety company and enforceable by the department in Commonwealth Court and by an aggrieved person in any court. Any aggrieved person seeking to recover advance fees and costs from a bond that has already been forfeited by the department or which the department is in the process of forfeiting may recover payment on the bond if, after filing a petition with the department, the department consents to the aggrieved person's requested payment or portion thereof. The department may pay the aggrieved person from the bond proceeds it recovers. Nothing in this section shall be construed as limiting the ability of any court or magisterial district judge to award to any aggrieved person other damages, court costs and attorney fees as permitted by law, but those claims that are not advance fees or related costs may not be recovered from the bond. The department, in its discretion, may consent to or order pro rata or other recovery on the bond for any aggrieved person if claims against the bond may or do exceed its full monetary amount. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

(2) Mortgage brokers who can demonstrate to the satisfaction of the department that they do not and will not accept advance fees shall be exempt from the bond requirement of paragraph (1).

(3) A mortgage broker shall obtain and maintain a surety bond in an amount that will provide coverage for the mortgage originators [employed] *sponsored* by the applicant or licensee, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The following shall apply:

(i) The amount of the bond shall be \$50,000 for an applicant or licensee whose mortgage originators will originate or originated less than \$15,000,000 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$75,000 for an applicant or licensee whose mortgage originators will originate or originated \$15,000,000 to \$29,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$100,000 for an applicant or licensee whose mortgage originators will originate or originated \$30,000,000 to \$49,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; and \$150,000 for an applicant or licensee whose mortgage originators will originate or originated \$50,000,000 or more in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year.

(ii) For an initial license applicant, the amount of the bond shall be determined by the applicant's anticipated amount of mortgage loans secured by Pennsylvania *dwelling*s or residential real estate originated by its mortgage originators in the first calendar year of licensing. For a licensee, the amount of the bond shall be determined annually by the department based upon the amount of mortgage loans secured by Pennsylvania *dwelling*s or residential real estate originated by the licensee's mortgage originators as indicated on the licensee's **[annual] periodic** report.

(iii) The bond shall run to the Commonwealth and shall be for the use of the Commonwealth and for the use of any consumer who is injured by the acts or omissions of the licensee's mortgage originators that are related to the mortgage loan business regulated by this chapter. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

(4) A mortgage broker shall designate an individual as the qualifying individual for the principal place of business and separate individuals as branch managers for each branch, as applicable.

(f) Mortgage originator license.—A mortgage originator shall do all of the following:

(1) Be an employee of **[a single] or under the direct supervision and control of a** licensed mortgage broker, mortgage lender or mortgage loan correspondent, a person excepted from this chapter or a person excepted from licensure under section 6112 (relating to exceptions to license requirements). The licensee or person shall *sponsor the mortgage originator in the Nationwide Mortgage Licensing System and Registry* and directly supervise, control and maintain responsibility for the acts and omissions of the mortgage originator.

(2) Be assigned to and work out of a licensed location of the **[employer] sponsoring** licensee or a location of **[an employer] a sponsoring** person excepted from this chapter or excepted from licensure under section 6112[.], *which, in the case of a sponsoring licensee, may be either the mortgage originator's residence or a location of the licensee that is within 100 miles of the mortgage originator's residence.*

(3) Maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.

(4) If a person excepted from this chapter or excepted from licensure under section 6112 does not elect to maintain bond coverage for its mortgage originators in the same manner as a mortgage lender, a mortgage originator employed by *or under the direct supervision and control of* a person excepted from this chapter or excepted from licensure under section 6112 shall obtain and maintain a surety bond in an amount that will provide coverage for the mortgage originator, in a form acceptable to the department, prior to the issuance of the license, from a

surety company authorized to do business in this Commonwealth. The following shall apply:

(i) The amount of the bond shall be \$25,000 for an applicant or licensee who will originate or originated less than \$7,500,000 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$50,000 for an applicant or licensee who will originate or originated \$7,500,000 to \$14,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$75,000 for an applicant or licensee who will originate or originated \$15,000,000 to \$29,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; \$100,000 for an applicant or licensee who will originate or originated \$30,000,000 to \$49,999,999.99 in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year; and \$150,000 for an applicant or licensee who will originate or originated \$50,000,000 or more in mortgage loans secured by Pennsylvania *dwelling*s or residential real estate in a calendar year.

(ii) For an initial license applicant, the amount of the bond shall be determined by the applicant's anticipated amount of mortgage loans secured by Pennsylvania *dwelling*s or residential real estate originated in the first calendar year of licensing. For a licensee, the amount of the bond shall be determined annually by the department based upon the amount of mortgage loans secured by Pennsylvania *dwelling*s or residential real estate originated by the mortgage originator as indicated on the mortgage originator's [annual] *periodic* report.

(iii) The bond shall run to the Commonwealth and shall be for the use of the Commonwealth and for the use of any consumer who is injured by the acts or omissions of the mortgage originator that are related to the mortgage loan business regulated by this chapter. No bond shall comply with the requirements of this section unless it contains a provision that it shall not be canceled for any cause unless notice of intention to cancel is given to the department at least 30 days before the day upon which cancellation shall take effect. Cancellation of the bond shall not invalidate the bond regarding the period of time it was in effect.

(5) Only engage in the mortgage loan business on behalf of the single mortgage broker, mortgage lender or mortgage loan correspondent or a person excepted from this chapter or a person excepted from licensure under section 6112 that sponsors the mortgage originator.

(g) Nationwide Mortgage Licensing System and Registry information challenge process.—A mortgage originator applicant or licensee may challenge the accuracy of information entered by the department to the Nationwide Mortgage Licensing System and Registry regarding the mortgage originator applicant or licensee by filing a written complaint with the department. The department shall review the complaint and alleged inaccurate information on the Nationwide Mortgage Licensing System and

Registry and notify the applicant or licensee of corrective action taken by the department regarding the alleged inaccurate information within 30 days of receipt of the complaint.

(h) License renewals.—Licenses shall be issued for terms **[of 12] not to exceed 14** months and may be renewed by the department each year on a schedule set by the department upon application by the licensee and the payment of any and all applicable renewal fees. The licensee shall demonstrate to the department that it is conducting the mortgage loan business in accordance with the requirements of this chapter and that the licensee or directors, officers, partners, employees, *mortgage originators*, agents and ultimate equitable owners of 10% or more of the licensee continue to meet all of the initial requirements for licensure required by this chapter unless otherwise determined by the department.

(i) Out-of-State applicants.—

(1) If an applicant is not a resident of this Commonwealth, as a condition to receiving a license under this chapter, the applicant shall be authorized to do business in this Commonwealth in accordance with the laws of this Commonwealth regulating corporations and other entities conducting business in this Commonwealth and shall maintain at least one office which is the office that shall be licensed as the principal place of business for the purposes of this chapter.

(2) Out-of-State applicants shall file with the license application an irrevocable consent, duly acknowledged, that suits and actions may be commenced against that person in the courts of this Commonwealth by the service of process of any pleading upon the department in the usual manner provided for service of process and pleadings by the laws and court rules of this Commonwealth. The consent shall provide that this service shall be as valid and binding as if service had been made personally upon the person in this Commonwealth. In all cases where process or pleadings are served upon the department under the provisions of this section, the process or pleadings shall be served in triplicate; one copy shall be filed in the department's offices and the others shall be forwarded by the department, by certified or registered mail, return receipt requested, to the last known principal place of business of the person.

(j) Disclosure of mortgage originator information.—Notwithstanding section 302 of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking *and Securities* Code, the department shall make available to the public, including by access to the Nationwide Mortgage Licensing System and Registry, the employment history of a mortgage originator.

§ 6131.1. Prelicensing and continuing education.

* * *

(b) Prelicensing education.—

(1) A mortgage originator applicant, and at least one **[partner or ultimate equitable owner of 10% or more of an applicant other than a mortgage originator] qualifying individual of a mortgage broker, mortgage lender or mortgage loan correspondent** applicant, shall

complete at least 20 hours of education programs approved in accordance with paragraph (2), which shall include all of the following:

(i) Three hours of Federal law and regulations.

(ii) Three hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues.

(iii) Two hours of training related to lending standards for the nontraditional mortgage loan marketplace.

(iv) Three hours of Pennsylvania law and regulations, including this chapter, the act of December 3, 1959 (P.L.1688, No.621), known as the Housing Finance Agency Law, and the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law.

(2) Prelicensing education programs shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department based upon reasonable standards. Review and approval of a prelicensing education program shall include review and approval of the program provider.

(3) A prelicensing education program approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department may be provided by the **[employer] sponsor** of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such **[employer] sponsor** or entity.

(4) Prelicensing education programs may be offered either in a classroom, online or by any other means approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department.

(5) Except for prelicensing education programs under paragraph (1)(iv), prelicensing education programs approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department and completed for another State license application shall be accepted as credit toward completion of the prelicensing education requirements of this chapter **[if the education programs have been successfully completed within the 12 months immediately preceding the date of the submission of the applicant's license application]**.

(6) An applicant that was previously licensed under this chapter that is applying to become licensed again under this chapter must demonstrate that the applicant has completed all of the continuing education requirements for the year in which the applicant was last licensed under this chapter.

(c) Prelicensing written test.—

(1) A mortgage originator applicant, and at least one **[partner or ultimate equitable owner of 10% or more of an applicant other than a mortgage originator] qualifying individual of a mortgage broker, mortgage lender or mortgage loan correspondent** applicant, shall pass, in accordance with the standards established under this subsection, 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. The **[portion of the] department may also require**

applicants to pass a test regarding Pennsylvania-specific law, *which* shall be administered by a test provider approved by the department or as otherwise determined by the department under subsection (e).

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

(i) Ethics.

(ii) Federal law and regulation pertaining to mortgage origination.

(iii) Pennsylvania law and regulation pertaining to mortgage origination, *unless otherwise determined by the department*.

(iv) Federal and Pennsylvania law and regulation related to fraud, consumer protection, the nontraditional mortgage marketplace and fair lending issues.

(3) A test provider approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department may provide a test at the location of the **[employer] sponsor** of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the **[employer] sponsor** or entity.

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

(ii) An applicant may **[retake] take** a test three consecutive times with each consecutive taking occurring at least 30 days after the preceding test.

(iii) After failing three consecutive tests, an applicant shall wait at least six months before taking the test again.

(iv) A formerly licensed mortgage originator applicant who has been unlicensed for five continuous years or longer shall retake a test. Any time during which the individual is a registered mortgage loan originator shall not be counted toward the five-year continuous period.

(d) Continuing education.—

(1) A licensee who is a mortgage originator and **[one individual from each licensed office] all branch managers and qualifying individuals** of a mortgage broker, mortgage lender or mortgage loan correspondent **[that is not a mortgage originator, unless all of the nonclerical staff of a particular licensed office are licensed as mortgage originators,]** shall *annually* complete at least eight hours of education programs in accordance with paragraph (2), which shall include all of the following:

(i) Three hours of Federal law and regulations.

(ii) Two hours of ethics, which shall include instruction on fraud, consumer protection and fair lending issues.

(iii) Two hours of training related to lending standards for the nontraditional mortgage loan marketplace.

(iv) One hour of Pennsylvania law, including this chapter, the act of December 3, 1959 (P.L.1688, No.621), known as the Housing

Finance Agency Law, and the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law.

(2) Continuing education programs shall be reviewed and approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department based upon reasonable standards. Review and approval of a continuing education program shall include review and approval of the program provider.

(3) A continuing education program approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department may be provided by the **[employer] sponsor** of the licensee or an entity which is affiliated with the licensee by an agency contract, or any subsidiary or affiliate of the **[employer] sponsor** or entity.

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

(5) A licensee may only receive credit for a continuing education program in the year in which the program is taken and may not take the same continuing education program in the same or successive years to meet the requirements of this subsection.

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

(7) Except for the continuing education program under paragraph (1)(iv), continuing education programs approved by the Nationwide Mortgage Licensing System and Registry or as otherwise determined by the department and completed for another state shall be accepted as credit toward completion of the continuing education requirements of this chapter.

(8) An individual who is a mortgage originator, branch manager or qualifying individual of a mortgage broker, mortgage lender or mortgage loan correspondent is not required to complete the requirements of this subsection in any licensing year in which the individual has completed the requirements of subsection (b).

* * *

§ 6135. Licensee requirements.

(a) Requirements of licensee.—

[(1) A licensee who is a mortgage broker, mortgage lender or mortgage loan correspondent shall conspicuously display, at each licensed place of business, its license and copies of the licenses of all mortgage originators assigned to that location. A licensee who is a mortgage originator shall keep the license in the immediate possession of the licensee whenever the licensee is engaged in the mortgage loan business.]

(2) Each licensee shall maintain at its principal place of business, or at another place if agreed to by the department, the original or a copy of any books, accounts, records and documents, or electronic or similar

access thereto, of the business conducted under the license as prescribed by the department to enable the department to determine whether the business of the licensee is being conducted in accordance with the provisions of this chapter and the regulations, statements of policy or orders issued under this chapter. All instruments, documents, accounts, books and records relating to the mortgage loan business shall be kept separate and apart from the records of any other business conducted by the licensee. Records of first and secondary mortgage loans shall be easily distinguishable and easily separated. All records shall be preserved and kept available for investigation or examination by the department for a period *of four years, unless otherwise* determined by the department. The department shall have free access to and authorization to examine records maintained by the licensee. The costs of the examination, including travel costs, shall be borne by the licensee. The department may deny or revoke the authority to maintain records at another place for good cause in the interest of protection for Commonwealth consumers, including for the licensee's failure to provide books, accounts, records or documents to the department upon request.

(3) A mortgage broker, mortgage lender or mortgage loan correspondent, or a mortgage originator that is required to obtain and maintain its own bond coverage under section 6131(f)(4) (relating to application for license), **[on a date determined by the department,]** shall file periodically, as determined by the department, a report with the department *or the Nationwide Mortgage Licensing System and Registry, as determined by the department*, setting forth such information as the department shall require concerning the first or secondary mortgage loan business conducted by the licensee **[during the preceding calendar year. The report shall be on a form provided by the department and shall be filed with the Nationwide Mortgage Licensing System and Registry]**. Licensees who fail to file the required report at the date required by the department may be subject to a penalty of \$100 for each day after the due date until the report is filed.

(4) Each licensee shall be subject to examination by the department at its discretion, at which time the department shall have free access, during regular business hours, to the licensee's place or places of business and to all instruments, documents, accounts, books and records which pertain to a licensee's first or secondary mortgage loan business. The department may examine a licensee at any time if the department deems the examination to be necessary or desirable. The cost of any such examination shall be borne by the licensee.

(5) Each licensee shall include in all advertisements **[language indicating that the licensee is licensed by the department. In the case of a mortgage originator, all advertising shall include the name of the mortgage originator's employer and the mortgage originator's unique identifier] the licensee's unique identifier**.

(b) Accounting records.—**[The] For licensees with minimum net worth requirements pursuant to this chapter, the licensee's accounting records must be constructed and maintained in compliance with generally accepted accounting principles or as provided by department regulation.**

* * *

§ 6136. Licensee limitations.

(a) Name and changes to name.—A licensee cannot transact any business under this chapter under any other name or names except those names designated in its license. A mortgage originator may not use any other name other than the mortgage originator's personal legal name. A licensee that changes its name or place or places of business shall notify the department *or the Nationwide Mortgage Licensing System and Registry, as determined by the department*, within ten days of the change[, and the department shall issue a certificate to the licensee, if appropriate, which shall specify the licensee's new name or address].

* * *

§ 6137. Surrender of license.

Upon satisfying the department that all creditors of a licensee have been paid or that other arrangements satisfactory to the creditors and the department have been made, a licensee may voluntarily surrender its license to the department by **[delivering its license to the department with] providing the department or the Nationwide Mortgage Licensing System and Registry, as determined by the department**, written notice that the license is being voluntarily surrendered, but an action by a licensee shall not affect the licensee's civil or criminal liability for acts committed.

§ 6138. Authority of department.

* * *

(b) Hearings.—A person aggrieved by a decision of the department may appeal the decision of the department to the **[Secretary of Banking] commission**. The appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

* * *

(d) Final orders.—A decision of the **[Secretary of Banking] commission, or an unappealed order of the department**, shall be a final order of the department and shall be enforceable in a court of competent jurisdiction. The department may publish final adjudications issued under this section, subject to redaction or modification to preserve confidentiality. The department shall regularly report violations of this chapter, enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry.

(e) Appeals.—A person aggrieved by a decision of the **[Secretary of Banking] commission** may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A.[¹] (relating to judicial review of Commonwealth agency action).

(f) Orders affecting mortgage originators.—An order issued against a licensee is applicable to the mortgage originators **[employed] sponsored** by the licensee.

§ 6139. Suspension, revocation or refusal.

(a) Departmental action.—The department may suspend, revoke or refuse to renew a license issued under this chapter if any fact or condition exists or is discovered which, if it had existed or had been discovered at the time of filing of the application for the license, would have warranted the department

¹Subch. A." in enrolled bill.

in refusing to issue the license or if a licensee or director, officer, partner, employee, *mortgage originator* or owner of a licensee has:

(1) Made a material misstatement in an application or any report or submission required by this chapter or any department regulation, statement of policy or order.

(2) Failed to comply with or violated any provision of this chapter or any regulation or order promulgated or issued by the department under this chapter.

(3) Engaged in dishonest, fraudulent or illegal practices or conduct in a business or unfair or unethical practices or conduct in connection with the mortgage loan business.

(4) Been convicted of or pleaded guilty or *nolo contendere* to a crime of moral turpitude or felony.

(5) Permanently or temporarily been enjoined by a court of competent jurisdiction from engaging in or continuing conduct or a practice involving an aspect of the mortgage loan business.

(6) Become the subject of an order of the department denying, suspending or revoking a license applied for or issued under this chapter.

(7) Become the subject of a United States Postal Service fraud order.

(8) Failed to comply with the requirements of this chapter to make and keep records prescribed by regulation, statement of policy or order of the department, to produce records required by the department or to file financial reports or other information that the department by regulation, statement of policy or order may require.

(9) Become the subject of an order of the department denying, suspending or revoking a license under the provisions of any other law administered by the department.

(10) Demonstrated negligence or incompetence in performing an act for which the licensee is required to hold a license under this chapter.

(11) Accepted an advance fee without having obtained the bond required by section 6131(d)(1) or (e)(1) (relating to application for license).

(12) Become insolvent, meaning that the liabilities of the applicant or licensee exceed the assets of the applicant or licensee or that the applicant or licensee cannot meet the obligations of the applicant or licensee as they mature or is in such financial condition that the applicant or licensee cannot continue in business with safety to the customers of the applicant or licensee.

(13) Failed to complete the requirements of section 6131.1 (relating to preclicensing and continuing education).

(14) In the case of a mortgage broker, mortgage lender or mortgage loan correspondent, conducted the mortgage loan business through an unlicensed mortgage originator.

(15) Failed to comply with the terms of any agreement under which the department authorizes a licensee to maintain records at a place other than the licensee's principal place of business.

* * *

§ 6140. Penalties.

* * *

(b) Violation by licensee.—A person licensed under this chapter or director, officer, owner, partner, employee, *mortgage originator* or agent of a licensee who violates a provision of this chapter or who commits any action which would subject the licensee to suspension, revocation or nonrenewal under section 6139 may be fined by the department up to \$10,000 for each offense.

§ 6151. Applicability.

The provisions of this chapter shall apply to:

- (1) Any mortgage loan which is:
 - (i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the ultimate lender or any other person;
 - (ii) made or executed within this Commonwealth; or
 - (iii) notwithstanding the place of execution, secured by **[real property] a dwelling or residential real estate** located in this Commonwealth.

(2) Any person who engages in the mortgage loan business in this Commonwealth.

Section 4. Section 6154 of Title 7 is repealed:

[§ 6154. Procedure for determination of noncompliance with Federal law.

(a) **Applicability.**—This section applies if, because of a determination under paragraph (4) of the definition of "mortgage originator" in section 6102 (relating to definitions), an employee:

(1) is required to be licensed as a mortgage originator under state laws implementing the S.A.F.E. Mortgage Licensing Act of 2008 (110 Stat. 289, 12 U.S.C. § 5101 et seq.); and

(2) is thus required to be licensed as a mortgage originator.

(b) **Continuation.**—An employee specified in subsection (a) may continue to act in the employee's current capacity if the employee files an application for a mortgage originator license with the department within 60 days of the date of the determination.]

Section 5. This act shall take effect in 60 days.

APPROVED—The 2nd day of July, A.D. 2013

TOM CORBETT