

- 1 (5) Broadcasting commercials by airwave or Internet
2 transmission; or
- 3 (6) Transmitting any written communication, including:
- 4 (A) A letter or a postcard that encourages a person
5 to borrow from or through a mortgage loan
6 originator; or
- 7 (B) A written communication that encourages a person
8 to refinance the person's existing residential
9 mortgage loan and mentions that a new residential
10 mortgage loan will reduce the monthly payment the
11 borrower will pay on the new residential mortgage
12 loan or reduce the interest rate on the
13 borrower's existing residential mortgage loan.

14 "Agent" means a person who acts with the consent and on
15 behalf of a mortgage loan originator, and is subject to the
16 mortgage loan originator's direct control.

17 "Applicant" means a person applying for the issuance of a
18 license or a renewal of a license under this chapter.

19 "Borrower" means a person who has applied for or obtained a
20 residential mortgage loan from or through a mortgage loan
21 originator, or from or through a person required to be licensed
22 as a mortgage loan originator under this chapter.



1 "Clerical or support duties" include subsequent to the
2 receipt of an application:

3 (1) The receipt, collection, distribution, and analysis of
4 information common for the processing or underwriting
5 of a residential mortgage loan; and

6 (2) Communicating with a borrower to obtain the
7 information necessary for the processing or
8 underwriting of a loan, to the extent that the
9 communication does not include offering or negotiating
10 loan rates or terms or counseling borrowers about
11 residential mortgage loan rates or terms.

12 "Commissioner" means the director of the department of
13 commerce and consumer affairs, or the director's designee.

14 "Federal banking agencies" means the Board of Governors of
15 the Federal Reserve System, the Comptroller of the Currency, the
16 Office of Thrift Supervision, the National Credit Union
17 Administration, and the Federal Deposit Insurance Corporation.

18 "Immediate family member" means a spouse, child, sibling,
19 parent, grandparent, grandchild, stepparent, stepchild,
20 stepsibling, and adoptive relationships.

21 "Insured depository institution" means the same as in 12
22 United States Code Section 1813(c)(2); provided that it also

1 includes any credit union whose deposits are insured by the
2 National Credit Union Association.

3 "Loan processor or underwriter" means an individual who
4 performs clerical or support duties as an employee at the
5 direction, of and subject to the supervision and instruction of
6 a mortgage loan originator or a person who is exempt from
7 licensing as a mortgage loan originator under the this chapter.

8 "Mortgage loan origination agreement" means a written
9 agreement under which a mortgage loan originator agrees to
10 obtain a residential mortgage loan for the borrower or assist
11 the borrower in obtaining a residential mortgage loan and does
12 not include a promissory note and mortgage or any other document
13 or instrument evidencing or securing the residential mortgage
14 loan.

15 "Mortgage loan originator" means an individual who for
16 compensation or gain or in the expectation of compensation or
17 gain:

- 18 (1) Takes a residential mortgage loan application; or
- 19 (2) Offers or negotiates terms of a residential mortgage
20 loan.

21 "National mortgage licensing system and registry" means a
22 mortgage licensing system developed and maintained by the



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

4 "Nontraditional mortgage product" means any mortgage
5 product other than a thirty-year fixed rate residential mortgage
6 loan where the interest rate is fixed for the thirty year term.

7 "Person" means an individual, sole proprietorship,
8 partnership, corporation, limited liability company, limited
9 liability partnership, or other association of individuals,
10 however organized.

11 "Real estate brokerage activity" means any activity that
12 involves offering or providing real estate brokerage services to
13 the public, including:

14 (1) Acting as a real estate agent or real estate broker
15 for a buyer, seller, lessor, or lessee of real
16 property;

17 (2) Bringing together parties interested in the sale,
18 purchase, lease, rental, or exchange of real property;

19 (3) Negotiating on behalf of any party, any portion of a
20 contract relating to the sale, purchase, lease,
21 rental, or exchange of real property (other than in



- 1 connection with providing financing with respect to
2 any such transaction);
- 3 (4) Engaging in any activity for which a person engaged in
4 the activity is required to be registered or licensed
5 as a real estate agent or real estate broker by the
6 State; and
- 7 (5) Offering to engage in any activity, or act in any
8 capacity, described in paragraphs (1), (2), (3), or
9 (4).
- 10 "Registered mortgage loan originator" means any individual
11 who:
- 12 (1) Meets the definition of mortgage loan originator and
13 is an employee of:
- 14 (A) An insured depository institution;
- 15 (B) A subsidiary that is:
- 16 (i) Owned and controlled by an insured
17 depository institution; and
- 18 (ii) Regulated by a federal banking agency; or
- 19 (C) An institution regulated by the Farm Credit
20 Administration; and



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

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

10 "Residential real estate" means any real property located
11 in this state, upon which is constructed or intended to be
12 constructed a dwelling.

13 "Unique identifier" means a number or other identifier
14 assigned by protocols established by the nationwide mortgage
15 licensing system and registry.

16 **§ -2 Exemptions.** This chapter shall not apply to the
17 following:

18 (1) A registered mortgage loan originator, when acting for
19 an insured depository institution, a subsidiary of an
20 insured depository institution regulated by a federal
21 banking agency, or an institution regulated by the
22 Farm Credit Association;



- 1 (2) Any individual who offers or negotiates terms of a
2 residential mortgage loan with, or on behalf of an
3 immediate family member of the individual;
- 4 (3) Any individual who offers or negotiates terms of a
5 residential mortgage loan secured by a dwelling that
6 served as the individual's residence;
- 7 (4) A licensed attorney who negotiates the terms of a
8 residential mortgage loan on behalf of a client as an
9 ancillary matter to the attorney's representation of
10 the client, unless the attorney is compensated by a
11 lender, a mortgage broker, or other mortgage loan
12 originator or by any agent of a lender, mortgage
13 broker, or other mortgage loan originator;
- 14 (5) An individual engaging solely in loan processor or
15 underwriter activities; provided that an independent
16 contractor who performs the services of a loan
17 processor or underwriter shall not represent to the
18 public, through advertising or other means of
19 communicating or providing information, including the
20 use of business cards, stationery, brochures, signs,
21 rate lists, or other promotional items, that the
22 individual can or will perform any of the activities



1 of a mortgage loan originator, and any loan processor
2 or contractor who advertises that the individual can
3 or will perform any of the activities of a mortgage
4 loan originator shall not be exempt under this
5 chapter;

6 (6) A person or entity that only performs real estate
7 brokerage activities and is licensed or registered by
8 the State unless the person or entity is compensated
9 by a lender, a mortgage broker, or other mortgage loan
10 originator or by any agent of the lender, mortgage
11 broker, or other mortgage loan originator; and

12 (7) A person or entity solely involved in extensions of
13 credit relating to timeshare plans, as the term is
14 defined in Section 101(53D) of title 11, United States
15 Code.

16 **§ -3 Requirement of licensure.** An individual, unless
17 specifically exempted from this chapter shall not engage in the
18 business of a mortgage loan originator with respect to any
19 dwelling located in this state without first obtaining and
20 maintaining annually, a license under this chapter. Each
21 licensed mortgage loan originator shall register with, and
22 maintain a valid unique identifier issued by the nationwide



1 mortgage licensing system and registry, and submit to the
2 nationwide mortgage licensing system and registry reports that
3 shall be in a form and contain information as the nationwide
4 mortgage licensing system and registry may require.

5 **§ -4 License and registration; application; issuance.**

6 (a) Applicants for a license shall apply in a form as
7 prescribed by the commissioner. Each form shall be prescribed
8 by rule, instruction, or procedure by the commissioner and may
9 be amended as necessary by the commissioner to carry out the
10 purposes of this chapter.

11 (b) To fulfill the purposes of this chapter, the
12 commissioner may establish relationships or contracts with the
13 nationwide mortgage licensing system and registry or other
14 entities designated by the nationwide mortgage licensing system
15 and registry to collect and maintain records and process
16 transaction fees or other fees related to licensees or other
17 persons subject to this chapter.

18 (c) For the purpose and the extent necessary to
19 participate in the nationwide mortgage licensing system and
20 registry, the commissioner may waive or modify, in whole or in
21 part, by rule or order, any or all of the requirements of this
22 chapter and to establish new requirements as reasonably



1 necessary to participate in the nationwide mortgage licensing
2 system and registry.

3 (d) In connection with an application for licensing as a
4 mortgage loan originator, the applicant, at a minimum, shall
5 furnish to the nationwide mortgage licensing system and registry
6 information concerning the applicant's identity, including:

7 (1) Fingerprints for submission to the Federal Bureau of
8 Investigation, and any governmental agency or entity
9 authorized to receive the fingerprints for a state,
10 national and international criminal history background
11 check; and

12 (2) Personal history and experience in a form prescribed
13 by the nationwide mortgage licensing system and
14 registry, including the submission of authorization
15 for the nationwide mortgage licensing system and
16 registry and the commissioner to obtain:

17 (A) An independent credit report obtained from a
18 consumer reporting agency described in section
19 603(p) of the Fair Credit Reporting Act; and

20 (B) Information related to any administrative, civil,
21 or criminal findings by any governmental
22 jurisdiction.



1 (e) The commissioner may use the nationwide mortgage
2 licensing system and registry as an agent for requesting
3 information from and distributing information to the Department
4 of Justice or any governmental agency.

5 (f) The commissioner may use the nationwide mortgage
6 licensing system and registry as an agent for requesting and
7 distributing information to and from any source directed by the
8 commissioner.

9 **§ -5 Issuance of license.** The commissioner shall not
10 issue a mortgage loan originator license unless the commissioner
11 makes at a minimum the following finding:

12 (1) The applicant has never had a mortgage loan originator
13 license revoked in any governmental jurisdiction,
14 except that a subsequent formal vacation of a
15 revocation shall not be deemed a revocation;

16 (2) The applicant has not been convicted of, or pled
17 guilty, nolo contendere, or been granted a deferred
18 acceptance of a guilty plea under chapter 853 to a
19 felony in a domestic, foreign, or military court:

20 (A) During the seven year period preceding the date
21 of the application for licensing and
22 registration; or



1 (B) At any time preceding the date of application, if
2 the felony involved an act of fraud, dishonesty,
3 a breach of trust, or money laundering;
4 provided that any pardon of a conviction shall not be
5 a conviction for purposes of this section;

6 (3) The applicant has demonstrated financial
7 responsibility, character, and general fitness to
8 command the confidence of the community and to warrant
9 a determination that the mortgage loan originator
10 shall operate honestly, fairly, and efficiently
11 pursuant to this chapter.

12 For purposes of this section, a person is not
13 financially responsible when the person has shown a
14 disregard in the management of the person's financial
15 condition. A determination that an individual has not
16 shown financial responsibility may be based on:

17 (A) Current outstanding judgments, except judgments
18 solely as a result of medical expenses;

19 (B) Current outstanding tax liens or other government
20 liens and filings;

21 (C) Foreclosures within the past three years; and



1 (D) A pattern of seriously delinquent accounts within
2 the past three years;

3 (4) The applicant has completed the pre-licensing
4 education requirement described in section -6;

5 (5) The applicant has passed a written test that meets the
6 test requirements in section -7; and

7 (6) The applicant has met the surety bond requirement as
8 required in section -13.

9 **§ -6 Pre-licensing and re-licensing; education of**
10 **mortgage loan originators.** (a) A person shall complete at
11 least twenty hours of pre-licensing education approved in
12 accordance with subsection (b) that includes:

13 (1) Three hours of federal law and regulations;

14 (2) Three hours of ethics, that shall include instruction
15 on fraud, consumer protection, and fair lending
16 issues; and

17 (3) Two hours of training related to lending standards for
18 the nontraditional mortgage product marketplace.

19 (b) Pre-licensing education courses shall be reviewed and
20 approved by the nationwide mortgage licensing system and
21 registry based upon reasonable standards. Review and approval



1 of a pre-licensing education course shall include review and
2 approval of the course provider.

3 (c) Nothing in this section shall prohibit the use of any
4 pre-licensing education course approved by the nationwide
5 mortgage licensing system and registry that is provided by the
6 employer of the applicant or an entity that is affiliated with
7 the applicant by an agency contract, or any subsidiary or
8 affiliate of the employer or entity.

9 (d) Pre-licensing education may be offered either in a
10 classroom, online, or by any other means approved by the
11 nationwide mortgage licensing system and registry.

12 (e) The pre-licensing education requirements approved by
13 the nationwide mortgage licensing system and registry in
14 subsection (a) for any state shall be accepted as credit towards
15 completion of pre-licensing education requirements in this
16 state.

17 (f) A person previously licensed under this chapter and
18 applying to be licensed under this chapter shall prove to the
19 satisfaction of the commissioner that the person has completed
20 all of the continuing education requirements for the year in
21 which the license was last held.



1 **§ -7 Testing of mortgage loan originators.** (a) To meet
2 the written test requirement in section -5, an applicant
3 shall pass, in accordance with the standards established under
4 this section, a qualified written test developed by the
5 nationwide mortgage licensing system and registry and
6 administered by a test provider approved by the nationwide
7 mortgage licensing system and registry based upon reasonable
8 standards.

9 (b) A written test shall not be treated as a qualified
10 written test for purposes of subsection (a) unless the test
11 adequately measures the applicant's knowledge and comprehension
12 in appropriate subject areas, including:

- 13 (1) Ethics;
- 14 (2) Federal law and regulations pertaining to mortgage
15 origination;
- 16 (3) State law and regulations pertaining to mortgage
17 origination; and
- 18 (4) Federal and state law and regulations, including
19 instruction on fraud, consumer protection, the
20 nontraditional mortgage marketplace, and fair lending
21 issues.



1 (c) Nothing in this section shall prohibit a test provider
2 approved by the nationwide mortgage licensing system and
3 registry from providing a test at the location of the employer
4 of the applicant or the location of any subsidiary or affiliate
5 of the employer of the applicant, the location of any entity
6 with which the applicant holds an exclusive arrangement to
7 conduct the business of a mortgage loan originator.

8 (d) An individual shall have passed a qualified written
9 test if the individual achieves a test score of seventy-five per
10 cent or better. An individual may retake a test three
11 consecutive times with each consecutive taking occurring at
12 least thirty days after the preceding test. After failing three
13 consecutive tests, an individual shall wait at least six months
14 before taking the test again. A licensed mortgage loan
15 originator who fails to maintain a valid license for a period of
16 five years or longer shall retake the test, not taking into
17 account any time during which the individual is a registered
18 mortgage loan originator.

19 **§ -8 Standards for license renewal.** (a) The minimum
20 standards for license renewal for mortgage loan originators
21 shall include the following:



1 (1) The mortgage loan originator continues to meet the
2 minimum standards for licensure under section -5;

3 (2) The mortgage loan originator has satisfied the annual
4 continuing education requirements in section -9;
5 and

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

8 (b) The license of a mortgage loan originator failing to
9 satisfy the minimum standards for license renewal shall expire.

10 The commissioner may adopt procedures for the reinstatement of
11 expired licenses consistent with the standards established by
12 the nationwide mortgage licensing system and registry.

13 **§ -9 Continuing education; mortgage loan originators.**

14 (a) A licensed mortgage loan originator shall complete at least
15 eight hours of education approved in accordance with subsection

16 (b) that shall include at least:

17 (1) Three hours of federal law and regulations;

18 (2) Two hours of ethics that shall include instruction on
19 fraud, consumer protection, and fair lending issues;
20 and

21 (3) Two hours of training related to lending standards for
22 the nontraditional mortgage product marketplace.



1 (b) For purposes of subsection (a), continuing education
2 courses shall be reviewed, and approved by the nationwide
3 mortgage licensing system and registry based upon reasonable
4 standards. Review and approval of a continuing education course
5 shall include review and approval of the course provider.

6 (c) Nothing in this section shall prohibit the use of any
7 education course that is approved by the nationwide mortgage
8 licensing system and registry and provided by the employer of
9 the mortgage loan originator or an entity that is affiliated
10 with the mortgage loan originator by an agency contract, or any
11 subsidiary or affiliate of the employer or entity.

12 (d) Continuing education may be offered either in a
13 classroom, online, or by any other means approved by the
14 nationwide mortgage licensing system and registry.

15 (e) A licensed mortgage loan originator:

16 (1) May only receive credit for a continuing education
17 course in the year in which the course is taken,
18 except for continuing education credits received
19 pursuant to this chapter; and

20 (2) May not take the same approved course in the same or
21 successive years to meet the annual requirements for
22 continuing education.



1 (f) A licensed mortgage loan originator who is an approved
2 instructor of an approved continuing education course may
3 receive credit for the course taught at the rate of two hours
4 credit for every one hour taught.

5 (g) Continuing education courses approved by the
6 nationwide mortgage licensing system and registry in subsection
7 (a) for any state, shall be accepted as credit towards
8 completion of continuing education requirements in this state.

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

13 (i) A person meeting the requirements of section -
14 8(a)(1) and (3) may make up any deficiency in continuing
15 education as established by rule adopted by the commissioner.

16 **§ -10 Authority to require license.** In addition to any
17 other duties imposed upon the commissioner, the commissioner
18 shall require mortgage loan originators to be licensed and
19 registered through the nationwide mortgage licensing system and
20 registry. The commissioner is authorized to participate in the
21 nationwide mortgage licensing system and registry. The



- 1 commissioner may establish by rule pursuant to chapter 91,
2 qualifications for mortgage loan organizations, including:
- 3 (1) Background checks of:
 - 4 (A) Criminal history through fingerprint or other
5 databases;
 - 6 (B) Civil or administrative records;
 - 7 (C) Credit history; or
 - 8 (D) Any other source deemed necessary by the
9 nationwide mortgage licensing system and
10 registry;
 - 11 (2) The payment of fees to apply for, or renew licenses
12 through the nationwide mortgage licensing system and
13 registry;
 - 14 (3) The setting or resetting as necessary of renewal or
15 reporting dates; and
 - 16 (4) Requirements for amending or surrendering a license or
17 any other activity the commissioner deems necessary to
18 participate in the nationwide mortgage licensing
19 system and registry.

20 **§ -11 Nationwide mortgage licensing system; registry**
21 **information; challenge process.** The commissioner shall
22 establish a process whereby mortgage loan originators may



1 challenge information entered into the nationwide mortgage
2 licensing system and registry by the commissioner.

3 **§ -12 Enforcement authorities; violations; penalties.**

4 (a) To ensure the effective supervision and enforcement of this
5 chapter, the commissioner may, pursuant to chapter 91:

6 (1) Deny, suspend, revoke, condition, or decline to renew
7 a license for a violation of this chapter, rules,
8 order, or directive entered under this chapter;

9 (2) Deny, suspend, revoke, condition, or decline to renew
10 a license if an applicant or licensed mortgage loan
11 originator fails at any time to meet the requirements
12 of section -6 or section -8, or withholds
13 information or makes a material misstatement in an
14 application for a license or renewal of a license;

15 (3) Order restitution against persons subject to this
16 chapter for violations of this chapter;

17 (4) Impose fines on persons subject to this chapter
18 pursuant to this section; and

19 (5) Issue orders or directives under this chapter as
20 follows:

21 (A) Order or direct persons subject to this chapter
22 to cease and desist from conducting business,

1 including immediate temporary orders to cease and
2 desist;

3 (B) Order or direct persons subject to this chapter
4 to cease any harmful activities or violations of
5 this chapter, including immediate temporary
6 orders to cease and desist;

7 (C) Enter immediate temporary orders to cease
8 business under a license or interim license
9 issued pursuant to the authority granted under
10 this chapter if the commissioner determines that
11 the license was erroneously granted or the
12 licensee is currently in violation of this
13 chapter; or

14 (D) Order or direct any other affirmative action as
15 the commissioner deems necessary.

16 (b) The commissioner may impose a civil penalty on a
17 mortgage loan originator or person subject to this chapter, if
18 the commissioner finds on the record after notice and
19 opportunity for hearing that the mortgage loan originator or
20 person subject to this chapter has violated or failed to comply
21 with any requirement of this chapter or any regulation

1 prescribed by the commissioner under this chapter or order
2 issued under the authority of this chapter.

3 (c) The maximum penalty for each act or omission described
4 in subsection (b) shall be \$25,000.

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

8 **§ -13 Surety bond; required.** (a) Each mortgage loan
9 originator shall be covered by a surety bond in accordance with
10 this section. In the event that the mortgage loan originator is
11 an employee or exclusive agent of a person subject to this
12 chapter, the surety bond of the person may be used in lieu of
13 the mortgage loan originator's surety bond.

14 (b) The surety bond shall provide coverage for each
15 mortgage loan originator in an amount prescribed in subsection
16 (b). The surety bond shall be in a form as prescribed by the
17 commissioner. The commissioner may adopt rules with respect to
18 the requirements for the surety bonds necessary to accomplish
19 the purposes of this chapter.

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



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

3 (e) Immediately upon recovery of any action on the bond
4 the commissioner may require the filing of a new bond.

5 **§ -14 Confidentiality.** (a) Except as otherwise
6 provided in Public Law 110-289, Section 1512, the requirements
7 under any federal law regarding the privacy or confidentiality
8 of any information or material provided to the Nationwide
9 Mortgage Licensing System and Registry, and any privilege
10 arising under federal or state law, including the rules of any
11 federal or state court, with respect to the information or
12 material, shall continue to apply to the information or material
13 after the information or material has been disclosed to the
14 nationwide mortgage licensing system and registry. The
15 information and material may be shared with all state and
16 federal regulatory officials with mortgage industry oversight
17 authority without the loss of privilege or the loss of
18 confidentiality protections provided by federal or state law.

19 (b) For these purposes, the commissioner is authorized to
20 enter into agreements or sharing arrangements with other
21 governmental agencies, the Conference of State Bank Supervisors,
22 the American Association of Residential Mortgage Regulators or



1 other associations representing governmental agencies as
2 established by rule or order of the commissioner.

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

5 (1) Disclosure under any federal or state law governing
6 the disclosure to the public of information held by an
7 officer or an agency of the federal government or a
8 state; or

9 (2) Subpoena or discovery, or admission into evidence, in
10 any private civil action or administrative process,
11 unless with respect to any privilege held by the
12 nationwide mortgage licensing system and registry with
13 respect to the information or material, the person to
14 whom the information or material pertains waives, in
15 whole or in part, that privilege.

16 (d) Notwithstanding chapter 92F, the examination process
17 and related information and documents, including the reports of
18 examination, are confidential and are not subject to discovery
19 or disclosure in civil or criminal lawsuits.

20 (e) Notwithstanding any law to the contrary, the
21 disclosure of confidential supervisory information or any
22 information or material described in subsection (a) that is



1 inconsistent with subsection (a) shall be superseded by the
2 requirements of this section.

3 (f) This section shall not apply to information or
4 material relating to the employment history of, and publicly
5 adjudicated disciplinary and enforcement actions against,
6 mortgage loan originators that is included in the nationwide
7 mortgage licensing system and registry for access by the public.

8 **§ -15 Investigation and examination authority.** (a) In
9 addition to any other authority under this chapter, the
10 commissioner shall have the authority to conduct investigations
11 and examinations, The commissioner may access, receive and use
12 any books, accounts, records, files, documents, information or
13 evidence including but not limited to:

- 14 (1) Criminal, civil, and administrative history
15 information, including nonconviction data as in
16 chapter 853;
- 17 (2) Personal history and experience information including
18 independent credit reports obtained from a consumer
19 reporting agency described in section 603(p) of the
20 Fair Credit Reporting Act; and
- 21 (3) Any other documents, information, or evidence the
22 commissioner deems relevant to the inquiry or



1 investigation regardless of the location, possession,
2 control or custody of the documents, information, or
3 evidence.

4 (b) For the purposes of investigating violations or
5 complaints arising under this chapter, or for the purposes of
6 examination, the commissioner may review, investigate, or
7 examine any licensed mortgage loan originator, individual, or
8 person subject to this chapter, as often as necessary to carry
9 out the purposes of this chapter. The commissioner may direct,
10 subpoena, or order the attendance of, and examine under oath all
11 persons whose testimony may be required about the loans or the
12 business or subject matter of any examination or investigation,
13 and may direct, subpoena, or order the person to produce books,
14 accounts, records, files, and any other documents the
15 commissioner deems relevant to the inquiry.

16 (c) Each licensed mortgage loan originator, individual or
17 person subject to this chapter shall provide to the commissioner
18 upon request, the books and records relating to the operations
19 of the licensee, individual, or person subject to this chapter.
20 The commissioner shall have access to the books and records and
21 interview the officers, principals, mortgage loan originators,
22 employees, independent contractors, agents, and customers of the



1 licensed mortgage loan originator, individual, or person subject
2 to this chapter concerning their business.

3 (d) Each licensed mortgage loan originator, individual, or
4 person subject to this chapter shall make or compile reports or
5 prepare other information as directed by the commissioner to
6 carry out the purposes of this section, including:

7 (1) Accounting compilations;

8 (2) Information lists and data concerning loan
9 transactions in a format prescribed by the
10 commissioner; or

11 (3) Other information deemed necessary to carry out the
12 purposes of this section.

13 (e) The commissioner may charge an examination fee based
14 upon the cost per hour per examiner for all mortgage loan
15 originators examined by the commissioner or the commissioner's
16 staff. The hourly fee shall be \$40 or an amount as the
17 commissioner shall establish by rule pursuant to chapter 91.

18 **§ -16 Written agreements.** For any transaction between
19 a mortgage loan originator and a borrower, the following
20 requirements shall apply:

21 (1) A mortgage loan originator shall comply with all
22 provisions of the Real Estate Settlement Procedures



1 Act, the Truth in Lending Act, and the Equal Credit
2 Opportunity Act, as those laws currently exist or as
3 they may be amended;

4 (2) Any written commitment letter to make a residential
5 mortgage loan with specified terms, including loan
6 amount, interest rate, points, and payment terms that
7 is issued by a mortgage loan originator and accepted
8 by a borrower, shall be honored by the mortgage loan
9 originator if the borrower has completely satisfied
10 all of the conditions of the commitment in a timely
11 manner and prior to the specified expiration date of
12 the commitment. A written commitment letter shall
13 specify the conditions precedent to closing the
14 residential mortgage loan and the lender that has the
15 ultimate authority to fund and close the residential
16 mortgage loan;

17 (3) Within three business days of receipt of a borrower's
18 completed residential mortgage loan application by the
19 licensee, and before the borrower gives the mortgage
20 loan originator any moneys except for an application
21 fee, the mortgage loan originator shall sign a
22 mortgage brokerage agreement with the borrower. The



1 mortgage brokerage agreement shall be with the person
2 employing the mortgage loan originator or the mortgage
3 loan originator if the mortgage loan originator is not
4 an employee. The mortgage brokerage agreement shall
5 be in writing and signed and dated by both the
6 borrower and the mortgage loan originator. The
7 mortgage brokerage agreement shall include a clear and
8 conspicuous statement:

9 (A) Explaining that a copy shall be made available
10 upon request, to the borrower or the borrower's
11 attorney for review prior to signing;

12 (B) Explaining whether the mortgage loan originator
13 is a fiduciary for the borrower;

14 (C) Explaining the nature of the mortgage loan
15 originator's compensation, and if the mortgage
16 loan originator is an employee, explaining the
17 compensation of the person that the mortgage loan
18 originator is employed by, and whether the
19 mortgage loan originator may receive compensation
20 from the borrower, the lender, or both;

21 (D) Describing the services the mortgage loan
22 originator will perform for the borrower;



1 (E) Setting forth the conditions under which the
2 borrower is obligated to pay fees to the mortgage
3 loan originator, the manner in which the borrower
4 may cancel the mortgage brokerage agreement, the
5 borrower's liabilities for fees and costs, and
6 the mortgage loan originator's contact
7 information for dispute resolution; and

8 (F) Explaining that, if the mortgage loan originator
9 makes materially false or misleading statements
10 or omissions in the mortgage brokerage agreement,
11 the borrower, upon written notice, may void the
12 mortgage brokerage agreement and recover moneys
13 paid to the mortgage loan originator by the
14 borrower for which no services have been
15 performed.

16 A copy of the fully signed mortgage brokerage agreement
17 shall be given to the borrower by the mortgage loan originator
18 immediately after signing the mortgage brokerage agreement.

19 **§ -17 Prohibited practices.** It shall be a violation of
20 this chapter for a mortgage loan originator to:



- 1 (1) Make a false promise likely to influence, defraud, or
2 mislead a borrower or lender, or to defraud any
3 person;
- 4 (2) Pursue a pattern or practice of making false promises,
5 including through an agent, mortgage loan originator,
6 advertising, or otherwise;
- 7 (3) Misrepresent or conceal any material fact with respect
8 to any residential mortgage loan transaction resulting
9 in injury to any party;
- 10 (4) Fail to disburse funds in accordance with an
11 agreement, or fail to account or deliver to any person
12 any personal property including money, funds, a
13 deposit, a check or draft, a mortgage or other
14 document or thing of value that has come into the
15 mortgage loan originator's hands and that is not the
16 mortgage loan originator's property or that the
17 mortgage loan originator is not, at law or equity,
18 entitled to retain, and at the time that has been
19 agreed upon, or is required by law, or, in the absence
20 of a fixed time, upon demand by the person entitled to
21 the accounting or delivery;



- 1 (5) Fail to place in escrow, within a reasonable time upon
2 receipt, any money, fund, deposit, check, or draft,
3 entrusted to the mortgage loan originator by any
4 person dealing with the mortgage loan originator
5 pursuant to a written agreement, or to deposit the
6 funds in a bank account maintained by the mortgage
7 loan originator in a bank located, and doing business
8 in the state, wherein the funds are kept until
9 disbursement is authorized;
- 10 (6) Deliver a misleading or deceptive communication or
11 advertising, whether written, electronic, or oral,
12 when marketing or soliciting a residential mortgage
13 loan. A communication or advertisement that uses the
14 name or trademark of a financial institution, as
15 defined in section 412:1-109, or its affiliates or
16 subsidiaries, or infers that the communication or
17 advertisement is from, endorsed by, is related to, or
18 is the responsibility of the financial institution is
19 a misleading or deceptive communication. Advertising
20 that a specific interest rate, points or other
21 financial terms are available when either the rates,



- 1 points or financial terms are not actually available
2 is a misleading or deceptive communication;
- 3 (7) Solicit or arrange for a residential mortgage loan or
4 engage in the activity of a mortgage loan originator
5 as a direct result of arranging or soliciting a
6 residential mortgage loan at the dwelling of a
7 borrower without a prearranged appointment initiated
8 by and at the invitation of the borrower;
- 9 (8) Fill in or complete, without the consent of the
10 borrower, any blank on a residential mortgage loan
11 application that requests material information,
12 including financial information;
- 13 (9) Fill in or complete, without the consent of the
14 borrower, any blank on any instrument evidencing or
15 securing the residential mortgage loan, which blank
16 relates to the amount, interest rate, or monthly
17 payment of the residential mortgage loan;
- 18 (10) Make a payment, directly or indirectly, of any kind,
19 to any appraiser licensed or certified under chapter
20 466K to influence the valuation of the residential
21 real property that will secure a residential mortgage
22 loan;



- 1 (11) Condition compensation of an appraiser on establishing
- 2 a certain value for a residential real property; or
- 3 (12) Fail to comply with this chapter or any order or rule
- 4 made under the authority of this chapter.

5 **§ -18 Powers of commissioner.** The commissioner may
 6 adopt rules pursuant to chapter 91 as the commissioner deems
 7 necessary for the administration of this chapter.

8 In addition to any other powers provided by law, the
 9 commissioner may:

- 10 (1) Administer and enforce the provisions and requirements
- 11 of this chapter;
- 12 (2) Adopt, amend, or repeal rules and issue declaratory
- 13 rulings or informal nonbinding interpretations;
- 14 (3) Develop requirements for licensure through rules,
- 15 including establishing the content of the written
- 16 tests required under section -7;
- 17 (4) Investigate and conduct hearings regarding any
- 18 violation of this chapter or any rule or order of, or
- 19 agreement with, the commissioner;
- 20 (5) Create fact-finding committees that may make
- 21 recommendations to the commissioner for the
- 22 commissioner's deliberations;



- 1 (6) Require an applicant or any of its officers,
2 directors, employees, partners, members, managers, and
3 agents to disclose their relevant criminal history and
4 request a criminal history record check in accordance
5 with chapter 846;
- 6 (7) Contract with qualified persons, including
7 investigators who may be exempt from chapter 76 and
8 who shall assist the commissioner in exercising the
9 commissioner's powers and duties;
- 10 (8) Require that all fees, fines, and charges collected by
11 the commissioner under this chapter be deposited into
12 the compliance resolution fund established pursuant to
13 section 26-9(o);
- 14 (9) Subpoena witnesses and documents, administer oaths,
15 and receive affidavits and oral testimony, including
16 telephonic communications, and do any and all things
17 necessary or incidental to the exercise of the
18 commissioner's power and duties, including the
19 authority to conduct contested case proceedings under
20 chapter 91; and
- 21 (10) Require a mortgage loan originator to comply with any
22 rule, guidance, guideline, statement, supervisory



1 policy or any similar proclamation issued is adopted
2 by the Federal Deposit Insurance Corporation to the
3 same extent and in the same manner as a bank chartered
4 by the State or in the alternative, any policy
5 position of the Conference of State Bank Supervisors.

6 **§ -19 Fees and costs.** (a) Each application for a
7 mortgage originator license shall be accompanied by an
8 application fee of \$, or an amount as the commissioner
9 shall establish by rule pursuant to chapter 91.

10 (b) Upon obtaining approval for a license, an initial
11 license fee shall be paid to the commissioner in the amount of
12 \$ or such other amount as the commissioner shall establish
13 by rule pursuant to chapter 91.

14 (c) By December 31 of each year, every mortgage broker and
15 loan originator licensed under this chapter shall pay an annual
16 license renewal fee of \$, or other amount as the
17 commissioner shall establish by rule pursuant to chapter 91.

18 **§ -20 Elders.** (a) Any person who, in the course of
19 engaging in conduct that requires a license under this chapter,
20 commits a violation of this chapter or the rules adopted
21 pursuant to this chapter, and the violation includes conduct
22 that is directed towards, targets, or is committed against an



1 elder, may be fined an amount not to exceed \$10,000 for each
2 violation in addition to any other fine or penalty assessed
3 against that person.

4 (b) As used in this section, "elder" means a consumer who
5 is sixty-two years of age or older."

6 SECTION 2. Section 412:3-502, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~§412:3-502~~ **Foreign financial institution.** No foreign
9 financial institution shall receive deposits, lend money, or pay
10 checks, negotiate orders of withdrawal or share drafts from any
11 principal office, branch, agency, automatic teller machine, or
12 other location in this State, unless expressly authorized by
13 this chapter, other laws of this [~~State,~~] state, or federal law;
14 provided that nothing in this section shall prohibit any foreign
15 financial institution from participating in the disbursement of
16 cash through an automatic teller machine network or from
17 operating from any location in this [~~State~~] state as a mortgage
18 broker licensed under chapter [~~454,~~] , or as a real estate
19 collection servicing agent."

20 SECTION 3. Section 454-3, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:



1 "(e) All fees shall be established and adopted by the
2 director in accordance with chapter 91 and shall be deposited
3 into the compliance resolution fund established pursuant to
4 section 26-9(o) [-]; provided that, to establish regulatory
5 practices for residential mortgage lending, a surcharge of \$400
6 shall be charged to every mortgage broker that shall be due on
7 December 31, 2009, and a surcharge of \$100 shall be charged to
8 every mortgage solicitor that shall be due on December 31, 2009.
9 Failure of any mortgage broker or mortgage solicitor to pay the
10 biennial renewal fee on or before December 31 of an even-
11 numbered year or the surcharge shall constitute an automatic
12 forfeiture of the license. The forfeited license may be
13 restored; provided that application for restoration is made
14 within six months of the forfeiture and a penalty fee is paid in
15 addition to the delinquent license fee. A licensee who fails to
16 restore a license as provided in this subsection shall apply as
17 a new applicant."

18 SECTION 4. Section 477E-2, Hawaii Revised Statutes, is
19 amended by amending the definition of "creditor" to read as
20 follows:

21 "Creditor" means any bank; savings and loan association;
22 trust company; financial services loan company; credit union;



1 mortgage banker, [~~broker, or solicitor,~~] mortgage loan
 2 originator; pawnbroker; mutual benefit society or fraternal
 3 benefit society; debt adjuster; the issuer of a credit card as
 4 defined in section 708-800; any person who initiates, extends,
 5 renews, or continues loans of money or credit; any person who
 6 regularly arranges for the initiation, extension, renewal, or
 7 continuation of a loan of money or credit; or any assignee of an
 8 original creditor who participates in the decision to grant,
 9 extend, renew, or to continue [~~such~~] a loan of money or credit."

10 SECTION 5. Section 667-21, Hawaii Revised Statutes, is
 11 amended by amending subsection (b) to read as follows:

12 "(b) As used in this part:

13 "Borrower" means the borrower, maker, cosigner, or
 14 guarantor under a mortgage agreement.

15 "Foreclosing mortgagee" means the mortgagee that intends to
 16 conduct a power of sale foreclosure; provided that the mortgagee
 17 is a federally insured bank, a federally insured savings and
 18 loan association, a federally insured savings bank, a depository
 19 financial services loan company, a nondepository financial
 20 services loan company, a credit union insured by the National
 21 Credit Union Administration, a bank holding company, a foreign



1 lender as defined in section 207-11, or an institutional
2 investor [~~as defined in section 454-1~~].

3 "Mailed" means to be sent by regular mail, postage prepaid,
4 and by certified, registered, or express mail, postage prepaid
5 and return receipt requested.

6 "Mortgage" means a mortgage, security agreement, or other
7 document under which property is mortgaged, encumbered, pledged,
8 or otherwise rendered subject to a lien for the purpose of
9 securing the payment of money or the performance of an
10 obligation.

11 "Mortgage agreement" includes the mortgage, the note or
12 debt document, or any document amending any of the foregoing.

13 "Mortgaged property" means the property that is subject to
14 the lien of the mortgage.

15 "Mortgagee" means the current holder of record of the
16 mortgagee's or the lender's interest under the mortgage, or the
17 current mortgagee's or lender's duly authorized agent.

18 "Mortgagor" means the mortgagor or borrower named in the
19 mortgage and, unless the context otherwise indicates, includes
20 the current owner of record of the mortgaged property whose
21 interest is subject to the mortgage.



1 "Open house" means a public showing of the mortgaged
 2 property during a scheduled time period.

3 "Power of sale" or "power of sale foreclosure" means a
 4 nonjudicial foreclosure under this part when the mortgage
 5 contains, authorizes, permits, or provides for a power of sale,
 6 a power of sale foreclosure, a power of sale remedy, or a
 7 nonjudicial foreclosure.

8 "Property" means property, [(-)real, personal, or mixed(+)],
 9 an interest in property, [(-)including fee simple, leasehold,
 10 life estate, reversionary interest, and any other estate under
 11 applicable law(+)], or other interests that can be subject to the
 12 lien of a mortgage.

13 "Record" or "recorded" means a document is recorded or
 14 filed with the office of the assistant registrar of the land
 15 court under chapter 501 or recorded with the registrar of
 16 conveyances under chapter 502, or both, as applicable.

17 "Served" means to have service of the notice of default
 18 made in accordance with the service of process or the service of
 19 summons under the Hawaii rules of civil procedure, and under
 20 sections 634-35 and 634-36."

21 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is
 22 amended by amending subsection (b) to read as follows:



- 1 "(b) Criminal history record checks may be conducted by:
- 2 (1) The department of health on operators of adult foster
- 3 homes or developmental disabilities domiciliary homes
- 4 and their employees, as provided by section 333F-22;
- 5 (2) The department of health on prospective employees,
- 6 persons seeking to serve as providers, or
- 7 subcontractors in positions that place them in direct
- 8 contact with clients when providing non-witnessed
- 9 direct mental health services as provided by section
- 10 321-171.5;
- 11 (3) The department of health on all applicants for
- 12 licensure for, operators for, and prospective
- 13 employees, and volunteers at one or more of the
- 14 following: skilled nursing facility, intermediate
- 15 care facility, adult residential care home, expanded
- 16 adult residential care home, assisted living facility,
- 17 home health agency, hospice, adult day health center,
- 18 special treatment facility, therapeutic living
- 19 program, intermediate care facility for the mentally
- 20 retarded, hospital, rural health center and
- 21 rehabilitation agency, and, in the case of any of the
- 22 above-related facilities operating in a private



- 1 residence, on any adult living in the facility other
2 than the client as provided by section 321-15.2;
- 3 (4) The department of education on employees, prospective
4 employees, and teacher trainees in any public school
5 in positions that necessitate close proximity to
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees
8 who may be in positions that place them in close
9 proximity to children in recreation or child care
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor
12 licenses as provided by section 281-53.5;
- 13 (7) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and foster boarding homes as provided
16 by section 346-17;
- 17 (8) The department of human services on prospective
18 adoptive parents as established under section 346-
19 19.7;
- 20 (9) The department of human services on applicants to
21 operate child care facilities, prospective employees
22 of the applicant, and new employees of the provider



- 1 after registration or licensure as provided by section
2 346-154;
- 3 (10) The department of human services on persons exempt
4 pursuant to section 346-152 to be eligible to provide
5 child care and receive child care subsidies as
6 provided by section 346-152.5;
- 7 (11) The department of human services on operators and
8 employees of home and community-based case management
9 agencies and operators and other adults, except for
10 adults in care, residing in foster family homes as
11 provided by section 346-335;
- 12 (12) The department of human services on staff members of
13 the Hawaii youth correctional facility as provided by
14 section 352-5.5;
- 15 (13) The department of human services on employees,
16 prospective employees, and volunteers of contracted
17 providers and subcontractors in positions that place
18 them in close proximity to youth when providing
19 services on behalf of the office or the Hawaii youth
20 correctional facility as provided by section 352D-4.3;
- 21 (14) The judiciary on employees and applicants at detention
22 and shelter facilities as provided by section 571-34;



- 1 (15) The department of public safety on employees and
2 prospective employees who are directly involved with
3 the treatment and care of persons committed to a
4 correctional facility or who possess police powers
5 including the power of arrest as provided by section
6 353C-5;
- 7 (16) The department of commerce and consumer affairs on
8 applicants for private detective or private guard
9 licensure as provided by section 463-9;
- 10 (17) Private schools and designated organizations on
11 employees and prospective employees who may be in
12 positions that necessitate close proximity to
13 children; provided that private schools and designated
14 organizations receive only indications of the states
15 from which the national criminal history record
16 information was provided as provided by section 302C-
17 1;
- 18 (18) The public library system on employees and prospective
19 employees whose positions place them in close
20 proximity to children as provided by section 302A-
21 601.5;



- 1 (19) The State or any of its branches, political
2 subdivisions, or agencies on applicants and employees
3 holding a position that has the same type of contact
4 with children, vulnerable adults, or persons committed
5 to a correctional facility as other public employees
6 who hold positions that are authorized by law to
7 require criminal history record checks as a condition
8 of employment as provided by section 78-2.7;
- 9 (20) The department of human services on licensed adult day
10 care center operators, employees, new employees,
11 subcontracted service providers and their employees,
12 and adult volunteers as provided by section 346-97;
- 13 (21) The department of human services on purchase of
14 service contracted and subcontracted service providers
15 and their employees serving clients of the adult and
16 community care services branch, as provided by section
17 346-97;
- 18 (22) The department of human services on foster grandparent
19 program, retired and senior volunteer program, senior
20 companion program, and respite companion program
21 participants as provided by section 346-97;



- 1 (23) The department of human services on contracted and
2 subcontracted service providers and their current and
3 prospective employees that provide home and community-
4 based services under Section 1915(c) of the Social
5 Security Act (Title 42 United States Code Section
6 1396n(c)), or under any other applicable section or
7 sections of the Social Security Act for the purposes
8 of providing home and community-based services, as
9 provided by section 346-97;
- 10 (24) The department of commerce and consumer affairs on
11 proposed directors and executive officers of a bank,
12 savings bank, savings and loan association, trust
13 company, and depository financial services loan
14 company as provided by section 412:3-201;
- 15 (25) The department of commerce and consumer affairs on
16 proposed directors and executive officers of a
17 nondepository financial services loan company as
18 provided by section 412:3-301;
- 19 (26) The department of commerce and consumer affairs on the
20 original chartering applicants and proposed executive
21 officers of a credit union as provided by section
22 412:10-103;



1 ~~[(27)]~~ The department of commerce and consumer affairs on:

2 (A) Each principal of every non-corporate applicant
3 for a money transmitter license; and

4 (B) The executive officers, key shareholders, and
5 managers in charge of a money transmitter's
6 activities of every corporate applicant for a
7 money transmitter license,

8 as provided by section 489D-9; ~~[and]~~;

9 (28) The department of commerce and consumer affairs on the
10 applicant for a mortgage loan originator's license as
11 provided by section -10 or the applicant's officers,
12 directors, partners, members, managers, employees, or
13 agents;

14 ~~[(28)]~~ (29) Any other organization, entity, or the State, its
15 branches, political subdivisions, or agencies as may
16 be authorized by state law."

17 SECTION 7. Chapter 454, Hawaii Revised Statutes, is
18 repealed.

19 SECTION 8. A mortgage broker or mortgage solicitor
20 licensed under chapter 454, Hawaii Revised Statutes, on July 1,
21 2009, shall not be required to be re-licensed under this Act
22 until such later date approved by the Secretary of the United



1 States Department of Housing and Urban Development, pursuant to
2 the authority granted under Public Law 110-289, Section 1508(a).

3 SECTION 9. There is appropriated out of the compliance
4 resolution fund established pursuant to section 26-9(o) the sum
5 of \$ or so much thereof as may be necessary for fiscal
6 year 2009-2010 to carry out the purposes of this Act.

7 The sum appropriated shall be expended by the department of
8 commerce and consumer affairs for the purposes of this Act.

9 SECTION 10. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 11. This Act shall take effect on January 1, 2020.



Report Title:

Mortgage Brokers

Description:

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws regulating mortgage brokers and loan originators. Repeals chapter 454. Effective 01/01/2020. (HB1438 HD1)

