
A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 412, Hawaii Revised Statutes, is
2 amended by adding to part I of article 9 a new section to be
3 appropriately designated and to read as follows:

4 "§412:9- Registration with Nationwide Mortgage
5 Licensing System and Registry. (a) A nondepository financial
6 services loan company licensed under this chapter is not a
7 mortgage loan originator company as defined in chapter 454F.

8 (b) A nondepository financial services loan company must
9 register with the Nationwide Mortgage Licensing System and
10 Registry if any employee of the nondepository financial services
11 loan company acts as a mortgage loan originator as defined by
12 chapter 454F or if the nondepository financial services loan
13 company uses the services of an exclusive independent contractor
14 mortgage loan originator, underwriter or loan processor, as
15 defined in chapter 454F.

16 (c) This section does not exempt an employee of a
17 nondepository financial services loan company who originates,
18 processes or underwrites mortgage loans, or an independent



1 contractor providing mortgage loan originating, processing, or
2 underwriting services to a nondepository financial services loan
3 company, from licensure under chapter 454F."

4 SECTION 2. Section 454F-1, Hawaii Revised Statutes, is
5 amended by adding new definitions to be appropriately inserted
6 and to read as follows:

7 "Borrower" means a person who has applied for or obtained
8 a residential mortgage loan from or through a licensed mortgage
9 loan originator or mortgage loan originator company, or from or
10 through a person required to be licensed as a mortgage loan
11 originator or mortgage loan originator company under this
12 chapter.

13 "Branch office" means any location, separate from the
14 principal place of business of the mortgage loan originator
15 company, that is identified by any means to the public or
16 customers as a location at which the licensee holds itself out
17 as a mortgage loan originator company.

18 "Control person" means an individual who directly or
19 indirectly has the right to vote twenty-five per cent or more of
20 a class of voting security of a company or has the power to sell
21 or direct the sale of twenty-five per cent or more of a class of
22 voting securities of a company.



1 "Division" means the division of financial institutions.

2 "Dwelling" means a residential structure that contains one
3 to four units whether or not that structure is attached to real
4 property. "Dwelling" includes an individual condominium unit, an
5 individual cooperative unit, a mobile home, and a trailer if
6 used as a residence.

7 "Employee" means an individual who is hired to provide
8 services for a licensee on a regular basis in exchange for
9 compensation and who does not provide these services as part of
10 an independent business. An employee is subject to tax
11 withholding, the Federal Income Contributions Act, and other
12 lawful deductions by the licensee as a condition of employment
13 and is subject to the right of the licensee to direct and
14 control the actions of the employee.

15 "Exempt registered mortgage loan originator company" means
16 any person who is required to be licensed by any other state or
17 federal law, but is not required to be licensed under this
18 chapter, and has the obligation to register with the Nationwide
19 Mortgage Licensing System and Registry because one or more of
20 the person's employees engage in the business of a mortgage loan
21 originator.



1 "Independent contractor" means any person who has a
2 contractual arrangement to perform mortgage loan originating,
3 underwriting, or loan processing services on behalf of a
4 licensee, but is not an employee of that licensee.

5 "License" means a license issued under this chapter.

6 "Licensee" means a mortgage loan originator, a mortgage
7 loan originator company, or a person who is required to be
8 licensed under this chapter. Licensee does not include an
9 exempt registered mortgage loan originator or exempt registered
10 mortgage loan originator company as defined by this section.

11 "Manager" means an individual employed by a mortgage loan
12 originator company who has the duty to directly manage and
13 supervise a licensed mortgage loan originator company and its
14 licensed mortgage loan originators.

15 "Mortgage loan originator company" means:

16 (1) An individual, not exempt under section 454F-2, who
17 engages in the business of a mortgage loan originator
18 as a sole proprietorship; or

19 (2) A person, not exempt under section 454F-2, who employs
20 or utilizes the exclusive services of one or more
21 mortgage loan originators licensed or required to be
22 licensed under this chapter.



1 "Taking a residential mortgage loan application" means the
2 receipt by a mortgage loan originator of a residential mortgage
3 loan application for the purpose of deciding whether or not to
4 extend the requested offer of a loan to the borrower, whether
5 the application is received directly or indirectly from the
6 borrower."

7 SECTION 3. Chapter 454F, Hawaii Revised Statutes, is
8 amended by adding twenty-four new sections to be appropriately
9 designated and to read as follows:

10 "§454F-A Automatic secondary review of license
11 application. The commissioner shall establish, by rule pursuant
12 to chapter 91, a procedure for the secondary review of an
13 application that was determined on initial review not to meet
14 the criteria for licensure.

15 §454F-B Continuing education requirements for license
16 renewal. The license of a licensee meeting the requirements of
17 section 454F-8(a)(1) and (3) shall expire if the licensee fails
18 to meet the minimum requirements for continuing education.
19 Reinstatement of the expired license may be allowed as provided
20 for by this chapter.

21 §454F-C Successive years for continuing education courses.
22 A licensee is prohibited from taking the same approved



1 continuing education course in the same or successive years to
2 meet the annual continuing education requirements. For purposes
3 of this section, the term "successive years" means the two years
4 following the year in which a mortgage loan originator takes an
5 approved course.

6 **§454F-D Authorized places of business; designation of**
7 **managers.** (a) Every mortgage loan originator company licensed
8 under this chapter shall have and maintain a principal place of
9 business in the State for the transaction of business and shall
10 designate a manager.

11 (b) In the event that a mortgage loan originator company
12 desires to maintain one or more branch offices in the State in
13 addition to its principal place of business in the State, the
14 commissioner, upon application and payment of a nonrefundable
15 application fee as required by this chapter shall approve a
16 branch office license. The mortgage loan originator company
17 shall designate a manager located in each branch office to be in
18 charge of that branch office.

19 (c) No mortgage loan originator company may relocate any
20 office in this State without first obtaining prior written
21 approval from the commissioner. The application shall set forth
22 the reasons for the relocation, the street address of the



1 proposed relocated office, and other information that may be
2 required by the commissioner, and shall be submitted with a
3 nonrefundable application fee.

4 (d) A mortgage loan originator company shall give the
5 commissioner notice of its intent to close any branch office at
6 least thirty days prior to the closing. The notice shall:

7 (1) State the intended date of closing; and

8 (2) Specify the reasons for the closing.

9 **§454F-E Reinstatement of expired license.** (a) A license
10 issued under this chapter that expires for failure to satisfy
11 the minimum standards for renewal may be reinstated if the
12 licensee meets the following requirements:

13 (1) The license must be reinstated between January 1 and
14 February 28 of the year immediately following the year
15 the license expired;

16 (2) All continuing education courses and any other minimum
17 requirements for license renewal for the year in which
18 the license expired must be taken on or after January
19 1 and before March 1 of the year immediately following
20 the year the license expired, and before the
21 reinstatement becomes effective. Continuing education
22 taken on or after January 1 and before March 1 as



1 credits for the previous year cannot also be credited
2 as part of the current calendar year's requisite hours
3 of continuing education; and

4 (3) The licensee must pay the applicable application fee,
5 reinstatement fee, and late fee.

6 (b) If a licensee whose license has expired fails to meet
7 the requirements for reinstatement specified in this section,
8 the licensee may apply for a new license and shall meet the
9 requirements for licensure in effect at that time.

10 **§454F-F Registration with Nationwide Mortgage Licensing**

11 **System and Registry; additional requirements.** (a) All mortgage
12 loan originators, mortgage loan originator companies, and any
13 other person in this State that originates a residential
14 mortgage loan, unless exempt under section 454F-2, are required
15 to be registered with the Nationwide Mortgage Licensing System
16 and Registry.

17 (b) All persons, defined in this chapter as "exempt
18 registered mortgage loan originators" and "exempt registered
19 mortgage loan originator companies" are required to register and
20 maintain a unique identifier through the Nationwide Mortgage
21 Licensing System and Registry, but are not required to be
22 licensed under this chapter.



1 §454F-G Mortgage loan recovery fund; use of fund; fees.

2 (a) The commissioner shall establish and maintain a trust fund
3 which shall be known as the mortgage loan recovery fund from
4 which any person aggrieved by an act, representation,
5 transaction, or conduct of a duly licensed mortgage loan
6 originator or mortgage loan originator company, upon the grounds
7 of fraud, misrepresentation, or deceit, may recover by order of
8 the circuit court or district court of the county where the
9 violation occurred, an amount of not more than \$25,000 per
10 transaction for damages sustained by the fraud,
11 misrepresentation, or deceit, including court costs and fees as
12 set by law, and reasonable attorney fees as determined by the
13 court.

14 (b) Upon licensure, a licensee shall pay directly to the
15 division, in addition to the person's original application fee,
16 and fees required by the Nationwide Mortgage Licensing System
17 and Registry, a mortgage loan recovery fund fee as follows, for
18 deposit in the mortgage loan recovery fund:

19 (1) The sum of \$300 for the principal office location of
20 the mortgage loan originator company licensed under
21 this chapter;



1 (2) The sum of \$250 for each branch office location of a
2 mortgage loan originator company licensed under this
3 chapter; and

4 (3) The sum of \$200 for each mortgage loan originator
5 licensed under this chapter.

6 (c) Upon renewal, a licensee shall pay directly to the
7 division, for deposit in the mortgage loan recovery fund:

8 (1) The sum of \$200 for the principal office location of
9 the mortgage loan originator company licensed under
10 this chapter;

11 (2) The sum of \$150 for each branch office location of a
12 mortgage loan originator company licensed under this
13 chapter; and

14 (3) The sum of \$100 for each mortgage loan originator
15 licensed under this chapter.

16 (d) When the mortgage loan recovery fund attains a funding
17 level of \$750,000, the commissioner may adjust the fees
18 generated by renewals, or may determine that payments made by
19 renewing licensees shall cease. If the funding level falls
20 below \$250,000 after the first five years, the commissioner may
21 adjust the fees to a reasonable level, for the purpose of
22 attaining a funding level of \$750,000.



1 (e) The commissioner, or the commissioner's delegate, as
2 the manager of the mortgage loan recovery fund, shall be
3 authorized to expend the funds to:

4 (1) Retain private legal counsel to represent the
5 commissioner or the division in any action involving
6 or which may result in payment from the mortgage loan
7 recovery fund;

8 (2) Retain a certified public accountant for accounting
9 and auditing of the mortgage loan recovery fund;

10 (3) Employ necessary personnel, not subject to chapter 76,
11 to assist the commissioner in exercising its powers
12 and duties with respect to the mortgage loan recovery
13 fund; and

14 (4) Retain a consultant to recover and collect any
15 payments from the mortgage loan recovery fund plus
16 interest from the judgment debtor.

17 **§454F-H Statute of limitation; recovery from fund.** (a)

18 No action for a judgment that subsequently results in an order
19 for collection from the mortgage loan recovery fund shall be
20 started later than six years from the accrual of the cause of
21 action thereon. When any aggrieved person commences action for
22 a judgment that may result in collection from the mortgage loan



1 recovery fund, the aggrieved person shall notify the
2 commissioner in writing to this effect at the time of the
3 commencement of the action and shall submit prescribed
4 documents. The commissioner may intervene in and defend any
5 such action.

6 (b) When any aggrieved person recovers a valid judgment in
7 any circuit or district court where the violation occurred
8 against any licensee under this chapter, upon the grounds of
9 fraud, misrepresentation, or deceit, which occurred before the
10 effective date of this chapter, the aggrieved person must
11 proceed against the existing bond covering the license which was
12 in force prior to the establishment of the mortgage loan
13 recovery fund.

14 (c) The court shall proceed upon the application in a
15 summary manner and, upon the hearing thereof, the aggrieved
16 person shall be required to show:

17 (1) The person is not a spouse of the judgment debtor, or
18 the personal representative of such spouse;

19 (2) The person has complied with all the requirements of
20 this section;



1 (3) The person has obtained a judgment as set out in
2 subsection (b), stating the amount thereof and the
3 amount owing thereon at the date of the application;

4 (4) The person has made all reasonable searches and
5 inquiries to ascertain whether the judgment debtor is
6 possessed of real or personal property or other
7 assets, liable to be sold or applied in satisfaction
8 of the judgment;

9 (5) That by such search the person has discovered no
10 personal or real property or other assets liable to be
11 sold or applied, or that the person has discovered
12 certain of them, describing them, owned by the
13 judgment debtor and liable to be so applied, and that
14 the person has taken all necessary action and
15 proceedings for the realization thereof, and that the
16 amount thereby realized was insufficient to satisfy
17 the judgment, stating the amount so realized and the
18 balance remaining due on the judgment after
19 application of the amount realized; and

20 (6) That where the licensee is a judgment debtor in a
21 bankruptcy proceeding, the aggrieved person has
22 obtained an order from the bankruptcy court declaring



1 the judgment against the licensee to be non-
2 dischargeable.

3 (d) The court shall make an order directed to the
4 commissioner requiring payment from the mortgage loan recovery
5 fund of whatever sum it finds to be payable upon the claim,
6 pursuant to and in accordance with the limitations contained in
7 this section, if the court is satisfied, upon the hearing, of
8 the truth of all matters required to be shown by the aggrieved
9 person by subsection (c) and that the aggrieved person has fully
10 pursued and exhausted all remedies available to the person for
11 recovering the amount awarded by the judgment of the court.

12 **§454F-I Management of fund.** (a) The sums received by the
13 division for deposit in the mortgage loan recovery fund shall be
14 held by the commissioner, or the commissioner's delegate, for
15 carrying out the purpose of the mortgage loan recovery fund.
16 The commissioner, or the commissioner's delegate, as the manager
17 of the recovery fund, shall be authorized to expend the funds to
18 retain private legal counsel to represent the commissioner in
19 any action involving the mortgage loan recovery fund. These
20 funds may be invested and reinvested in the same manner as funds
21 of the state employees' retirement system.



1 §454F-J Standing in court. When the division receives
2 notice, as provided in section 454F-H, the commissioner may
3 enter an appearance, file an answer, appear at the court
4 hearing, defend the action, or take whatever other action it
5 deems appropriate, and take recourse through any appropriate
6 method of review. The commissioner or its legal representative
7 shall be served with all pleadings in an action which may result
8 in a recovery from the mortgage loan recovery fund.

9 §454F-K Subrogation of rights. When, upon the order of
10 the court, the commissioner has paid from the mortgage loan
11 recovery fund any sum to the judgment creditor, the commissioner
12 shall be subrogated to all of the rights of the judgment
13 creditor and the judgment creditor shall assign all the
14 creditor's right, title, and interest in the judgment to the
15 commissioner and any amount and interest so recovered by the
16 commissioner on the judgment shall be deposited to the fund.

17 §454F-L Waiver of rights. The failure of an aggrieved
18 person to comply with this chapter relating to the mortgage loan
19 recovery fund shall constitute a waiver of any rights hereunder.

20 §454F-M Maximum liability. Notwithstanding any other
21 provision, the liability of the mortgage loan recovery fund
22 shall not exceed the sum of \$100,000 against any one licensee.



1 **§454F-N** **Disciplinary action against licensee.** Nothing
2 contained herein shall limit the authority of the commissioner
3 to take disciplinary action against any licensee for a violation
4 of this chapter, or the rules and orders of the commissioner;
5 nor shall the repayment in full of all obligations to the
6 mortgage loan recovery fund by any licensee nullify or modify
7 the effect of any other disciplinary proceeding brought pursuant
8 to this chapter.

9 **§454F-O** **Change in control of a licensee; fees.** (a) A
10 licensee shall submit to the commissioner an application
11 requesting approval of a proposed change of control of the
12 licensee, accompanied by a nonrefundable application fee of
13 \$500, payable to the division.

14 (b) The commissioner shall approve a request for change
15 of control under subsection (a) if, after investigation, the
16 commissioner determines that the person or group of persons
17 requesting approval has the competence, experience, character,
18 and general fitness to control the licensee or person in control
19 of the licensee in a lawful and proper manner, and that the
20 interests of the public will not be jeopardized by the change of
21 control.



1 §454F-P Mortgage loan originator fees, commissions, and
2 charges. The commissioner may adopt rules concerning maximum
3 fees, commissions, and charges on mortgage loan transactions.
4 The maximum fees, commissions, and charges shall be related to
5 the actual amount of money made available to the borrower, over
6 and above the indebtedness of prior mortgages. The commissioner
7 may also adopt rules concerning the full disclosure of the fees,
8 commissions, and charges.

9 §454F-Q Elders. (a) Any person who, in the course of
10 engaging in conduct that requires a license under this chapter,
11 commits a violation of this chapter or the rules adopted
12 pursuant to this chapter, which violation includes conduct that
13 is directed towards, targets, or is committed against an elder,
14 may be fined an amount not to exceed \$10,000 for each violation
15 in addition to any other fine or penalty assessed against that
16 person.

17 (b) As used in this section, "elder" means an individual
18 who is sixty-two years of age or older.

19 §454F-R Payment of fees. All fees, except those fees
20 designated to be placed in the mortgage loan recovery fund,
21 together with any administrative fine or other charge assessed
22 under this chapter shall be deposited into the compliance



1 resolution fund established pursuant to section 26-9(o) and
2 shall be payable through the Nationwide Mortgage Licensing
3 System and Registry, to the extent allowed by the Nationwide
4 Mortgage Licensing System and Registry. Otherwise, fees shall
5 be payable to the division.

6 **§454F-S Mortgage loan originator fees.** A mortgage loan
7 originator shall pay the following fees to maintain a valid
8 mortgage loan originator license. These fees are non-
9 refundable. These fees are in addition to any fees established
10 and charged by the Nationwide Mortgage Licensing System and
11 Registry, any approved educational course provider, any approved
12 educational testing provider, any law enforcement agency for
13 finger prints and background checks, or any credit reporting
14 agency used by the Nationwide Mortgage Licensing System and
15 Registry:

- 16 (1) Application fee: \$600;
17 (2) Annual renewal fee: \$375;
18 (3) Reinstatement fee: \$100;
19 (4) Late fee: \$25 per day;
20 (5) Criminal background check fee of \$35 or an amount to
21 be determined by the commissioner.



1 §454F-T Mortgage loan originator company fees. (a) A
2 mortgage loan originator company shall pay the following fees to
3 maintain a valid mortgage loan originator company or branch
4 license. These fees are non-refundable and are in addition to
5 any fees established and charged by the Nationwide Mortgage
6 Licensing System and Registry.

7 (b) Principal office:

8 (1) Application fee: \$990;

9 (2) Annual renewal fee: \$650;

10 (3) Reinstatement fee: \$100;

11 (4) Late fees: \$25 per day;

12 (5) Criminal background check fees of \$35 for each control
13 person, executive officer, director, general partner,
14 and manager, or an amount to be determined by the
15 commissioner.

16 (c) Branch office:

17 (1) Application fee: \$250

18 (2) Annual renewal fee: \$125;

19 (3) Reinstatement fee: \$100;

20 (4) Late fee: \$25 per day.

21 §454F-U Fees to amend licensing information. (a) In

22 addition to fees charged by the Nationwide Mortgage Licensing



1 System and Registry, a fee of \$50 shall be charged by the
2 division for each of the following amendments by licensees
3 amending information provided to the Nationwide Mortgage
4 Licensing System and Registry or the division, which requires
5 the review of the commissioner.

6 (1) Change of physical location, including branch or
7 company main office address change;

8 (2) Addition or deletion of a "d/b/a" designation;

9 (3) Change in manager;

10 (4) Change in legal name.

11 (b) Amendment fees are charged per license.

12 (c) Upon a showing of good cause, the commissioner may
13 waive any fees set forth in this section that are assessed by
14 the division.

15 **§454F-V Complaints against mortgage loan originators.** The
16 division may investigate and act upon complaints against
17 licensees licensed under this chapter. Complaints shall be
18 filed in writing with the division.

19 **§454F-W False or misleading information on application**
20 **form.** It shall be a violation of this chapter for any
21 applicant, or in the case of the applicant that is not an
22 individual, any of the applicant's control persons, executive



1 officers, directors, general partners, or managers, to provide
2 false or misleading information, or make any misrepresentations
3 to the commissioner or to the Nationwide Mortgage Licensing
4 System and Registry. Providing false or misleading information
5 or making a misrepresentation on an application is grounds for
6 denial of the application.

7 **§454F-X Voluntary cessation of operation; surrender of**
8 **license.** (a) Subject to the approval of the commissioner, a
9 licensee may voluntarily cease activity for which a license to
10 operate has been issued under this chapter by delivering to the
11 commissioner a written notice of surrender, which shall include,
12 but not be limited to, a plan of cessation of business,
13 provisions for the transfer or assumption of assets and
14 liabilities, provisions for pending applications or
15 transactions, and provisions for payment or assumption of the
16 licensee's other liabilities, provisions for the disposition of
17 individual mortgage loan originator licenses, and for transfer
18 or assumption of all trust, agency, and other fiduciary
19 relationships and accounts.

20 (b) The commissioner shall approve the surrender if:

21 (1) The commissioner is satisfied with the plan as set
22 forth by the licensee; and



1 (2) No other reason exists to deny the request for
2 surrender;
3 provided that the commissioner may impose any restrictions and
4 conditions as the commissioner deems appropriate.

5 (c) The surrender shall not affect rights and duties that
6 have matured, penalties that were incurred, and proceedings that
7 were begun before the effective date of the surrender of the
8 license under this section."

9 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) No department of the State other than the attorney
12 general may employ or retain any attorney, by contract or
13 otherwise, for the purpose of representing the State or the
14 department in any litigation, rendering legal counsel to the
15 department, or drafting legal documents for the department;
16 provided that the foregoing provision shall not apply to the
17 employment or retention of attorneys:

18 (1) By the public utilities commission, the labor and
19 industrial relations appeals board, and the Hawaii
20 labor relations board;

21 (2) By any court or judicial or legislative office of the
22 State; provided that if the attorney general is



- 1 requested to provide representation to a court or
2 judicial office by the chief justice or the chief
3 justice's designee, or to a legislative office by the
4 speaker of the house of representatives and the
5 president of the senate jointly, and the attorney
6 general declines to provide such representation on the
7 grounds of conflict of interest, the attorney general
8 shall retain an attorney for the court, judicial, or
9 legislative office, subject to approval by the court,
10 judicial, or legislative office;
- 11 (3) By the legislative reference bureau;
- 12 (4) By any compilation commission that may be constituted
13 from time to time;
- 14 (5) By the real estate commission for any action involving
15 the real estate recovery fund;
- 16 (6) By the contractors license board for any action
17 involving the contractors recovery fund;
- 18 (7) By the trustees for any action involving the travel
19 agency recovery fund;
- 20 (8) By the office of Hawaiian affairs;



- 1 (9) By the department of commerce and consumer affairs for
2 the enforcement of violations of chapters 480 and
3 485A;
- 4 (10) As grand jury counsel;
- 5 (11) By the Hawaiian home lands trust individual claims
6 review panel;
- 7 (12) By the Hawaii health systems corporation, or its
8 regional system boards, or any of their facilities;
- 9 (13) By the auditor;
- 10 (14) By the office of ombudsman;
- 11 (15) By the insurance division;
- 12 (16) By the University of Hawaii;
- 13 (17) By the Kahoolawe island reserve commission;
- 14 (18) By the division of consumer advocacy;
- 15 (19) By the office of elections;
- 16 (20) By the campaign spending commission;
- 17 (21) By the Hawaii tourism authority, as provided in
18 section 201B-2.5; [~~or~~]
- 19 (22) By the division of financial institutions for any
20 action involving the mortgage loan recovery fund; or
- 21 [(22)] (23) By a department, in the event the attorney
22 general, for reasons deemed by the attorney general



1 good and sufficient, declines to employ or retain an
2 attorney for a department; provided that the governor
3 thereupon waives the provision of this section."

4 SECTION 5. Section 237-24.8, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) As used in this section:

7 "Activities relating to the general servicing of
8 fiduciary/custodial accounts" means those activities performed
9 by trust companies which are directly or indirectly performed
10 within the fiduciary/custodial relationship between the trust
11 company or trust department of a financial institution and its
12 client and which are not offered to any person outside of the
13 fiduciary/custodial relationship.

14 "Annual percentage rate" and "finance charge" have the same
15 meaning as defined in the federal Truth in Lending Act (15
16 U.S.C. sections 1605(a) to (c) and 1606).

17 "Deposit" means:

18 (1) Money or its equivalent received or held by a
19 financial institution in the usual course of business
20 and for which it has given or is obligated to give
21 credit to:



- 1 (A) A commercial (including public deposits),
2 checking, savings, time, or thrift account;
- 3 (B) A check or draft drawn against a deposit account
4 and certified by the financial institution;
- 5 (C) A letter of credit; or
- 6 (D) A traveler's check, on which the financial
7 institution is primarily liable;
- 8 (2) Trust funds received or held by a financial
9 institution, whether held in the trust department or
10 held or deposited in any other department of the
11 financial institution;
- 12 (3) Money received or held by a financial institution, or
13 the credit given for money or its equivalent received
14 or held by a financial institution in the usual course
15 of business for a special or specific purpose,
16 regardless of the legal relationship thereby
17 established, including, without being limited to,
18 escrow funds, funds held as security for an obligation
19 due the financial institution or others (including
20 funds held as dealers' reserves) or for securities
21 loaned by the financial institution, funds deposited
22 by a debtor to meet maturing obligations, funds



1 deposited as advance payment on subscriptions to
2 United States government securities, funds held for
3 distribution or purchase of securities, funds held to
4 meet the financial institution's acceptances or
5 letters of credit, and withheld taxes;

6 (4) Outstanding drafts, cashier's checks, money orders, or
7 other officer's checks issued in the usual course of
8 business for any purpose; or

9 (5) Money or its equivalent held as a credit balance by a
10 financial institution on behalf of its customer if the
11 financial institution is engaged in soliciting and
12 holding the balances in the regular course of its
13 business.

14 "Financial institution" means banks, building and loan
15 associations, development companies, financial corporations,
16 financial services loan companies, small business investment
17 companies, financial holding companies, mortgage loan originator
18 companies, and trust companies [~~all as defined in chapter 241~~].

19 "Leasing of personal property" occurs if:

20 (1) The lease is to serve as the functional equivalent of
21 an extension of credit to the lessee of the property;



- 1 (2) The property to be leased is acquired specifically for
2 the leasing transaction under consideration, or was
3 acquired specifically for an earlier leasing
4 transaction;
- 5 (3) The lease is on a nonoperating basis, i.e., the
6 financial institution may not, directly or indirectly:
7 (A) Provide for the maintenance, repair, replacement,
8 or servicing of the leased property during the
9 lease term;
- 10 (B) Purchase parts and accessories in bulk or for an
11 individual property after the lessee has taken
12 delivery of the property; or
- 13 (C) Purchase insurance for the lessee;
- 14 (4) At the inception of the lease the effect of the
15 transaction will yield a return that will compensate
16 the lessor financial institution for not less than the
17 lessor's full investment in the property plus the
18 estimated total cost of financing the property over
19 the term of the lease, from:
- 20 (A) Rentals;
- 21 (B) Estimated tax benefits (capital goods excise tax
22 credit, net economic gain from tax deferral from



1 accelerated depreciation, and other tax benefits
2 with a substantially similar effect); and

3 (C) The estimated residual value of the property at
4 the expiration of the initial term of the lease;

5 (5) The maximum lease term during which the lessor
6 financial institution must recover the lessor's full
7 investment in the property, plus the estimated total
8 cost of financing the property, shall be forty years;
9 and

10 (6) At the expiration of the lease (including any renewals
11 or extensions with the same lessee), all interest in
12 the property shall be either liquidated or leased
13 again on a nonoperating basis as soon as practicable
14 (in no event later than two years from the expiration
15 of the lease), but in no case shall the lessor retain
16 any interest in the property beyond fifty years after
17 the lessor's acquisition of the property."

18 SECTION 6. Section 241-1, Hawaii Revised Statutes, is
19 amended by amending the definition of "mortgage loan company" to
20 read as follows:

21 ""Mortgage loan originator company" means any company
22 licensed under chapter [~~454.~~] 454F."



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

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

16 SECTION 8. Section 454F-1, Hawaii Revised Statutes, is
17 amended by amending the definitions of "advertisement" or
18 "advertising", "applicant", "insured depository institution",
19 "loan processor or underwriter", "mortgage loan originator",
20 "Nationwide Mortgage Licensing System", "registered mortgage
21 loan originator", "residential mortgage loan", and "unique
22 identifier" to read as follows:



- 1 ""Advertisement" or "advertising" means:
- 2 (1) Issuing any card, sign, or device to any person;
- 3 (2) Causing, permitting, or allowing the placement of any
- 4 sign or marking on or in any building, vehicle, or
- 5 structure;
- 6 (3) Placing an advertisement in any newspaper, magazine,
- 7 or on the Internet;
- 8 (4) Listing or advertising in any directory under a
- 9 classification or heading that includes the words
- 10 "mortgage loan originator", "mortgage loan originator
- 11 company", or the like;
- 12 (5) Broadcasting commercials by airwave or internet
- 13 transmission; or
- 14 (6) Transmitting any written communication, including:
- 15 (A) A letter or a postcard that encourages a person
- 16 to borrow from or through a mortgage loan
- 17 originator[+] or mortgage loan originator
- 18 company; or
- 19 (B) A written communication that encourages a person
- 20 to refinance the person's existing residential
- 21 mortgage loan and mentions that a new residential
- 22 mortgage loan will reduce the monthly payment the



1 borrower will pay on the new residential mortgage
2 loan or reduce the interest rate on the
3 borrower's existing residential mortgage loan.

4 "Applicant" means [~~an individual~~] a person applying for the
5 issuance of a license or a renewal of a license under this
6 chapter.

7 "Insured depository institution" means the same as in 12
8 United States Code [~~Section~~] section 1813(c)(2); provided that
9 it also includes any credit union [~~whose deposits are insured by~~
10 ~~the National Credit Union Association~~].

11 "Loan processor or underwriter" means an individual who
12 performs clerical or support duties as an employee at the
13 direction of and subject to the supervision and instruction of a
14 [~~mortgage loan originator or a~~] person [~~who is~~] licensed or
15 exempt from licensing [~~as a mortgage loan originator~~] under this
16 chapter.

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

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



1 A mortgage loan originator includes a loan processor or
2 underwriter working as an independent contractor as provided in
3 section 454F-3.

4 "Nationwide Mortgage Licensing System["] and Registry"
5 means a mortgage licensing system and registry developed and
6 maintained by the Conference of State Bank Supervisors and the
7 American Association of Residential Mortgage Regulators for the
8 licensing and registration of [~~icensed~~] mortgage loan
9 originators[~~-~~] and mortgage loan originator companies.

10 [~~"Registered~~] "Exempt registered mortgage loan originator"
11 means any individual 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 depository
17 institution; and

18 (ii) Regulated by a federal banking agency; or

19 (C) An institution regulated by the Farm Credit
20 Administration; and

21 (2) Is registered with, and maintains a unique identifier
22 through, the Nationwide Mortgage Licensing System and



1 Registry~~[-]~~, but is not required to be licensed under
2 this chapter.

3 "Residential mortgage loan" means any loan primarily for
4 personal, family, or household use that is secured by a
5 mortgage, deed of trust, or other equivalent consensual security
6 interest on a dwelling as defined in [~~Section~~] section 103(v) of
7 the Truth in Lending Act, 15 United States Code [~~Section~~]
8 section 1601 et seq., or residential real estate.

9 "Unique identifier" means a number or other identifier
10 assigned by protocols established by the Nationwide Mortgage
11 Licensing System~~[-]~~ and Registry."

12 SECTION 9. Section 454F-2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~+~~§454F-2~~+~~ **Exemptions.** This chapter shall not apply
15 to the following:

16 (1) [A] An exempt registered mortgage loan originator,
17 when acting for an insured depository institution, a
18 subsidiary of an insured depository institution
19 regulated by a federal banking agency, or an
20 institution regulated by the Farm Credit
21 Administration;



- 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,~~] loan originator company,
12 or other mortgage loan originator, or by an agent of a
13 lender, mortgage [~~broker,~~] loan originator company, or
14 other mortgage loan originator;
- 15 ~~[(5) An individual engaging solely in loan processor or~~
16 ~~underwriter activities; provided that an individual,~~
17 ~~including an independent contractor, who performs the~~
18 ~~services of a loan processor or underwriter shall not~~
19 ~~represent to the public, through advertising or other~~
20 ~~means of communicating or providing information,~~
21 ~~including the use of business cards, stationery,~~
22 ~~brochures, signs, rate lists, or other promotional~~



1 ~~items, that the individual can or will perform any of~~
2 ~~the activities of a mortgage loan originator, and any~~
3 ~~loan processor or underwriter, including an~~
4 ~~independent contractor, who advertises that the~~
5 ~~individual can or will perform any of the activities~~
6 ~~of a mortgage loan originator or engages in the~~
7 ~~activities of a mortgage loan originator shall not be~~
8 ~~exempt under this chapter and shall obtain and~~
9 ~~maintain a license under this chapter and a valid~~
10 ~~unique identifier issued by the Nationwide Mortgage~~
11 ~~Licensing System;]~~

12 [~~(6)~~] (5) A person or entity that only performs real
13 estate brokerage activities and is licensed or
14 registered by the State unless the person or entity is
15 compensated by a lender, a mortgage [~~broker,~~] loan
16 originator company, or other mortgage loan originator,
17 or by an agent of the lender, mortgage [~~broker,~~] loan
18 originator company, or other mortgage loan originator;
19 or

20 [~~(7)~~] (6) A person or entity solely involved in extensions
21 of credit relating to timeshare plans, as the term is



- 1 defined in [~~Section~~] section 101(53D) of Title 11,
2 United States Code[~~7~~];
- 3 (7) An exempt registered mortgage loan originator company,
4 as defined by this chapter; and
- 5 (8) A nondepository financial services loan company
6 licensed under article 9 of chapter 412."

7 SECTION 10. Section 454F-3, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~+~~]**\$454F-3**[~~+~~] **Requirement of licensure.** (a) Effective
10 [~~August 1, 2010,~~] January 1, 2011, or such later date approved
11 by the United States Department of Housing and Urban Development
12 pursuant to the authority granted under Public Law 110-289,
13 [~~Section~~] section 1508(e), [~~an individual,~~] a person, unless
14 specifically exempted from this chapter, shall not engage in the
15 business of a mortgage loan originator or mortgage loan
16 originator company with respect to any dwelling located in this
17 State without first obtaining and maintaining annually, a
18 license under this chapter. Each licensed mortgage loan
19 originator and mortgage loan originator company shall register
20 with and maintain a valid unique identifier issued by the
21 Nationwide Mortgage Licensing System[~~7~~] and Registry, and shall
22 submit to the Nationwide Mortgage Licensing System and Registry



1 any reports that shall be in a form and contain information as
2 the Nationwide Mortgage Licensing System and Registry may
3 require.

4 (b) An individual who acts as an independent contractor
5 may not engage in the activities of a mortgage loan originator,
6 loan processor, or underwriter unless that individual mortgage
7 loan originator, loan processor or underwriter obtains and
8 maintains a license under section 454F-4. Each independent
9 contractor engaging in the activities of a mortgage loan
10 originator, loan processor, or underwriter that is licensed as a
11 mortgage loan originator shall have and maintain a valid unique
12 identifier issued by the Nationwide Mortgage Licensing System
13 and Registry. An individual who acts as an independent
14 contractor as described herein, may be an exclusive agent of a
15 mortgage loan originator company. If an independent contractor
16 is not an exclusive agent of a mortgage loan originator company,
17 that independent contractor, in addition to obtaining a license
18 as a mortgage loan originator, shall obtain a license as a
19 mortgage loan originator company."

20 SECTION 11. Section 454F-4, Hawaii Revised Statutes, is
21 amended to read as follows:



1 " [f]§454F-4 [f] **License and registration; application;**
2 **issuance.** (a) Applicants for a license shall apply in a form
3 as prescribed by the Nationwide Mortgage Licensing System and
4 Registry or the commissioner.

5 (b) To fulfill the purposes of this chapter, the
6 commissioner shall establish relationships or contracts with the
7 Nationwide Mortgage Licensing System and Registry or other
8 entities designated by the Nationwide Mortgage Licensing System
9 and Registry to collect and maintain records and process
10 transaction fees or other fees related to licensees or other
11 persons subject to this chapter.

12 (c) For the purpose and the extent necessary to
13 participate in the Nationwide Mortgage Licensing System[,] and
14 Registry, the commissioner may waive or modify, in whole or in
15 part, by rule or order, any or all of the requirements of this
16 chapter and to establish new requirements as reasonably
17 necessary to participate in the Nationwide Mortgage Licensing
18 System[-] and Registry.

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



- 1 (1) Fingerprints for submission to the Federal Bureau of
2 Investigation, and any governmental agency or entity
3 authorized to receive the fingerprints for a state,
4 national, and international criminal history
5 background check; and
- 6 (2) Personal history and experience in a form prescribed
7 by the Nationwide Mortgage Licensing System and
8 Registry including the submission of authorization for
9 the Nationwide Mortgage Licensing System and Registry
10 and the commissioner to obtain:
- 11 (A) An independent credit report obtained from a
12 consumer reporting agency described in [~~Section~~]
13 section 603(p) of the Fair Credit Reporting Act,
14 15 United States Code 1681 et seq.; and
- 15 (B) Information related to any administrative, civil,
16 or criminal findings by any governmental
17 jurisdiction.
- 18 (e) In connection with an application for licensing as a
19 mortgage loan originator company, the applicant, at a minimum,
20 shall furnish, directly to the commissioner unless the
21 commissioner directs otherwise, information concerning the
22 applicant's identity, including:



1 (1) Fingerprints of the applicant's control persons,
2 executive officers, directors, general partners, and
3 managers, for submission to the Federal Bureau of
4 Investigation, and any governmental agency or entity
5 authorized to receive the fingerprints for a state,
6 national, and international criminal history
7 background check; and

8 (2) Personal history and experience of the applicant's
9 control persons, executive officers, directors,
10 general partners, and managers, in a form prescribed
11 by the Nationwide Mortgage Licensing System and
12 Registry or the commissioner including the submission
13 of authorization for the Nationwide Mortgage Licensing
14 and Registry and the commissioner to obtain for each
15 covered individual:

16 (A) An independent credit report obtained from a
17 consumer reporting agency described in section
18 603(p) of the Fair Credit Reporting Act, 15
19 United States Code 1681 et seq.; and

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



1 [~~(e)~~] (f) 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)~~] (g) 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 (h) An applicant for a mortgage loan originator company
10 license that is a person other than an individual must be
11 registered to do business in this State with the business
12 registration division of the department of commerce and consumer
13 affairs before a license shall be granted.

14 (i) An applicant for a mortgage loan originator company
15 license shall designate one licensed mortgage loan originator to
16 be the applicant's manager for each principal office and for
17 each branch office."

18 SECTION 12. Section 454F-5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~(f)~~ **\$454F-5** ~~(f)~~ **Issuance of license.** (a) The commissioner
21 shall not issue a [~~mortgage loan originator~~] license under this



1 chapter unless the commissioner makes at a minimum the following
2 findings:

3 (1) The applicant, or in the case of an applicant that is
4 not an individual, each of the applicant's control
5 persons, executive officers, directors, general
6 partners, and managers, has never had a mortgage loan
7 originator or mortgage loan originator company license
8 revoked in any jurisdiction; provided that a
9 subsequent formal vacation of a revocation shall not
10 be deemed a revocation;

11 (2) The applicant, or in the case of an applicant that is
12 not an individual, each of the applicant's control
13 persons, executive officers, directors, general
14 partners, and managers, has not been convicted of, or
15 pled guilty or nolo contendere, or been granted a
16 deferred acceptance of a guilty plea under chapter 853
17 to a felony in a domestic, foreign, or military court:

18 (A) During the seven-year period preceding the date
19 of the application for licensing and
20 registration; or



1 (B) At any time preceding the date of application, if
2 the felony involved an act of fraud, dishonesty,
3 breach of trust, or money laundering;

4 provided that any pardon of a conviction shall not be
5 deemed a conviction for purposes of this section;

6 (3) The applicant, or in the case of an applicant that is
7 not an individual, each of the applicant's control
8 persons, executive officers, directors, general
9 partners, and managers, has demonstrated financial
10 responsibility, character, and general fitness to
11 command the confidence of the community and to warrant
12 a determination that the [~~mortgage loan originator~~]
13 applicant shall operate honestly, fairly, and
14 efficiently pursuant to this chapter. For purposes of
15 this [~~paragraph,~~] section, a person is not financially
16 responsible when the person has shown a disregard in
17 the management of the person's financial condition. A
18 determination that [~~an individual~~] a person has not
19 shown financial responsibility may be based on:

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



1 (B) Current outstanding tax liens or other government
2 liens and filings;

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

4 (D) A pattern of seriously delinquent accounts within
5 the past three years;

6 (4) The applicant, or in the case of an applicant that is
7 not an individual, each of the applicant's control
8 persons, executive officers, directors, general
9 partners, and managers, has not been convicted of any
10 misdemeanor involving an act of fraud, dishonesty,
11 breach of trust, or money laundering;

12 ~~[(4)]~~ (5) The applicant has completed the pre-licensing
13 education requirement described in section 454F-6;

14 ~~[(5)]~~ (6) The applicant has passed a written test that
15 meets the test requirements in section 454F-7; and

16 ~~[(6)]~~ (7) The applicant has ~~[met the surety bond~~
17 ~~requirement]~~ paid the fees required by the mortgage loan
18 recovery fund as required in section [454F-13.] 454F-G.

19 (b) The applicant, or in the case of an applicant that is
20 not an individual, each of the applicant's control persons,
21 executive officers, directors, general partners, and managers,
22 shall submit to the commissioner authorization for the



1 commissioner to conduct background checks in each state that the
2 person has conducted mortgage loan origination activities.
3 Authorization shall include consent to provide additional
4 fingerprints for other states."

5 SECTION 13. Section 454F-6, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~+~~]**\$454F-6**[~~+~~] **Pre-licensing and re-licensing; education**
8 **of mortgage loan originators.** (a) [~~A person~~] An applicant for
9 licensure as a mortgage loan originator shall complete at least
10 twenty hours of pre-licensing education approved in accordance
11 with subsection (b) that includes:

- 12 (1) Three hours of federal law and regulations;
13 (2) Three hours of ethics, that shall include instruction
14 on fraud, consumer protection, and fair lending
15 issues; and
16 (3) Two hours of training related to lending standards for
17 the nontraditional mortgage product marketplace.
- 18 (b) Pre-licensing education courses shall be reviewed and
19 approved by the Nationwide Mortgage Licensing System and
20 Registry based upon reasonable standards. Review and approval
21 of a pre-licensing education course shall include review and
22 approval of the course provider.



1 (c) Nothing in this section shall prohibit the use of any
2 pre-licensing education course approved by the Nationwide
3 Mortgage Licensing System and Registry that is provided by the
4 employer of the applicant, an entity that is affiliated with the
5 applicant by an agency contract, or any subsidiary or affiliate
6 of the employer or entity.

7 (d) Pre-licensing education may be offered either in a
8 classroom, online, or by any other means approved by the
9 Nationwide Mortgage Licensing System~~[+]~~ and Registry.

10 (e) The pre-licensing education requirements approved by
11 the Nationwide Mortgage Licensing System [~~in subsection (a)~~] and
12 Registry for any state shall be accepted as credit towards
13 completion of pre-licensing education requirements in this
14 State.

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

20 SECTION 14. Section 454F-7, Hawaii Revised Statutes, is
21 amended to read as follows:



- 1 " ~~[+]~~§454F-7~~[+]~~ **Testing of mortgage loan originators.** (a)
- 2 In order to meet the ~~[passing of the]~~ written test requirement
- 3 in section 454F-5, an applicant for licensure as a mortgage loan
- 4 originator shall pass, in accordance with the standards
- 5 established under this section, a qualified written test
- 6 developed by the Nationwide Mortgage Licensing System and
- 7 Registry and administered by a test provider approved by the
- 8 Nationwide Mortgage Licensing System and Registry based upon
- 9 reasonable standards.
- 10 (b) A written test shall not be treated as a qualified
- 11 written test for purposes of subsection (a) unless the test
- 12 adequately measures the applicant's knowledge and comprehension
- 13 in appropriate subject areas, including:
- 14 (1) Ethics;
- 15 (2) Federal law and regulations pertaining to mortgage
- 16 origination;
- 17 (3) State law and rules pertaining to mortgage
- 18 origination; and
- 19 (4) Federal and state law, rules, and regulations,
- 20 including instruction on fraud, consumer protection,
- 21 the nontraditional mortgage marketplace, and fair
- 22 lending 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, the location of any subsidiary or affiliate of
5 the employer of the applicant, or 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 of the correct answers to questions or better. An
11 individual may retake a test three consecutive times with each
12 consecutive taking occurring at least thirty days after the
13 preceding test. After failing three consecutive tests, an
14 individual shall wait at least six months before taking the test
15 again. A licensed mortgage loan originator who fails to
16 maintain a valid license for a period of five years or longer,
17 not taking into account any time during which the individual is
18 [~~a~~] an exempt registered mortgage loan originator, shall retake
19 the test."

20 SECTION 15. Section 454F-8, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "~~+~~§454F-8~~+~~ Standards for license renewal. (a) The
2 minimum standards for license renewal for mortgage loan
3 originators shall include the following:

4 (1) The mortgage loan originator continues to meet the
5 minimum standards for licensure under section 454F-5;

6 (2) The mortgage loan originator has satisfied the annual
7 continuing education requirements in section 454F-9;

8 and

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

11 (b) The minimum standards for license renewal for mortgage
12 loan originator companies shall include the following:

13 (1) The mortgage loan originator company continues to meet
14 the minimum standards for licensure under section
15 454F-5;

16 (2) The mortgage loan originator company's manager has
17 satisfied the minimum standards for license renewal;

18 and

19 (3) The mortgage loan originator company has paid all
20 required fees for renewal of the license.

21 ~~(b)~~ (c) The license of a mortgage loan originator ~~who~~
22 and mortgage loan originator company that fails to satisfy the



1 minimum standards for license renewal shall expire. The
2 commissioner may adopt procedures for the reinstatement of
3 expired licenses consistent with the standards established by
4 the Nationwide Mortgage Licensing System~~[]~~ and Registry."

5 SECTION 16. Section 454F-9, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~§~~]**§454F-9**[~~]~~ **Continuing education; mortgage loan**

8 **originators.** (a) Each year, a licensed mortgage loan
9 originator shall complete at least eight hours of education
10 approved in accordance with subsection (b) that shall include at
11 least:

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

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

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

18 (b) For purposes of subsection (a), continuing education
19 courses shall be reviewed and approved by the Nationwide
20 Mortgage Licensing System and Registry based upon reasonable
21 standards. Review and approval of a continuing education course
22 shall include review and approval of the course provider.



1 (c) Nothing in this section shall prohibit the use of any
2 education course that is approved by the Nationwide Mortgage
3 Licensing System and Registry and provided by the employer of
4 the mortgage loan originator, an entity that is affiliated with
5 the mortgage loan originator by an agency contract, or any
6 subsidiary or affiliate of the employer or entity.

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

10 (e) A licensed mortgage loan originator:

11 (1) May only receive credit for a continuing education
12 course in the year in which the course is taken,
13 except for continuing education credits received
14 pursuant to this chapter; and

15 (2) May not take the same approved course in the same or
16 successive years to meet the annual requirements for
17 continuing education.

18 (f) A licensed mortgage loan originator who is an approved
19 instructor of an approved continuing education course may
20 receive continuing education credit for the course taught at the
21 rate of two hours credit for every one hour taught.



1 (g) Continuing education courses as described in
2 subsection (a) and approved by the Nationwide Mortgage Licensing
3 System and Registry for any state, that are successfully
4 completed by a licensed mortgage originator, shall be accepted
5 as credit towards completion of continuing education
6 requirements in this State.

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

11 (i) A person meeting the requirements of
12 section 454F-8(a)(1) and (3) may make up any deficiency in
13 continuing education as established by rule adopted by the
14 commissioner."

15 SECTION 17. Section 454F-10, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§454F-10[+] **Authority to require license.** In addition
18 to any other duties imposed upon the commissioner, the
19 commissioner shall require mortgage loan originators and
20 mortgage loan originator companies to be licensed and registered
21 through the Nationwide Mortgage Licensing System[-] and
22 Registry. The commissioner is authorized to participate in the



1 Nationwide Mortgage Licensing System[+] and Registry. The
2 commissioner may establish by rule pursuant to chapter 91,
3 requirements for mortgage loan originators[+] and mortgage loan
4 originator companies, including:

5 (1) Background checks of:

6 (A) Criminal history through fingerprint or other
7 databases;

8 (B) Civil or administrative records;

9 (C) Credit history; and

10 (D) Any other source deemed necessary by the
11 Nationwide Mortgage Licensing System and
12 Registry;

13 (2) Fees to apply for or renew licenses through the
14 Nationwide Mortgage Licensing System[+] and Registry;

15 (3) The setting or resetting as necessary of license
16 renewal and reporting dates;

17 (4) Requirements for amending or surrendering a license;
18 and

19 (5) Any other activity the commissioner deems necessary to
20 participate in the Nationwide Mortgage Licensing
21 System[-] and Registry."



1 SECTION 18. Section 454F-11, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§454F-11[+] **Nationwide Mortgage Licensing System**[+
4 **registry] and Registry information; challenge process.** The
5 commissioner shall establish a process by rule pursuant to
6 chapter 91 whereby mortgage loan originators and mortgage loan
7 originator companies may challenge information entered into the
8 Nationwide Mortgage Licensing System and Registry by the
9 commissioner."

10 SECTION 19. Section 454F-12, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§454F-12[+] **Enforcement authorities; violations;**
13 **penalties.** (a) In order to ensure the effective supervision
14 and enforcement of this chapter, the commissioner may, pursuant
15 to chapter 91:

16 (1) Deny, suspend, revoke, condition, or decline to renew
17 a license because of a violation of this chapter,
18 rules, an order, or a directive entered under this
19 chapter;

20 (2) Deny, suspend, revoke, condition, or decline to renew
21 a license if an applicant or [~~licensed mortgage loan~~
22 ~~originator~~] licensee fails at any time to meet the



1 requirements of section 454F-6 or section 454F-8, or
2 withholds information or makes a material misstatement
3 in an application for a license or renewal of a
4 license;

5 (3) Order restitution against persons subject to this
6 chapter for violations of this chapter;

7 (4) Impose fines on persons subject to this chapter; and

8 (5) Issue orders or directives under this chapter as
9 follows:

10 (A) Order or direct persons subject to this chapter
11 to cease and desist from conducting business,
12 including immediate temporary orders to cease and
13 desist;

14 (B) Order or direct persons subject to this chapter
15 to cease any harmful activities or violations of
16 this chapter, including immediate temporary
17 orders to cease and desist;

18 (C) Enter immediate temporary orders to cease doing
19 business under a license [~~or interim license~~]
20 issued pursuant to the authority granted under
21 this chapter if the commissioner determines that
22 the license was erroneously granted or the



1 licensee is currently in violation of this
2 chapter; or

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

5 (b) The commissioner may impose [~~a civil penalty~~] an
6 administrative fine on a [~~mortgage loan originator~~] licensee or
7 person subject to this chapter if the commissioner finds on the
8 record after notice and opportunity for hearing that the
9 [~~mortgage loan originator~~] licensee or person subject to this
10 chapter has violated or failed to comply with any requirement of
11 this chapter or any rule prescribed by the commissioner under
12 this chapter or order issued under the authority of this
13 chapter.

14 (c) The maximum [~~penalty~~] fine for each act or omission
15 described in subsection (b) shall be \$25,000.

16 (d) Each violation or failure to comply with any directive
17 or order of the commissioner shall be a separate and distinct
18 violation."

19 SECTION 20. Section 454F-14, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "[+]§454F-14[+] **Confidentiality** (a) Except as otherwise
22 provided in Public Law 110-289, Section 1512, the requirements



1 under any federal or state law regarding the privacy or
2 confidentiality of any information or material provided to the
3 Nationwide Mortgage Licensing System~~[7]~~ and Registry, and any
4 privilege arising under federal or state law, including the
5 rules of any federal or state court, with respect to the
6 information or material shall continue to apply to the
7 information or material after the information or material has
8 been disclosed to the Nationwide Mortgage Licensing System~~[7]~~
9 and Registry. The information and material may be shared with
10 all state and federal regulatory officials with mortgage
11 industry oversight authority without the loss of privilege or
12 the loss of confidentiality protections provided by federal or
13 state law.

14 (b) For these purposes, the commissioner is authorized to
15 enter into agreements or sharing arrangements with other
16 governmental agencies, the Conference of State Bank Supervisors,
17 the American Association of Residential Mortgage Regulators, or
18 other associations representing governmental agencies as
19 established by rule or order of the commissioner.

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



- 1 (1) Disclosure under any federal or state law governing
2 the disclosure to the public of information held by an
3 officer or an agency of the federal government or a
4 state; or
- 5 (2) Subpoena or discovery, or admission into evidence, in
6 any private civil action or administrative process,
7 unless with respect to any privilege held by the
8 Nationwide Mortgage Licensing System and Registry
9 applicable to the information or material; provided
10 that the person to whom the information or material
11 pertains waives, in whole or in part, in the
12 discretion of such person, that privilege.
- 13 (d) Notwithstanding chapter 92F, the examination process
14 and related information and documents, including the reports of
15 examination, are confidential and are not subject to discovery
16 or disclosure in civil or criminal lawsuits.
- 17 (e) Notwithstanding any law to the contrary, the
18 disclosure of confidential supervisory information or any
19 information or material described in subsection (a) that is
20 inconsistent with subsection (a) shall be superseded by the
21 requirements of this section.



1 (f) This section shall not apply to information or
2 material relating to the employment history of, and publicly
3 adjudicated disciplinary and enforcement actions against,
4 mortgage loan originators that are included in the Nationwide
5 Mortgage Licensing System and Registry for access by the
6 public."

7 SECTION 21. Section 454F-15, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "[~~f~~]§454F-15[~~]~~ **Investigation and examination authority.**

10 (a) In addition to any other authority under this chapter, the
11 commissioner shall have the authority to conduct investigations
12 and examinations. The commissioner may access, receive, and use
13 any books, accounts, records, files, documents, information, or
14 evidence, including[~~+~~] but not limited to:

15 (1) Criminal, civil, and administrative history
16 information, including nonconviction data under
17 chapter 853;

18 (2) Personal history and experience information including
19 independent credit reports obtained from a consumer
20 reporting agency described in [~~Section~~] section 603(p)
21 of the Fair Credit Reporting Act; and



1 (3) Any other documents, information, or evidence the
2 commissioner deems relevant to the inquiry or
3 investigation, regardless of the location, possession,
4 control, or custody of the documents, information, or
5 evidence.

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

18 (c) Each [~~licensed mortgage loan originator, individual,~~]
19 licensee or person subject to this chapter shall provide to the
20 commissioner upon request, the books and records relating to the
21 operations of the licensee[~~, individual,~~] or person subject to
22 this chapter. The commissioner shall have access to the books



1 and records and shall be permitted to interview the officers,
2 principals, mortgage loan originators, employees, independent
3 contractors, agents, and customers of the [~~licensed mortgage~~
4 ~~loan originator, individual,~~] licensee or person subject to this
5 chapter concerning their business.

6 (d) Each [~~licensed mortgage loan originator, individual,~~]
7 licensee or person subject to this chapter shall make or compile
8 reports or prepare other information as directed by the
9 commissioner in order to carry out the purposes of this section,
10 including[+] but not limited to:

11 (1) Accounting compilations;

12 (2) Information lists and data concerning loan
13 transactions in a format prescribed by the
14 commissioner; or

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

17 (e) In making any examination or investigation authorized
18 by this chapter, the commissioner may control access to any
19 documents and records of the [~~licensed mortgage loan originator~~]
20 licensee or person under examination or investigation. The
21 commissioner may take possession of the documents and records or
22 place a person in exclusive charge of the documents and records



1 in the place where they are usually kept. During the period of
2 control, no [~~individual or~~] person shall remove or attempt to
3 remove any of the documents and records except pursuant to a
4 court order or with the consent of the commissioner. Unless the
5 commissioner has reasonable grounds to believe the documents or
6 records of the [~~licensed mortgage loan originator~~] licensee or
7 person under examination or investigation have been, or are at
8 risk of being altered or destroyed for purposes of concealing a
9 violation of this chapter, the [~~licensed mortgage loan~~
10 ~~originator~~] licensee or owner of the documents and records shall
11 have access to the documents or records as necessary to conduct
12 its ordinary business affairs.

13 (f) [~~The~~] In order to carry out the purposes of this
14 chapter, the commissioner may:

15 (1) Retain attorneys, accountants, or other professionals
16 and specialists, who may be exempt from chapter 76, as
17 examiners, auditors, or investigators to conduct or
18 assist in the conduct of examinations or
19 investigations;

20 (2) Enter into agreements or relationships with other
21 government officials or regulatory associations in
22 order to improve efficiencies and reduce regulatory



1 burden by sharing resources, standardized or uniform
2 methods or procedures, and documents, records,
3 information, or evidence obtained under this section;

4 (3) Use, hire, contract, or employ public or privately
5 available analytical systems, methods, or software to
6 examine or investigate the [~~licensed mortgage loan~~
7 ~~originator, individual,~~] licensee or person subject to
8 this chapter;

9 (4) Accept and rely on examination or investigation
10 reports made by other government officials, within or
11 without this State; [~~and~~]

12 (5) Accept audit reports made by an independent certified
13 public accountant for the [~~licensed mortgage loan~~
14 ~~originator, individual,~~] licensee or person subject to
15 this chapter in the course of that part of the
16 examination covering the same general subject matter
17 as the audit and may incorporate the audit report in
18 the report of the examination, report of
19 investigation, or other writing of the commissioner.

20 (g) The authority of this section shall remain in effect,
21 whether such [~~licensed mortgage loan originator, individual,~~]
22 licensee or person subject to this chapter acts or claims to act



1 under any licensing or registration law of this State, or claims
2 to act without such authority.

3 (h) No [~~licensed mortgage loan originator, individual,~~
4 licensee or person subject to investigation or examination under
5 this section may knowingly withhold, abstract, remove, mutilate,
6 destroy, or secrete any books, records, computer records, or
7 other information.

8 (i) The commissioner may charge an examination or
9 investigation fee, payable to the division, based upon the cost
10 per hour per examiner for all [~~mortgage loan originators~~]
11 licensees and persons subject to this chapter examined or
12 investigated by the commissioner or the commissioner's staff.
13 The hourly fee shall be \$40 or an amount as the commissioner
14 shall establish by rule pursuant to chapter 91. In addition to
15 the examination or investigation fee, the commissioner may
16 charge any licensee or person subject to this chapter that is
17 examined or investigated by the commissioner or the
18 commissioner's staff additional amounts for travel, per diem,
19 mileage, and other reasonable expenses incurred in connection
20 with the examination or investigation, payable to the division.

21 (j) Any person having reason to believe that this chapter
22 or the rules adopted pursuant thereto have been violated, or



1 that a license issued under this chapter should be suspended or
2 revoked, may file with the commissioner a written complaint
3 setting forth the details of the alleged violation or grounds
4 for suspension or revocation."

5 SECTION 22. Section 454F-16, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§454F-16[+] **Mortgage call reports.** Each licensed
8 mortgage loan originator, as may be required by 12 U.S.C.
9 sections 5101 to 5116, and each licensed mortgage loan
10 originator company shall submit to the Nationwide Mortgage
11 Licensing System and Registry reports of condition, using the
12 form entitled [~~"REPORT OF CONDITION",~~] "Report of Condition",
13 which shall be in such form and contain such information as the
14 Nationwide Mortgage Licensing System and Registry may require."

15 SECTION 23. Section 454F-17, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "[+]§454F-17[+] **Prohibited practices.** It shall be a
18 violation of this chapter for a [~~mortgage loan originator~~]
19 licensee to:

20 (1) Directly or indirectly employ any scheme, device, or
21 artifice to defraud or mislead borrowers or lenders or
22 to defraud any person;



- 1 (2) Engage in any unfair or deceptive practice toward any
2 person;
- 3 (3) Obtain property by fraud or misrepresentation;
- 4 (4) Solicit or enter into any contract with a borrower
5 that provides in substance that the person [~~or~~
6 ~~individual~~] subject to this chapter may earn a fee or
7 commission through "best efforts" to obtain a loan
8 even though no loan is actually obtained for the
9 borrower;
- 10 (5) Solicit, advertise, or enter into a contract for
11 specific interest rates, points, or other financing
12 terms unless the terms are actually available at the
13 time of soliciting, advertising, or contracting;
- 14 (6) Conduct any business covered by this chapter without
15 holding a valid license as required under this
16 chapter, or assist or aid and abet any person in the
17 conduct of business under this chapter without a valid
18 license as required under this chapter;
- 19 (7) Fail to make disclosures as required by this chapter
20 and any other applicable state or federal law
21 including rules or regulations thereunder;



- 1 (8) Fail to comply with this chapter or [~~rules~~] any order
2 or rule issued or adopted under the authority of this
3 chapter, or fail to comply with any other state or
4 federal law, including the rules and regulations
5 adopted thereunder, applicable to any business
6 authorized or conducted pursuant to this chapter;
- 7 (9) Make, in any manner, any false or deceptive statement
8 or representation, including with regard to the rates,
9 points, or other financing terms or conditions for a
10 residential mortgage loan, or engage in bait and
11 switch advertising;
- 12 (10) Negligently make any false statement or knowingly and
13 wilfully make any omission of material fact in
14 connection with any information or reports filed with
15 a governmental agency or the Nationwide Mortgage
16 Licensing System and Registry or in connection with
17 any examination or investigation conducted by the
18 commissioner or another government agency;
- 19 (11) Make any payment, threat, or promise, directly or
20 indirectly, to any person for the purposes of
21 influencing the independent judgment of the person in
22 connection with a residential mortgage loan, or make



- 1 any payment, threat, or promise, directly or
2 indirectly, to any appraiser of a property for the
3 purpose of influencing the independent judgment of the
4 appraiser with respect to the value of a property;
- 5 (12) Collect, charge, attempt to collect or charge, or use
6 or propose any agreement purporting to collect or
7 charge any fee prohibited by this chapter;
- 8 (13) Cause or require a borrower to obtain property
9 insurance coverage in an amount that exceeds the
10 replacement cost of the improvements as established by
11 the property insurer;
- 12 (14) Fail to truthfully account for moneys belonging to a
13 party to a residential mortgage loan transaction; or
- 14 (15) Deliver a misleading or deceptive communication or
15 advertisement, whether written, electronic, or oral,
16 when marketing or soliciting a residential mortgage
17 loan. A communication or advertisement that uses the
18 name or trademark of a financial institution as
19 defined in section 412:1-109 or its affiliates or
20 subsidiaries, or infers that the communication or
21 advertisement is from, endorsed by, is related to, or
22 is the responsibility of the financial institution is



1 a misleading or deceptive communication. Advertising
2 that a specific interest rate, points, or financial
3 terms are available when the rates, points, or
4 financial terms are not actually available is a
5 misleading or deceptive communication."

6 SECTION 24. Section 454F-18, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~+~~]**§454F-18**[~~+~~] **Powers of the commissioner.** (a) The
9 commissioner may adopt rules pursuant to chapter 91 as the
10 commissioner deems necessary for the administration of this
11 chapter.

12 (b) In addition to any other powers provided by law, the
13 commissioner shall have the authority to:

- 14 (1) Administer and enforce the provisions and requirements
15 of this chapter;
- 16 (2) Adopt, amend, or repeal rules and issue declaratory
17 rulings or informal nonbinding interpretations;
- 18 (3) Develop requirements for licensure through rules,
19 including establishing the content of the written
20 tests required under section 454F-7;



- 1 (4) Investigate and conduct hearings regarding any
2 violation of this chapter or any rule or order of, or
3 agreement with, the commissioner;
- 4 (5) Create fact-finding committees that may make
5 recommendations to the commissioner for the
6 commissioner's deliberations;
- 7 (6) Require an applicant or any of its control persons,
8 officers, directors, employees, partners, members,
9 managers, and agents to disclose their relevant
10 criminal history and request a criminal history record
11 check in accordance with chapter 846;
- 12 (7) Contract with or employ qualified persons, including
13 investigators, examiners, and auditors who may be
14 exempt from chapter 76 and who shall assist the
15 commissioner in exercising the commissioner's powers
16 and duties;
- 17 (8) Require that all fees, fines, and charges collected by
18 the commissioner, other than those fees designated to
19 be placed in the mortgage recovery fund, under this
20 chapter be deposited into the compliance resolution
21 fund established pursuant to section 26-9(o);



- 1 (9) ~~[Subpoena]~~ Process and investigate complaints,
2 subpoena witnesses and documents, administer oaths,
3 and receive affidavits and oral testimony, including
4 telephonic communications, and do any and all things
5 necessary or incidental to the exercise of the
6 commissioner's power and duties, including the
7 authority to conduct contested case proceedings under
8 chapter 91; ~~[and]~~
- 9 (10) Require a ~~[mortgage loan originator]~~ licensee to
10 comply with any rule, guidance, guideline, statement,
11 supervisory policy, or any similar proclamation issued
12 or adopted by the Federal Deposit Insurance
13 Corporation to the same extent and in the same manner
14 as a bank chartered by the State, or in the
15 alternative, any policy position of the Conference of
16 State Bank Supervisors~~[+]~~; and
- 17 (11) Hire and employ six permanent examiners and one
18 permanent supervisor, all of which positions shall be
19 exempt from chapter 76, and two permanent office
20 assistants, one of which shall be paid out of the
21 mortgage recovery fund, to implement this chapter."



1 SECTION 25. Section 454F-19, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§454F-19[+] **Unique identifier shown.** The unique
4 identifier of any person originating a residential mortgage
5 loan, except a person that is exempt from the provisions of this
6 chapter, shall be clearly shown on all residential mortgage loan
7 application forms, solicitations, or advertisements, including
8 business cards or websites, and any other documents as
9 established by rule or order of the commissioner."

10 SECTION 26. Section 454F-20, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§454F-20[+] **Report to Nationwide Mortgage Licensing**
13 **System[-] and Registry.** Notwithstanding any other law to the
14 contrary, the commissioner is required to regularly report
15 violations of this chapter, as well as enforcement actions and
16 other relevant information, to the Nationwide Mortgage Licensing
17 System and Registry subject to the confidentiality provisions
18 contained in section 454F-14."

19 SECTION 27. Section 477E-2, Hawaii Revised Statutes, is
20 amended by amending the definition of "creditor" to read as
21 follows:



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

13 SECTION 28. Section 846-2.7, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 (b) Criminal history record checks may be conducted by:

16 (1) The department of health on operators of adult foster
17 homes or developmental disabilities domiciliary homes
18 and their employees, as provided by section 333F-22;

19 (2) The department of health on prospective employees,
20 persons seeking to serve as providers, or
21 subcontractors in positions that place them in direct
22 contact with clients when providing non-witnessed



- 1 direct mental health services as provided by section
2 321-171.5;
- 3 (3) The department of health on all applicants for
4 licensure for, operators for, and prospective
5 employees, and volunteers at one or more of the
6 following: skilled nursing facility, intermediate
7 care facility, adult residential care home, expanded
8 adult residential care home, assisted living facility,
9 home health agency, hospice, adult day health center,
10 special treatment facility, therapeutic living
11 program, intermediate care facility for the mentally
12 retarded, hospital, rural health center and
13 rehabilitation agency, and, in the case of any of the
14 above-related facilities operating in a private
15 residence, on any adult living in the facility other
16 than the client as provided by section 321-15.2;
- 17 (4) The department of education on employees, prospective
18 employees, and teacher trainees in any public school
19 in positions that necessitate close proximity to
20 children as provided by section 302A-601.5;
- 21 (5) The counties on employees and prospective employees
22 who may be in positions that place them in close



- 1 proximity to children in recreation or child care
2 programs and services;
- 3 (6) The county liquor commissions on applicants for liquor
4 licenses as provided by section 281-53.5;
- 5 (7) The department of human services on operators and
6 employees of child caring institutions, child placing
7 organizations, and foster boarding homes as provided
8 by section 346-17;
- 9 (8) The department of human services on prospective
10 adoptive parents as established under section
11 346-19.7;
- 12 (9) The department of human services on applicants to
13 operate child care facilities, prospective employees
14 of the applicant, and new employees of the provider
15 after registration or licensure as provided by section
16 346-154;
- 17 (10) The department of human services on persons exempt
18 pursuant to section 346-152 to be eligible to provide
19 child care and receive child care subsidies as
20 provided by section 346-152.5;
- 21 (11) The department of human services on operators and
22 employees of home and community-based case management



1 agencies and operators and other adults, except for
2 adults in care, residing in foster family homes as
3 provided by section 346-335;

4 (12) The department of human services on staff members of
5 the Hawaii youth correctional facility as provided by
6 section 352-5.5;

7 (13) The department of human services on employees,
8 prospective employees, and volunteers of contracted
9 providers and subcontractors in positions that place
10 them in close proximity to youth when providing
11 services on behalf of the office or the Hawaii youth
12 correctional facility as provided by section 352D-4.3;

13 (14) The judiciary on employees and applicants at detention
14 and shelter facilities as provided by section 571-34;

15 (15) The department of public safety on employees and
16 prospective employees who are directly involved with
17 the treatment and care of persons committed to a
18 correctional facility or who possess police powers
19 including the power of arrest as provided by section
20 353C-5;



- 1 (16) The department of commerce and consumer affairs on
2 applicants for private detective or private guard
3 licensure as provided by section 463-9;
- 4 (17) Private schools and designated organizations on
5 employees and prospective employees who may be in
6 positions that necessitate close proximity to
7 children; provided that private schools and designated
8 organizations receive only indications of the states
9 from which the national criminal history record
10 information was provided as provided by section
11 302C-1;
- 12 (18) The public library system on employees and prospective
13 employees whose positions place them in close
14 proximity to children as provided by section
15 302A-601.5;
- 16 (19) The State or any of its branches, political
17 subdivisions, or agencies on applicants and employees
18 holding a position that has the same type of contact
19 with children, vulnerable adults, or persons committed
20 to a correctional facility as other public employees
21 who hold positions that are authorized by law to



- 1 require criminal history record checks as a condition
2 of employment as provided by section 78-2.7;
- 3 (20) The department of human services on licensed adult day
4 care center operators, employees, new employees,
5 subcontracted service providers and their employees,
6 and adult volunteers as provided by section 346-97;
- 7 (21) The department of human services on purchase of
8 service contracted and subcontracted service providers
9 and their employees serving clients of the adult and
10 community care services branch, as provided by section
11 346-97;
- 12 (22) The department of human services on foster grandparent
13 program, retired and senior volunteer program, senior
14 companion program, and respite companion program
15 participants as provided by section 346-97;
- 16 (23) The department of human services on contracted and
17 subcontracted service providers and their current and
18 prospective employees that provide home and community-
19 based services under Section 1915(c) of the Social
20 Security Act (Title 42 United States Code Section
21 1396n(c)), or under any other applicable section or
22 sections of the Social Security Act for the purposes



1 of providing home and community-based services, as
2 provided by section 346-97;

3 (24) The department of commerce and consumer affairs on
4 proposed directors and executive officers of a bank,
5 savings bank, savings and loan association, trust
6 company, and depository financial services loan
7 company as provided by section 412:3-201;

8 (25) The department of commerce and consumer affairs on
9 proposed directors and executive officers of a
10 nondepository financial services loan company as
11 provided by section 412:3-301;

12 (26) The department of commerce and consumer affairs on the
13 original chartering applicants and proposed executive
14 officers of a credit union as provided by section
15 412:10-103;

16 (27) The department of commerce and consumer affairs on:
17 (A) Each principal of every non-corporate applicant
18 for a money transmitter license; and
19 (B) The executive officers, key shareholders, and
20 managers in charge of a money transmitter's
21 activities of every corporate applicant for a
22 money transmitter license,



- 1 as provided by section 489D-9;
- 2 (28) The department of commerce and consumer affairs on
3 applicants for licensure and persons licensed under
4 title 24;
- 5 (29) The Hawaii health systems corporation on:
- 6 (A) Employees;
- 7 (B) Applicants seeking employment;
- 8 (C) Current or prospective members of the corporation
9 board or regional system board; or
- 10 (D) Current or prospective volunteers, providers, or
11 contractors,
- 12 in any of the corporation's health facilities as
13 provided by section 323F-5.5;
- 14 [†] (30) [†] The department of commerce and consumer affairs
15 on an applicant for a mortgage loan originator's
16 license as provided by chapter 454F; [~~and~~]
- 17 (31) The department of commerce and consumer affairs on the
18 control persons, executive officers, directors,
19 general partners, and managers of an applicant for a
20 mortgage loan originator company's license as provided
21 by chapter 454F; and



1 [~~[(31)]~~] (32) Any other organization, entity, or the State,
2 its branches, political subdivisions, or agencies as
3 may be authorized by state law."

4 SECTION 29. Act 32, Special Session Laws of Hawaii 2009,
5 section 8, is amended to read as follows:

6 "SECTION 8. Effective [~~August 1, 2010~~] January 1, 2011:

- 7 (1) No new license shall be issued and no license renewal
8 shall be effected under chapter 454, Hawaii Revised
9 Statutes; and
- 10 (2) An individual who is subject to this Act shall be
11 required to be licensed under chapter 454F, Hawaii
12 Revised Statutes, or by such later date approved by
13 the United States Department of Housing and Urban
14 Development, pursuant to the authority granted under
15 Public Law 110 289, section 1508(e). [~~As of the date
16 that an individual is required to be licensed under
17 chapter , Hawaii Revised Statutes, the remaining pro
18 rata balance of the fees paid by the individual under
19 chapter 454, Hawaii Revised Statutes, shall be applied
20 to the individual's fees due under chapter , Hawaii
21 Revised Statutes, until exhausted.]"~~



1 SECTION 30. Chapter 454, Hawaii Revised Statutes, is
2 repealed; provided that the repeal does not affect rights and
3 duties that matured, penalties that were incurred, and
4 proceedings that were begun, before the repeal.

5 SECTION 31. Section 454F-13, Hawaii Revised Statutes, is
6 repealed.

7 ~~["**[§454F-13] Surety bond; required.** (a) Each mortgage~~
8 ~~loan originator shall be covered by a surety bond in accordance~~
9 ~~with this section. In the event that the mortgage loan~~
10 ~~originator is an employee or exclusive agent of a person subject~~
11 ~~to this chapter, the surety bond of the person may be used in~~
12 ~~lieu of the mortgage loan originator's surety bond.~~

13 ~~(b) The surety bond shall provide coverage for each~~
14 ~~mortgage loan originator in an amount prescribed in subsection~~
15 ~~(c). The surety bond shall be in a form as prescribed by the~~
16 ~~commissioner. The commissioner may adopt rules pursuant to~~
17 ~~chapter 91 with respect to the requirements for the surety bonds~~
18 ~~necessary to accomplish the purposes of this chapter.~~

19 ~~(c) The penal sum of the surety bond shall be maintained~~
20 ~~in an amount that reflects the dollar amount of loans originated~~
21 ~~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 SECTION 32. Section 454F-21, Hawaii Revised Statutes, is
6 repealed.

7 ~~["~~§454F-21~~ Fees and costs. (a) Each application for a~~
8 ~~mortgage loan originator license shall be accompanied by an~~
9 ~~application fee of \$250, or an amount as the commissioner shall~~
10 ~~establish by rule pursuant to chapter 91.~~

11 ~~(b) Upon obtaining approval for a license, an initial~~
12 ~~license fee shall be paid to the commissioner in the amount of~~
13 ~~\$175 or an amount as the commissioner shall establish by rule~~
14 ~~pursuant to chapter 91.~~

15 ~~(c) By December 31 of each year, every mortgage broker and~~
16 ~~loan originator licensed under this chapter shall pay an annual~~
17 ~~license renewal fee of \$325, or an amount as the commissioner~~
18 ~~shall establish by rule pursuant to chapter 91."]~~

19 SECTION 33. There is appropriated out of the compliance
20 resolution fund of the State of Hawaii the sum of \$156,000, or
21 so much thereof as may be necessary for fiscal year 2009-2010
22 and the sum of \$921,700, or so much thereof as may be necessary



1 for fiscal year 2010-2011, to carry out the purposes of this
2 Act, including the hiring of one permanent supervisor exempt
3 from chapter 76, Hawaii Revised Statutes, six permanent
4 examiners exempt from chapter 76, Hawaii Revised Statutes, and
5 two permanent office assistants, one of which shall be paid out
6 of the mortgage recovery fund, in the division of financial
7 institutions, to implement this Act. The sum appropriated shall
8 be expended by the department of commerce and consumer affairs
9 for the purposes of this Act.

10 SECTION 34. A person licensed under chapter 454F, Hawaii
11 Revised Statutes, shall not be required to be licensed under
12 chapter 454, Hawaii Revised Statutes, and shall not be subject
13 to the provisions of that chapter upon the effective date of the
14 person's licensure under chapter 454F, Hawaii Revised Statutes;
15 provided that this section shall not affect rights and duties
16 that matured, penalties that were incurred, and proceedings that
17 were begun, before the effective date of the person's licensure
18 under chapter 454F, Hawaii Revised Statutes.

19 SECTION 35. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 36. This Act shall take effect upon its approval;
22 provided that sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12,



1 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28,
2 31 and 32 shall take effect on July 1, 2010, and section 30
3 shall take effect on January 1, 2011.

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INTRODUCED BY: *Barbara Marumoto*
by request

JAN 21 2010



Report Title:

Mortgage Loan Origination

Description:

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws regulating mortgage loan originators and mortgage loan originator companies. Repeals chapter 454, HRS effective January 1, 2011. Effective date of sections 29, 33, 34, and 35 is upon approval. Effective date of all other provisions is July 1, 2010.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

