
A BILL FOR AN ACT

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE
LICENSING ACT.

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

1 SECTION 1. The purpose of this Act is to allow the State
2 to continue to work toward meeting its obligations under the
3 federal Secure and Fair Enforcement for Mortgage Licensing Act
4 of 2008 (S.A.F.E. Mortgage Licensing Act). The S.A.F.E.
5 Mortgage Licensing Act requires states to have a clear system of
6 regulation that complies with the federal law in place to
7 regulate the residential mortgage industry or face federal
8 takeover of the intrastate residential real estate industry.
9 The legislature finds that it is in the best interest of the
10 State that licensing and regulation of the domestic mortgage
11 industry remain with the State and in compliance with federal
12 law. The legislature began the process of compliance with the
13 federal law by creating chapter 454F, Hawaii Revised Statutes,
14 through the passage of Act 32 in the First Special Session of
15 2009 (Act 32). The legislature finds that Act 32 was a
16 necessary step in meeting the mandates of the S.A.F.E. Mortgage



1 Licensing Act, but that the current measure is also necessary to
2 refine the regulatory system created by Act 32.

3 The legislature further finds that the fees and
4 appropriations from the compliance resolution fund contained in
5 this Act are adequate to fully fund the regulatory system
6 contained in chapter 454F, Hawaii Revised Statutes. The
7 legislature also finds that the mortgage recovery fund will
8 protect the state's consumers by making it easier to recover
9 losses caused by individuals or companies that violate the law
10 governing fair mortgage lending practices.

11 Finally, the legislature finds that this Act and Act 32
12 contain appropriate provisions to effectuate a smooth transfer
13 of the regulatory regime governing mortgage professionals from
14 the system created by chapter 454, Hawaii Revised Statutes, to
15 the new system created by chapter 454F, Hawaii Revised Statutes.
16 The legislature particularly notes that this Act both authorizes
17 the commissioner of financial institutions to hire temporary
18 employees to overcome the initial administrative hurdle of
19 processing a large number of licensing applications and
20 statutorily creates permanent positions in the division of
21 financial institutions of the department of commerce and



1 consumer affairs to carry out the continuing requirements of
2 this Act.

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

6 "§412:9- Registration of nondepository financial
7 services loan companies with Nationwide Mortgage Licensing

8 System. (a) A nondepository financial services loan company
9 licensed under this chapter is not a mortgage loan originator
10 company as defined in section 454F-1.

11 (b) A nondepository financial services loan company shall
12 register with the Nationwide Mortgage Licensing System if any
13 employee of the nondepository financial services loan company
14 acts as a mortgage loan originator as defined in section 454F-1
15 or if the nondepository financial services loan company uses the
16 services of an exclusive independent contractor mortgage loan
17 originator, or loan processor or underwriter, as defined in
18 chapter 454F.

19 (c) This section does not exempt an employee of a
20 nondepository financial services loan company who originates
21 mortgage loans, or an independent contractor providing mortgage
22 loan originating, processing, or underwriting services to a



1 nondepository financial services loan company, from licensure
2 under chapter 454F."

3 SECTION 3. Chapter 454F, Hawaii Revised Statutes, is
4 amended by adding sixteen new sections to be appropriately
5 designated and to read as follows:

6 **"§454F-A Registration with Nationwide Mortgage Licensing**
7 **System required.** (a) All mortgage loan originators, mortgage
8 loan originator companies, and any other person in this state
9 that originate a residential mortgage loan, unless exempt under
10 section 454F-2, shall register with the Nationwide Mortgage
11 Licensing System.

12 (b) Exempt registered mortgage loan originators and exempt
13 mortgage loan originator companies, unless exempt under section
14 454F-2, shall register and maintain a unique identifier through
15 the Nationwide Mortgage Licensing System, but shall not be
16 required to be licensed under this chapter.

17 **§454F-B Automatic secondary review of license application.**
18 The commissioner shall establish, by rule pursuant to chapter
19 91, a procedure for the secondary review of each application
20 that was determined on initial review to fail to meet the
21 criteria for licensure.



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

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

12 (b) In addition to application fees and any fees required
13 by the Nationwide Mortgage Licensing System, a licensee shall
14 pay to the division a mortgage loan recovery fund fee as follows
15 for deposit in the mortgage loan recovery fund:

16 (1) The sum of \$300 for each principal office location of
17 a mortgage loan originator company;

18 (2) The sum of \$250 for each branch office location of a
19 mortgage loan originator company; and

20 (3) The sum of \$200 for each mortgage loan originator.

21 (c) Upon application for renewal of a license under this
22 chapter, a licensee shall pay, in addition to the licensee's



1 license renewal fee and fees required by the Nationwide Mortgage
2 Licensing System, a mortgage loan recovery fund fee as follows
3 for deposit in the mortgage loan recovery fund:

4 (1) The sum of \$200 for each principal office location of
5 a mortgage loan originator company;

6 (2) The sum of \$100 for each branch office location of a
7 mortgage loan originator company; and

8 (3) The sum of \$100 for each mortgage loan originator.

9 Mortgage loan recovery fees collected pursuant to this
10 subsection shall be refundable upon the denial of a license
11 renewal by the commissioner.

12 (d) When the mortgage loan recovery fund attains a funding
13 level of \$750,000, the commissioner may, by rule adopted
14 pursuant to chapter 91, adjust the fees generated by renewals or
15 may determine that payments made by renewing licensees shall
16 cease. If the funding level falls below \$250,000 after the
17 first five years of the establishment of the fund, the
18 commissioner may adjust the fees to a reasonable level for the
19 purpose of attaining a funding level of \$750,000.

20 (e) The commissioner or the commissioner's designee, as
21 the manager of the mortgage loan recovery fund, shall be



1 authorized to expend moneys in the mortgage loan recovery fund
2 to:

- 3 (1) Retain private legal counsel to represent the
4 commissioner or the division in any action that
5 involves or may result in payment from the mortgage
6 loan recovery fund;
- 7 (2) Retain a certified public accountant for accounting
8 and auditing of the mortgage loan recovery fund;
- 9 (3) Employ necessary personnel, not subject to chapter 76,
10 to assist the commissioner in exercising the
11 commissioner's powers and duties with respect to the
12 mortgage loan recovery fund; and
- 13 (4) Retain a consultant to recover and collect any
14 payments from the mortgage loan recovery fund plus
15 interest from the judgment debtor.

16 **§454F-D Statute of limitation; recovery from fund.** (a)
17 No action for a judgment that subsequently results in an order
18 for collection from the mortgage loan recovery fund shall be
19 commenced later than six years from the accrual of the cause of
20 action. When any aggrieved person commences an action for a
21 judgment that may result in collection from the mortgage loan
22 recovery fund, the aggrieved person shall notify the



1 commissioner in writing at the time of the commencement of the
2 action and shall submit to the commissioner any documents
3 required by the commissioner pursuant to rules issued in
4 accordance with chapter 91.

5 (b) When any aggrieved person receives a valid judgment
6 upon the grounds of fraud, misrepresentation, or deceit that
7 occurred before the effective date of section 454F-C against any
8 licensee from any circuit or district court where the violation
9 occurred, the aggrieved person shall proceed against the bond
10 covering the license that was in force prior to the enactment of
11 section 454F-C and establishment of the mortgage loan recovery
12 fund.

13 (c) The court shall proceed upon an application to recover
14 from the mortgage loan recovery fund in a summary manner and, at
15 hearing, the aggrieved person shall be required to show:

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

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

21 (3) The person has obtained a judgment or settlement
22 pursuant to section 454F-C(a) that states the amount



1 of the judgment and the amount owed on the judgment
2 debt as of the date of the application;

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

8 (A) The search has uncovered no personal or real
9 property or other assets liable to be sold or
10 applied; or

11 (B) The search has uncovered personal or real
12 property or other assets liable to be sold or
13 applied, the person has taken all necessary
14 action and completed all necessary proceedings
15 for the realization thereof, and the amount
16 realized was insufficient to satisfy the
17 judgment; provided that the person shall state
18 the amount realized and the balance remaining due
19 on the judgment after application of the amount
20 realized; and

21 (5) That where the licensee is a judgment debtor in a
22 bankruptcy proceeding, the aggrieved person has



1 obtained an order from the bankruptcy court declaring
2 the judgment against the licensee to be non-
3 dischargeable.

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

12 (e) Notwithstanding any other provision, the liability of
13 the mortgage loan recovery fund shall not exceed the sum of
14 \$100,000 against any one licensee.

15 **§454F-E Management of fund.** (a) The sums received by the
16 division pursuant to section 454F-C for deposit into the
17 mortgage loan recovery fund shall be held by the commissioner or
18 the commissioner's designee to carry out the purpose of the
19 mortgage loan recovery fund. These funds may be invested and
20 reinvested in the same manner as funds of the state employees'
21 retirement system.



1 (b) The commissioner or the commissioner's designee, as
2 the manager of the mortgage loan recovery fund, shall be
3 authorized to expend moneys from the fund to retain private
4 legal counsel to represent the commissioner in any action
5 involving the mortgage loan recovery fund.

6 **§454F-F Standing.** The commissioner shall have standing to
7 intervene in and defend any action to recover from the mortgage
8 loan recovery fund, including by entering an appearance, filing
9 an answer, appearing at court hearings, and taking any recourse
10 through appropriate methods of review. The commissioner or the
11 commissioner's legal representative shall be served with all
12 pleadings in any action pursuant to this section.

13 **§454F-G Subrogation of rights.** When, pursuant to court
14 order, the commissioner has paid any sum to a judgment creditor
15 from the mortgage loan recovery fund, the commissioner shall be
16 subrogated to all of the rights of the judgment creditor. The
17 judgment creditor shall assign all of the judgment creditor's
18 rights, title, and interest in the judgment to the commissioner.
19 Any interest collected by the commissioner pursuant to this
20 section shall be deposited into the mortgage loan recovery fund.



1 §454F-H Waiver of rights. The failure of an aggrieved
2 person to comply with sections 454F-C and 454F-D shall
3 constitute a waiver of the rights contained in those sections.

4 §454F-I Disciplinary action against licensee. No
5 provision of this chapter relating to the mortgage loan recovery
6 fund shall limit the authority of the commissioner to take
7 disciplinary action against any licensee for a violation of this
8 chapter or of the rules and orders of the commissioner adopted
9 pursuant to this chapter. Repayment of obligations to the
10 mortgage loan recovery fund by a licensee shall not nullify or
11 modify the effect of any other disciplinary proceeding brought
12 pursuant to this chapter.

13 §454F-J Authorized places of business; designation of
14 managers; branch offices. (a) Every mortgage loan originator
15 company licensed under this chapter shall have and maintain a
16 principal place of business in the state and shall designate a
17 manager.

18 (b) A mortgage loan originator company shall not maintain
19 any branch offices in the state in addition to its principal
20 place of business without the prior written approval of the
21 commissioner. An application to establish a branch office shall
22 be submitted with a nonrefundable application fee as required by



1 section 454F-N. A mortgage loan originator company that
2 established a branch office pursuant to this subsection shall
3 designate a manager located at each branch office to oversee
4 that branch office.

5 (c) A mortgage loan originator company shall not relocate
6 any office in this state without the prior written approval of
7 the commissioner. An application to relocate an office shall
8 set forth the reasons for the relocation, the street address of
9 the proposed relocated office, and other information that may be
10 required by the commissioner. An application to relocate an
11 office pursuant to this subsection shall be submitted with a
12 nonrefundable fee as required by section 454F-N.

13 (d) A mortgage loan originator company shall give the
14 commissioner notice of its intent to close a branch office at
15 least thirty days prior to the closing. The notice shall:

- 16 (1) State the intended date of closing; and
17 (2) Specify the reasons for the closing.

18 **§454F-K Reinstatement of expired licenses.** (a) A license
19 issued pursuant to this chapter that expires due to failure to
20 satisfy the minimum standards for renewal may be reinstated if
21 the licensee meets the following requirements:



- 1 (1) The licensee applies for reinstatement between
2 January 1 and February 28 of the year immediately
3 following the year in which the license expired;
4 (2) All continuing education courses required for license
5 renewal for the year in which the license expired
6 shall be completed between January 1 and February 28
7 of the year immediately following the year in which
8 the license expired; provided that continuing
9 education courses that satisfy the previous year's
10 requirement shall not also be credited toward
11 satisfying the current year's continuing education
12 requirements; and
13 (3) The licensee shall pay all applicable licensing,
14 reinstatement, and late fees assessed by the
15 commissioner.

16 (b) A licensee that fails to meet the requirements for
17 renewal of an expired license established by this section may
18 apply for a new license and shall meet the requirements for new
19 licenses in effect at the time of application.

20 **§454F-L Presumption of control.** An individual is presumed
21 to control a mortgage loan originator company if that individual



1 is a director, general partner, managing director, or executive
2 officer of that mortgage loan originator company.

3 §454F-M Payment of fees. All fees collected pursuant to
4 section 454F-N, administrative fines, and other charges
5 collected pursuant to this chapter, except fees designated for
6 deposit into the mortgage loan recovery fund shall be deposited
7 into the compliance resolution fund established pursuant to
8 section 26-9(o) and shall be payable through the Nationwide
9 Mortgage Licensing System, to the extent allowed by the
10 Nationwide Mortgage Licensing System. Fees not eligible for
11 payment through the Nationwide Mortgage Licensing System shall
12 be deposited into a separate account within the compliance
13 resolution fund for use by the division.

14 §454F-N Mortgage loan originator and mortgage loan
15 originator company fees. (a) A mortgage loan originator shall
16 pay the following fees to obtain and maintain a valid mortgage
17 loan originator license:

- 18 (1) Initial application fee of \$500;
19 (2) Annual license renewal fee of \$300;
20 (3) Reinstatement fee of \$100;
21 (4) Late fee of \$25 per day; and



1 (5) Criminal background check fee of \$35, or of an amount
2 determined by the commissioner by rule pursuant to
3 chapter 91.

4 (b) A mortgage loan originator company shall pay the
5 following fees to maintain a valid mortgage loan originator
6 company license or branch license:

7 (1) Fees payable for a principal office of a mortgage loan
8 originator company:

9 (A) Initial application fee of \$900;

10 (B) Annual license renewal fee of \$600;

11 (C) Reinstatement fee of \$100;

12 (D) Late fee of \$25 per day; and

13 (E) Criminal background check fee of \$35, or of an

14 amount determined by the commissioner by rule

15 pursuant to chapter 91, for each control person,

16 executive officer, director, general partner, and

17 manager; and

18 (2) Fees payable for each branch office of a mortgage loan
19 originator company:

20 (A) Initial application fee of \$250;

21 (B) Annual license renewal fee of \$100;

22 (C) Reinstatement fee of \$100; and



1 (D) Late fee of \$25 per day.

2 (c) In addition to fees charged by the Nationwide Mortgage
3 Licensing System, a licensee shall pay to the commissioner a fee
4 of \$50 for each of the following amendments to information
5 provided to the Nationwide Mortgage Licensing System that
6 require the review of the commissioner:

7 (1) Change of physical location, including address change
8 for branch or principal place of business;

9 (2) Addition or deletion of a "d/b/a" assignment;

10 (3) Change of manager; or

11 (4) Change of legal name.

12 The commissioner, upon a showing of good cause, may waive any
13 fee set forth in this subsection.

14 (d) The fees established by this section are nonrefundable
15 and are in addition to any fees established and charged by the
16 Nationwide Mortgage Licensing System, an approved educational
17 course provider, an approved educational testing provider, a law
18 enforcement agency for fingerprints and background checks, or a
19 credit reporting agency used by the Nationwide Mortgage
20 Licensing System.



1 (e) The commissioner may establish, by rule pursuant to
2 chapter 91, any other fees or charges necessary for the
3 administration of this chapter.

4 §454F-O Voluntary cessation of operation; surrender of
5 license. (a) Subject to the approval of the commissioner, a
6 licensee may voluntarily cease activity for which a license to
7 operate has been issued under this chapter by delivering to the
8 commissioner a written notice of surrender, which shall include
9 but not be limited to:

- 10 (1) A plan of cessation of business;
11 (2) Provisions for the transfer or assumption of assets;
12 (3) Provisions for pending applications or transactions;
13 (4) Provisions for payment or assumption of liabilities;
14 (5) Provisions for the disposition of individual mortgage
15 loan originator licenses, and
16 (6) Provisions for transfer or assumption of all trust,
17 agency, and other fiduciary relationships and
18 accounts.

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

- 20 (1) The commissioner is satisfied with the plan as set
21 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 a
8 license under this section.

9 §454F-P 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 of
15 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 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) No department of the State other than the attorney
4 general may employ or retain any attorney, by contract or
5 otherwise, for the purpose of representing the State or the
6 department in any litigation, rendering legal counsel to the
7 department, or drafting legal documents for the department;
8 provided that the foregoing provision shall not apply to the
9 employment or retention of attorneys:

10 (1) By the public utilities commission, the labor and
11 industrial relations appeals board, and the Hawaii
12 labor relations board;

13 (2) By any court or judicial or legislative office of the
14 State; provided that if the attorney general is
15 requested to provide representation to a court or
16 judicial office by the chief justice or the chief
17 justice's designee, or to a legislative office by the
18 speaker of the house of representatives and the
19 president of the senate jointly, and the attorney
20 general declines to provide such representation on the
21 grounds of conflict of interest, the attorney general
22 shall retain an attorney for the court, judicial, or



- 1 legislative office, subject to approval by the court,
2 judicial, or legislative office;
- 3 (3) By the legislative reference bureau;
- 4 (4) By any compilation commission that may be constituted
5 from time to time;
- 6 (5) By the real estate commission for any action involving
7 the real estate recovery fund;
- 8 (6) By the contractors license board for any action
9 involving the contractors recovery fund;
- 10 (7) By the trustees for any action involving the travel
11 agency recovery fund;
- 12 (8) By the office of Hawaiian affairs;
- 13 (9) By the department of commerce and consumer affairs for
14 the enforcement of violations of chapters 480 and
15 485A;
- 16 (10) As grand jury counsel;
- 17 (11) By the Hawaiian home lands trust individual claims
18 review panel;
- 19 (12) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;
- 21 (13) By the auditor;
- 22 (14) By the office of ombudsman;



- 1 (15) By the insurance division;
- 2 (16) By the University of Hawaii;
- 3 (17) By the Kahoolawe island reserve commission;
- 4 (18) By the division of consumer advocacy;
- 5 (19) By the office of elections;
- 6 (20) By the campaign spending commission;
- 7 (21) By the Hawaii tourism authority, as provided in
- 8 section 201B-2.5; [~~or~~]
- 9 (22) By the division of financial institutions for any
- 10 action involving the mortgage loan recovery fund; or
- 11 [~~(22)~~] (23) By a department, in the event the attorney
- 12 general, for reasons deemed by the attorney general to
- 13 be good and sufficient, declines to employ or retain
- 14 an attorney for a department; provided that the
- 15 governor thereupon waives the provision of this
- 16 section."

17 SECTION 5. Section 237-24.8, Hawaii Revised Statutes, is

18 amended by amending subsection (b) to read as follows:

19 "(b) As used in this section:

20 "Activities relating to the general servicing of

21 [~~fiduciary/custodial~~] fiduciary or custodial accounts" means

22 those activities performed by trust companies which are directly



1 or indirectly performed within the [~~fiduciary/custodial~~]
2 fiduciary or custodial relationship between the trust company or
3 trust department of a financial institution and its client and
4 which are not offered to any person outside of the
5 [~~fiduciary/custodial~~] fiduciary or custodial relationship.

6 "Annual percentage rate" and "finance charge" have the same
7 meaning as defined in the federal Truth in Lending Act (15
8 [~~U.S.C. sections~~] United States Code Sections 1605(a) to (c) and
9 1606).

10 "Deposit" means:

11 (1) Money or its equivalent received or held by a
12 financial institution in the usual course of business
13 and for which it has given or is obligated to give
14 credit to:

- 15 (A) A commercial (including public deposits),
16 checking, savings, time, or thrift account;
17 (B) A check or draft drawn against a deposit account
18 and certified by the financial institution;
19 (C) A letter of credit; or
20 (D) A traveler's check, on which the financial
21 institution is primarily liable;



- 1 (2) Trust funds received or held by a financial
2 institution, whether held in the trust department or
3 held or deposited in any other department of the
4 financial institution;
- 5 (3) Money received or held by a financial institution, or
6 the credit given for money or its equivalent received
7 or held by a financial institution in the usual course
8 of business for a special or specific purpose,
9 regardless of the legal relationship thereby
10 established, including, without being limited to,
11 escrow funds, funds held as security for an obligation
12 due the financial institution or others (including
13 funds held as dealers' reserves) or for securities
14 loaned by the financial institution, funds deposited
15 by a debtor to meet maturing obligations, funds
16 deposited as advance payment on subscriptions to
17 United States government securities, funds held for
18 distribution or purchase of securities, funds held to
19 meet the financial institution's acceptances or
20 letters of credit, and withheld taxes;



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

4 (5) Money or its equivalent held as a credit balance by a
5 financial institution on behalf of its customer if the
6 financial institution is engaged in soliciting and
7 holding the balances in the regular course of its
8 business.

9 "Financial institution" means banks, building and loan
10 associations, development companies, financial corporations,
11 financial services loan companies, small business investment
12 companies, financial holding companies, mortgage loan originator
13 companies[7] as defined in chapter 454F, and trust companies all
14 as defined in chapter 241.

15 "Leasing of personal property" occurs if:

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

18 (2) The property to be leased is acquired specifically for
19 the leasing transaction under consideration, or was
20 acquired specifically for an earlier leasing
21 transaction;



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



- 1 (C) The estimated residual value of the property at
2 the expiration of the initial term of the lease;
- 3 (5) The maximum lease term during which the lessor
4 financial institution [~~must~~] shall recover the
5 lessor's full investment in the property, plus the
6 estimated total cost of financing the property, shall
7 be forty years; and
- 8 (6) At the expiration of the lease, [~~+~~]including any
9 renewals or extensions with the same lessee[~~+~~], all
10 interest in the property shall be either liquidated or
11 leased again on a nonoperating basis as soon as
12 practicable [~~+~~] but in no event later than two years
13 from the expiration of the lease[~~+~~, ~~but~~]; provided
14 that in no case shall the lessor retain any interest
15 in the property beyond fifty years after the lessor's
16 acquisition of the property."

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

20 ""Mortgage loan company" means [~~any company licensed under~~
21 ~~chapter 454.~~] a mortgage loan originator company licensed under
22 chapter 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,~~] state, unless expressly
8 authorized by this chapter, other laws of this State, or federal
9 law; provided that nothing in this section shall prohibit any
10 foreign financial institution from participating in the
11 disbursement of cash through an automatic teller machine network
12 or from operating from any location in this [~~State~~] state as a
13 [~~mortgage broker licensed under chapter 454, loan originator~~
14 ~~licensed~~] licensee under chapter 454F, or as a real estate
15 collection servicing agent."

16 SECTION 8. Section 454F-1, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By adding twelve new definitions to be appropriately
19 inserted and to read:

20 ""Borrower" means a person who has applied for or obtained
21 a residential mortgage loan from or through a licensed mortgage
22 loan originator or mortgage loan originator company or from a



1 person required to be licensed as a mortgage loan originator or
2 mortgage loan originator company under this chapter.

3 "Branch office" means any location, separate from the
4 principal place of business of the mortgage loan originator
5 company that is identified by any means to the public or
6 customers as a location at which the licensee holds itself out
7 as a mortgage loan originator company.

8 "Control" means the power, either directly or indirectly,
9 to direct management or policies of a company, whether through
10 ownership of securities, by contract, or otherwise.

11 "Control person" means an individual who directly or
12 indirectly exercises control over a licensee or applicant.

13 "Division" means the division of financial institutions of
14 the department of commerce and consumer affairs.

15 "Employee" means an individual who is:

- 16 (1) Hired to provide services for a licensee on a regular
17 basis in exchange for compensation and who does not
18 provide these services as part of the individual's
19 independent business;
- 20 (2) Subject to tax withholding, the Federal Income
21 Contributions Act, and other lawful deductions by the
22 licensee as a condition of employment; and



1 (3) Subject to the right of the licensee to direct and
2 control the actions of the individual.

3 "Exempt registered mortgage loan originator company" means
4 any person, including an insured depository institution, who is
5 required to be licensed by any other state or federal law but is
6 not required to be licensed under this chapter, and has the
7 obligation to register with the Nationwide Mortgage Licensing
8 System because one or more of the person's employees engage in
9 the business of a mortgage loan originator.

10 "Independent contractor" means any person who has a
11 contractual arrangement to perform mortgage loan originating,
12 underwriting, or loan processing services to a licensee, but is
13 not an employee of a licensee.

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

15 "Licensee" means a mortgage loan originator, a mortgage
16 loan originator company, or a person who is required to be
17 licensed under this chapter. Licensee does not include an
18 exempt registered mortgage loan originator or exempt registered
19 mortgage loan originator company as defined by this section.

20 "Mortgage loan originator company" means:



- 1 (1) An individual not exempt under section 454F-2 who
2 engages in the business of a mortgage loan originator
3 as a sole proprietorship; or
4 (2) A person not exempt under section 454F-2 who employs
5 or uses the exclusive services of one or more mortgage
6 loan originators licensed or required to be licensed
7 under this chapter.

8 "Taking a residential mortgage loan application" means
9 receipt of a request or of a response to a solicitation of an
10 offer from a borrower, either directly or indirectly, for the
11 purpose of deciding whether or not to extend an offer of a loan
12 to the borrower. Taking a residential mortgage loan application
13 does not include mere physical handling or transmission of a
14 form."

15 2. By amending the definitions of "advertisement" or
16 "advertising", "applicant", "insured depository institution",
17 "loan processor or underwriter", "mortgage loan originator",
18 "Nationwide Mortgage Licensing System", "registered mortgage
19 loan originator", and "residential mortgage loan" to read:

20 "Advertisement" or "advertising" means:

- 21 (1) Issuing any card, sign, or device to any person;



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



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

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

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

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

16 "Mortgage loan originator" ~~[means]~~ :

17 (1) Means an individual who for compensation or gain or in
18 the expectation of compensation or gain:

19 ~~[+1]~~ (A) Takes a residential mortgage loan application; or

20 ~~[+2]~~ (B) Offers or negotiates terms of a residential

21 mortgage loan~~[-]~~; and



1 (2) Includes an independent contractor as defined in this
2 section.

3 "Nationwide Mortgage Licensing System" means a mortgage
4 licensing system developed and maintained by the Conference of
5 State Bank Supervisors and the American Association of
6 Residential Mortgage Regulators for the licensing and
7 registration of [~~licensed~~] mortgage loan originators~~[-]~~,
8 mortgage loan originator companies, exempt registered mortgage
9 loan originators, and exempt registered mortgage loan originator
10 companies as defined by this chapter.

11 [~~Registered~~] "Exempt registered mortgage loan originator"
12 means any individual who:

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

15 (A) An insured depository institution;

16 (B) A subsidiary that is:

17 (i) Owned and controlled by an insured
18 depository institution; and

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

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



1 (2) Is registered with, and maintains a unique identifier
2 through, the Nationwide Mortgage Licensing System [~~and~~
3 ~~Registry.~~] but is not required to be licensed under
4 this chapter.

5 "Residential mortgage loan" or "residential mortgage
6 transaction" means any loan primarily for personal, family, or
7 household use that is secured by a mortgage, deed of trust, or
8 other equivalent consensual security interest on a dwelling as
9 defined in Section 103(v) of the Truth in Lending Act, 15 United
10 States Code [~~Section 1601 et seq.~~] Section 1602 or residential
11 real estate."

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 estate
13 brokerage activities and is licensed or registered by
14 the State unless the person or entity is compensated
15 by a lender, a mortgage [~~broker,~~] loan originator
16 company, or other mortgage loan originator or by an
17 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 101(53D) of Title 11, United States
2 Code[-];

3 (7) An exempt registered mortgage loan originator company
4 as defined by this chapter; or

5 (8) An insured depository institution."

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

8 "~~[+]§454F-3[+]~~ **Requirement of licensure.** (a) Effective
9 ~~[August 1, 2010,]~~ January 1, 2011, or such later date approved
10 by the United States Department of Housing and Urban Development
11 pursuant to the authority granted under Public Law 110-289,
12 Section 1508(e), ~~[an individual,]~~ 12 United States Code Section
13 5107(e), a person, unless specifically exempted from this
14 chapter, shall not engage in the business of a mortgage loan
15 originator or mortgage loan originator company with respect to
16 any dwelling located in this ~~[State]~~ state without first
17 obtaining and maintaining annually, a license under this
18 chapter. Each licensed mortgage loan originator or mortgage
19 loan originator company shall register with and maintain a valid
20 unique identifier issued by the Nationwide Mortgage Licensing
21 System, and shall submit to the Nationwide Mortgage Licensing
22 System any reports that shall be in a form and contain



1 information as the Nationwide Mortgage Licensing System may
2 require.

3 A mortgage broker or mortgage solicitor who holds a license
4 under chapter 454 that is valid as of December 31, 2010 and who
5 creates a record and obtains a unique identifying number in the
6 Nationwide Mortgage Licensing System by November 30, 2010 shall
7 be determined to be in compliance with the licensing provisions
8 of this chapter until the commissioner makes a final
9 determination on the issuance or denial of the individual's
10 license.

11 (b) An independent contractor shall not engage in the
12 activities of a loan processor or underwriter without a license
13 pursuant to section 454F-4. Each independent contractor
14 licensed as a mortgage loan originator shall obtain and maintain
15 a valid unique identifier issued by the Nationwide Mortgage
16 Licensing System. An independent contractor who is not an
17 exclusive agent of a mortgage loan originator company, in
18 addition to obtaining a license as a mortgage loan originator,
19 shall obtain a license as a mortgage loan originator company.

20 (c) A loan processor or underwriter who does not represent
21 to the public, through advertising or other means of
22 communicating or providing information, including through



1 business cards, stationery, brochures, signs, rate lists, or
2 other promotional items, that the individual can or will perform
3 any of the activities of a mortgage loan originator, who does
4 not advertise that the individual can or will perform any of the
5 activities of a mortgage loan originator, and who does not
6 engage in the activities of a mortgage loan originator shall not
7 be required to be licensed under this chapter.

8 (d) Upon obtaining a incensing determination under this
9 chapter, an applicant's license issued under chapter 454 shall
10 automatically terminate.

11 (e) If this section or any provision of this section
12 conflicts at any time with any federal law, then the federal law
13 shall prevail and this section or the relevant provisions of
14 this section shall become ineffective and invalid. The
15 ineffectiveness or invalidity of this section or any of its
16 provisions shall not affect any other provisions or applications
17 of this chapter which shall be given effect without the invalid
18 provision or application, and to this end, the provisions of
19 this section are severable."

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



1 "§454F-4 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 or by
4 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 or other entities
8 designated by the Nationwide Mortgage Licensing System to
9 collect and maintain records and process transaction fees or
10 other fees related to licensees or other persons subject to this
11 chapter.

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

18 (d) In connection with an application for ~~[licensing as a~~
19 ~~mortgage loan originator,]~~ a license under this chapter, the
20 applicant, at a minimum, shall furnish to the commissioner and
21 to the Nationwide Mortgage Licensing System information
22 concerning the applicant's identity, including:



- 1 (1) Fingerprints of the applicant and, in the case of an
2 applicant that is not an individual, each of the
3 applicant's control persons, executive officers,
4 directors, general partners, and managing members for
5 submission to the Federal Bureau of Investigation, and
6 any governmental agency or entity authorized to
7 receive the fingerprints for a state, national, and
8 international criminal history background check; and
- 9 (2) Personal history and experience of the applicant and,
10 in the case of an applicant that is not an individual,
11 each of the applicant's control persons, executive
12 officers, directors, general partners, and managing
13 members in a form prescribed by the Nationwide
14 Mortgage Licensing System including the submission of
15 authorization for the Nationwide Mortgage Licensing
16 System and the commissioner to obtain:
- 17 (A) An independent credit report obtained from a
18 consumer reporting agency described in Section
19 603(p) of the Fair Credit Reporting Act, 15
20 United States Code 1681 et seq.; and



1 (B) Information related to any administrative, civil,
2 or criminal findings by any governmental
3 jurisdiction.

4 (e) The commissioner may use the Nationwide Mortgage
5 Licensing System as an agent for requesting information from and
6 distributing information to the Department of Justice or any
7 governmental agency.

8 (f) The commissioner may use the Nationwide Mortgage
9 Licensing System as an agent for requesting and distributing
10 information to and from any source directed by the commissioner.

11 (g) An applicant for a license as a mortgage loan
12 originator company that is a person other than an individual
13 shall be registered with the business registration division of
14 the department of commerce and consumer affairs to do business
15 in this state before a license pursuant to this chapter shall be
16 granted."

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

19 "[+]§454F-5[+] **Issuance of license.** (a) The commissioner
20 shall not issue a [~~mortgage loan originator~~] license pursuant to
21 this chapter unless the commissioner makes at a minimum the
22 following findings:



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

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

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

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



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

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

- 18 (A) Current outstanding judgments, except judgments
19 solely as a result of medical expenses;
- 20 (B) Current outstanding tax liens or other government
21 liens and filings;
- 22 (C) Foreclosures within the past three years; and



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

3 (4) The applicant, 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 managing members, has not been convicted
7 of any misdemeanor involving an act of fraud,
8 dishonesty, breach of trust, or money laundering;

9 [~~4~~] (5) The applicant, or in the case of an applicant
10 that is not an individual, each individual mortgage
11 loan originator who is employed by the mortgage loan
12 originator company or who provides exclusive services
13 to the applicant as a mortgage loan originator, has
14 completed the pre-licensing education requirement
15 described in section 454F-6;

16 [~~5~~] (6) The applicant, or in the case of an applicant
17 that is not an individual, each individual mortgage
18 loan originator who is employed by the mortgage loan
19 originator company or who provides exclusive services
20 to the applicant as a mortgage loan originator, has
21 passed a written test that meets the test requirements
22 in section 454F-7; and



1 [~~(6)~~] (7) The applicant has met the [~~surety bond~~] mortgage
2 loan recovery fund requirement as required in section
3 [~~454F-13.~~] 454F-C.

4 (b) The applicant, or in the case of an applicant that is
5 not an individual, each of the applicant's control persons,
6 executive officers, directors, general partners, and managers,
7 shall submit authorization to the commissioner for the
8 commissioner to conduct background checks to determine or verify
9 the information in subsection (a) in each state where the person
10 has conducted mortgage loan origination activities.
11 Authorization pursuant to this subsection shall include consent
12 to provide additional fingerprints, if necessary, to law
13 enforcement or regulatory bodies in other states."

14 SECTION 13. Section 454F-6, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) [~~A person~~] An applicant for licensure as a mortgage
18 loan originator shall complete at least twenty hours of
19 pre-licensing education approved in accordance with subsection
20 (b) that includes:

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



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

4 (3) Two hours of training related to lending standards for
5 the nontraditional mortgage product marketplace."

6 2. By amending subsection (e) to read:

7 "(e) The pre-licensing education requirements approved by
8 the Nationwide Mortgage Licensing System [~~in subsection (a)~~] for
9 any state shall be accepted as credit towards completion of
10 pre-licensing education requirements in this [~~State-~~] state."

11 SECTION 14. Section 454F-7, Hawaii Revised Statutes, is
12 amended as follows:

13 1. By amending subsection (a) to read:

14 "(a) [~~In order to~~] To meet the passing of the written test
15 requirement in section 454F-5, an applicant for licensure as a
16 mortgage loan originator shall pass, in accordance with the
17 standards established under this section, a qualified written
18 test developed by the Nationwide Mortgage Licensing System and
19 administered by a test provider approved by the Nationwide
20 Mortgage Licensing System based upon reasonable standards."

21 2. By amending subsection (d) to read:



1 "(d) An individual shall have passed a qualified written
2 test if the individual achieves a test score of seventy-five per
3 cent of the correct answers to questions or better. An
4 individual may retake a test three consecutive times with each
5 consecutive taking occurring at least thirty days after the
6 preceding test. After failing three consecutive tests, an
7 individual shall wait at least six months before taking the test
8 again. A licensed mortgage loan originator who fails to
9 maintain a valid license for a period of five years or longer
10 not taking into account any time during which the individual is
11 [a] an exempt registered mortgage loan originator, shall retake
12 the test."

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

15 "~~§454F-8~~ **Standards for license renewal.** (a) The
16 minimum standards for license renewal for mortgage loan
17 originators shall include the following:

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

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

22 and



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

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

5 (1) The mortgage loan originator company continues to meet
6 the minimum standards for licensure established
7 pursuant to section 454F-5;

8 (2) The mortgage loan originator company's qualified
9 manager has satisfied the minimum standards for
10 license renewal; and

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

13 [~~b~~] (c) The license of a mortgage loan originator [whe]
14 or mortgage loan originator company that fails to satisfy the
15 minimum standards for license renewal shall expire. The
16 commissioner may adopt procedures for the reinstatement of
17 expired licenses consistent with section 454F-K and the
18 standards established by the Nationwide Mortgage Licensing
19 System."

20 SECTION 16. Section 454F-9, Hawaii Revised Statutes, is
21 amended as follows:

22 1. By amending subsections (d) and (e) to read:



1 "(d) Continuing education may be offered either in a
2 classroom, online, or by any other means approved by the
3 Nationwide Mortgage Licensing System [~~and Registry~~].

4 (e) A licensed mortgage loan originator:

5 (1) May only receive credit for a continuing education
6 course in the year in which the course is taken,
7 except for continuing education credits received
8 pursuant to this chapter; and

9 (2) May not take the same approved course in the same or
10 successive years to meet the annual requirements for
11 continuing education~~[-]~~; provided that the term
12 "successive years" shall mean the two years following
13 the year in which a mortgage loan originator takes an
14 approved course."

15 2. By amending subsection (i) to read:

16 "(i) [~~A person~~] The license of a licensee meeting the
17 requirements of section 454F-8(a)(1) and (3) [~~may make up any~~
18 deficiency in continuing education as established by rule
19 adopted by the commissioner] shall expire if the licensee fails
20 to meet the minimum requirements for continuing education.
21 Reinstatement of the expired license shall be allowed as
22 provided for in section 454F-K."



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

3 "[~~§~~454F-10~~§~~] **Authority to require license.** In addition
4 to any other duties imposed upon the commissioner, the
5 commissioner shall require mortgage loan originators and
6 mortgage loan originator companies to be licensed and registered
7 through the Nationwide Mortgage Licensing System. The
8 commissioner is authorized to participate in the Nationwide
9 Mortgage Licensing System. The commissioner may establish by
10 rule pursuant to chapter 91, requirements for mortgage loan
11 originators~~[,]~~ and mortgage loan originator companies,
12 including:

13 (1) Background checks of:

14 (A) Criminal history through fingerprint or other
15 databases;

16 (B) Civil or administrative records;

17 (C) Credit history; and

18 (D) Any other source deemed necessary by the
19 Nationwide Mortgage Licensing System [~~and~~
20 ~~Registry~~];

21 (2) Fees to apply for or renew licenses through the
22 Nationwide Mortgage Licensing System;



- 1 (3) The setting or resetting as necessary of license
- 2 renewal and reporting dates;
- 3 (4) Requirements for amending or surrendering a license;
- 4 and
- 5 (5) Any other activity the commissioner deems necessary to
- 6 participate in the Nationwide Mortgage Licensing
- 7 System."

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

10 "~~+~~\$454F-11~~+~~ **Nationwide Mortgage Licensing System;**
11 **registry information; challenge process.** The commissioner shall
12 establish a process by rule pursuant to chapter 91 whereby
13 [~~mortgage loan originators~~] a licensee may challenge information
14 entered into the Nationwide Mortgage Licensing System by the
15 commissioner."

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

18 "~~+~~\$454F-12~~+~~ **Enforcement authorities; violations;**
19 **penalties.** (a) [~~In order to~~] To ensure the effective
20 supervision and enforcement of this chapter, the commissioner
21 may, pursuant to chapter 91:



- 1 (1) Deny, suspend, revoke, condition, or decline to renew
2 a license because of a violation of this chapter,
3 rules, an order, or a directive entered under this
4 chapter;
- 5 (2) Deny, suspend, revoke, condition, or decline to renew
6 a license if an applicant or [~~licensed mortgage loan~~
7 ~~originator~~] licensee fails at any time to meet the
8 requirements of section 454F-6 or section 454F-8,
9 violates section 454F-17, or withholds information or
10 makes a material misstatement in an application for a
11 license or renewal of a license;
- 12 (3) Order restitution against persons subject to this
13 chapter for violations of this chapter;
- 14 (4) Impose fines on persons subject to this chapter; and
- 15 (5) Issue orders or directives under this chapter as
16 follows:
 - 17 (A) Order or direct persons subject to this chapter
18 to cease and desist from conducting business,
19 including immediate temporary orders to cease and
20 desist;
 - 21 (B) Order or direct persons subject to this chapter
22 to cease any harmful activities or violations of



1 this chapter, including immediate temporary
2 orders to cease and desist;

3 (C) Enter immediate temporary orders to cease doing
4 business under a license [~~or interim license~~]
5 issued pursuant to the authority granted under
6 this chapter if the commissioner determines that
7 the license was erroneously granted or the
8 licensee is currently in violation of this
9 chapter; or

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

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

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



1 (d) Each violation or failure to comply with any directive
2 or order of the commissioner shall be a separate and distinct
3 violation.

4 (e) Notwithstanding section 480-13.5, any violation of
5 this chapter that is directed toward, targets, or injures an
6 elder, may be subject to an additional civil penalty not in
7 excess of \$10,000 for each violation in addition to any other
8 finances or penalties assessed for the violation."

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

11 "~~§~~454F-15~~§~~ Investigation and examination authority.

12 (a) In addition to any other authority under this chapter, the
13 commissioner shall have the authority to conduct investigations
14 and examinations. The commissioner may access, receive, and use
15 any books, accounts, records, files, documents, information, or
16 evidence, including:

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

20 (2) Personal history and experience information including
21 independent credit reports obtained from a consumer



1 reporting agency described in Section 603(p) of the
2 Fair Credit Reporting Act; and

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

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

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



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

8 (d) Each [~~licensed mortgage loan originator, individual,~~]
9 licensee or person subject to this chapter shall make or compile
10 reports or prepare other information as directed by the
11 commissioner in order to carry out the purposes of this section,
12 including:

- 13 (1) Accounting compilations;
14 (2) Information lists and data concerning loan
15 transactions in a format prescribed by the
16 commissioner; or
17 (3) Other information deemed necessary to carry out the
18 purposes of this section.

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



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

15 (f) [~~The~~] To carry out the purposes of this chapter, the
16 commissioner may:

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



- 1 (2) Enter into agreements or relationships with other
2 government officials or regulatory associations in
3 order to improve efficiencies and reduce regulatory
4 burden by sharing resources, standardized or uniform
5 methods or procedures, and documents, records,
6 information, or evidence obtained under this section;
- 7 (3) Use, hire, contract, or employ public or privately
8 available analytical systems, methods, or software to
9 examine or investigate the [~~licensed mortgage loan~~
10 ~~originator, individual,~~] licensee or person subject to
11 this chapter;
- 12 (4) Accept and rely on examination or investigation
13 reports made by other government officials, within or
14 without this [~~State,~~] state; and
- 15 (5) Accept audit reports made by an independent certified
16 public accountant for the [~~licensed mortgage loan~~
17 ~~originator, individual,~~] licensee or person subject to
18 this chapter in the course of that part of the
19 examination covering the same general subject matter
20 as the audit and may incorporate the audit report in
21 the report of the examination, report of
22 investigation, or other writing of the commissioner.



1 (g) The authority of this section shall remain in effect,
2 whether [~~such licensed mortgage loan originator, individual,~~] a
3 licensee or person subject to this chapter acts or claims to act
4 under any licensing or registration law of this [~~State,~~] state,
5 or claims to act without such authority.

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

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



1 other reasonable expenses incurred in connection with the
2 examination or investigation, payable to the division.

3 (j) Any person having reason to believe that this chapter
4 or the rules adopted pursuant thereto have been violated, or
5 that a license issued under this chapter should be suspended or
6 revoked, may file a written complaint with the commissioner
7 setting forth the details of the alleged violation or grounds
8 for suspension or revocation."

9 SECTION 21. Section 454F-16, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~+~~§454F-16~~+~~ **Mortgage call reports.** Each ~~licensed~~
12 ~~mortgage originator~~ licensee, as may be required by 12 United
13 States Code Sections 5101 to 5116, shall submit to the
14 Nationwide Mortgage Licensing System reports of condition, using
15 the form entitled "REPORT OF CONDITION", which shall be in
16 ~~such~~ the form and contain ~~such~~ the information as the
17 Nationwide Mortgage Licensing System may require."

18 SECTION 22. Section 454F-17, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~+~~§454F-17~~+~~ **Prohibited practices.** It shall be a
21 violation of this chapter for a ~~mortgage loan originator~~
22 licensee or person subject to this chapter to:



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



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



1 investigation conducted by the commissioner or another
2 government agency;

3 (11) Make any payment, threat, or promise, directly or
4 indirectly, to any person for the purposes of
5 influencing the independent judgment of the person in
6 connection with a residential mortgage loan, or make
7 any payment, threat, or promise, directly or
8 indirectly, to any appraiser of a property for the
9 purpose of influencing the independent judgment of the
10 appraiser with respect to the value of a property;

11 (12) Collect, charge, attempt to collect or charge, or use
12 or propose any agreement purporting to collect or
13 charge any fee prohibited by this chapter;

14 (13) Cause or require a borrower to obtain property
15 insurance coverage in an amount that exceeds the
16 replacement cost of the improvements as established by
17 the property insurer;

18 (14) Fail to truthfully account for moneys belonging to a
19 party to a residential mortgage loan transaction; or

20 (15) Deliver a misleading or deceptive communication or
21 advertisement, whether written, electronic, or oral,
22 when marketing or soliciting a residential mortgage



1 loan. A communication or advertisement that uses the
2 name or trademark of a financial institution as
3 defined in section 412:1-109 or its affiliates or
4 subsidiaries, or infers that the communication or
5 advertisement is from, endorsed by, is related to, or
6 is the responsibility of the financial institution is
7 a misleading or deceptive communication. Advertising
8 that a specific interest rate, points, or financial
9 terms are available when the rates, points, or
10 financial terms are not actually available is a
11 misleading or deceptive communication."

12 SECTION 23. Section 454F-18, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) In addition to any other powers provided by law, the
15 commissioner shall have the authority to:

- 16 (1) Administer and enforce the provisions and requirements
17 of this chapter;
- 18 (2) Adopt, amend, or repeal rules and issue declaratory
19 rulings or informal nonbinding interpretations;
- 20 (3) Develop requirements for licensure through rules,
21 including establishing the content of the written
22 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, or 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 under this chapter, except for fees
19 designated for deposit into the mortgage loan recovery
20 fund pursuant to section 454F-C, be deposited into the
21 compliance resolution fund established pursuant to
22 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."

17 SECTION 24. Section 454F-19, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[~~§~~454F-19~~]~~ **Unique identifier shown.** The unique
20 identifier of any person originating a residential mortgage
21 loan, except a person who is exempt from this chapter, shall be
22 clearly shown on all residential mortgage loan application



1 forms, solicitations, or advertisements, including business
2 cards or websites, and any other documents as established by
3 rule or order of the commissioner."

4 SECTION 25. Section 477E-2, Hawaii Revised Statutes, is
5 amended by amending the definition of "creditor" to read as
6 follows:

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

19 SECTION 26. Section 846-2.7, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:

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



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



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



1 after registration or licensure as provided by section
2 346-154;

3 (10) The department of human services on persons exempt
4 pursuant to section 346-152 to be eligible to provide
5 child care and receive child care subsidies as
6 provided by section 346-152.5;

7 (11) The department of human services on operators and
8 employees of home and community-based case management
9 agencies and operators and other adults, except for
10 adults in care, residing in foster family homes as
11 provided by section 346-335;

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

15 (13) The department of human services on employees,
16 prospective employees, and volunteers of contracted
17 providers and subcontractors in positions that place
18 them in close proximity to youth when providing
19 services on behalf of the office or the Hawaii youth
20 correctional facility as provided by section 352D-4.3;

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



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



1 holding a position that has the same type of contact
2 with children, vulnerable adults, or persons committed
3 to a correctional facility as other public employees
4 who hold positions that are authorized by law to
5 require criminal history record checks as a condition
6 of employment as provided by section 78-2.7;

7 (20) The department of human services on licensed adult day
8 care center operators, employees, new employees,
9 subcontracted service providers and their employees,
10 and adult volunteers as provided by section 346-97;

11 (21) The department of human services on purchase of
12 service contracted and subcontracted service providers
13 and their employees serving clients of the adult and
14 community care services branch, as provided by section
15 346-97;

16 (22) The department of human services on foster grandparent
17 program, retired and senior volunteer program, senior
18 companion program, and respite companion program
19 participants as provided by section 346-97;

20 (23) The department of human services on contracted and
21 subcontracted service providers and their current and
22 prospective employees that provide home and community-



1 based services under Section 1915(c) of the Social
2 Security Act [~~Title~~], 42 United States Code Section
3 1396n(c) [~~+~~], or under any other applicable section or
4 sections of the Social Security Act for the purposes
5 of providing home and community-based services, as
6 provided by section 346-97;

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

12 (25) The department of commerce and consumer affairs on
13 proposed directors and executive officers of a
14 nondepository financial services loan company as
15 provided by section 412:3-301;

16 (26) The department of commerce and consumer affairs on the
17 original chartering applicants and proposed executive
18 officers of a credit union as provided by section
19 412:10-103;

20 (27) The department of commerce and consumer affairs on:

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



1 (B) The executive officers, key shareholders, and
2 managers in charge of a money transmitter's
3 activities of every corporate applicant for a
4 money transmitter license,
5 as provided by section 489D-9;

6 (28) The department of commerce and consumer affairs on
7 applicants for licensure and persons licensed under
8 title 24;

9 (29) The Hawaii health systems corporation on:

10 (A) Employees;

11 (B) Applicants seeking employment;

12 (C) Current or prospective members of the corporation
13 board or regional system board; or

14 (D) Current or prospective volunteers, providers, or
15 contractors,

16 in any of the corporation's health facilities as
17 provided by section 323F-5.5;

18 [+](30)[+] The department of commerce and consumer affairs on
19 [an]:

20 (A) An applicant for a mortgage loan [~~originator's~~
21 originator license [~~as provided by chapter 454F~~];

22 and



1 (B) Each control person, executive officer, director,
2 general partner, and manager of an applicant for
3 a mortgage loan originator company license,
4 as provided by chapter 454F; and

5 [+] (31) [+] Any other organization, entity, or the State, its
6 branches, political subdivisions, or agencies as may
7 be authorized by state law."

8 SECTION 27. Section 454F-13, Hawaii Revised Statutes, is
9 repealed.

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

16 ~~(b) The surety bond shall provide coverage for each~~
17 ~~mortgage loan originator in an amount prescribed in subsection~~

18 ~~(c). The surety bond shall be in a form as prescribed by the~~
19 ~~commissioner. The commissioner may adopt rules pursuant to~~
20 ~~chapter 91 with respect to the requirements for the surety bonds~~
21 ~~necessary to accomplish the purposes of this chapter.~~



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

4 ~~(d) When an action is commenced on a licensee's bond, the~~
5 ~~commissioner may require the filing of a new bond.~~

6 ~~(e) Immediately upon recovery of any action on the bond,~~
7 ~~the commissioner may require the filing of a new bond."]~~

8 SECTION 28. Section 454F-21, Hawaii Revised Statutes, is
9 repealed.

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

14 ~~(b) Upon obtaining approval for a license, an initial~~
15 ~~license fee shall be paid to the commissioner in the amount of~~
16 ~~\$175 or an amount as the commissioner shall establish by rule~~
17 ~~pursuant to chapter 91.~~

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



1 SECTION 29. Chapter 454, Hawaii Revised Statutes, is
2 repealed.

3 SECTION 30. Act 32, Special Session Laws of Hawaii 2009,
4 is amended by amending section 8 to read as follows:

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

6 (1) No new license shall be issued and no license renewal
7 shall be effected under chapter 454, Hawaii Revised
8 Statutes; and

9 (2) An individual who is subject to this Act shall be
10 required to be licensed under chapter 454F, Hawaii
11 Revised Statutes, or by such later date approved by
12 the United States Department of Housing and Urban
13 Development, pursuant to the authority granted under
14 Public Law 110-289, section 1508(e). [~~As of the date
15 that an individual is required to be licensed under
16 chapter , Hawaii Revised Statutes, the remaining pro
17 rata balance of the fees paid by the individual under
18 chapter 454, Hawaii Revised Statutes, shall be applied
19 to the individual's fees due under chapter , Hawaii
20 Revised Statutes, until exhausted.]"~~

21 SECTION 31. Act 32, Special Session Laws of Hawaii 2009,
22 is amended by amending section 11 to read as follows:



1 "SECTION 11. There is appropriated out of the compliance
2 resolution fund established under section 26-9(o), Hawaii
3 Revised Statutes, the sum of \$159,400 or so much thereof as may
4 be necessary for fiscal year 2009-2010 for all expenses,
5 including the hiring in the division of financial institutions
6 of one permanent working supervisor exempt from chapter 76,
7 Hawaii Revised Statutes; three permanent examiners exempt from
8 chapter 76, Hawaii Revised Statutes; three temporary examiners
9 exempt from chapter 76, Hawaii Revised Statutes; and two
10 permanent office assistants, to carry out the purposes of this
11 Act.

12 The sum appropriated shall be expended by the department of
13 commerce and consumer affairs for the purposes of this Act."

14 SECTION 32. A person licensed under chapter 454F, Hawaii
15 Revised Statutes, shall not be required to be licensed under
16 chapter 454, Hawaii Revised Statutes, and shall not be subject
17 to the provisions of that chapter upon the effective date of the
18 person's licensure under chapter 454F, Hawaii Revised Statutes;
19 provided that this section shall not affect rights and duties
20 that matured, penalties that were incurred, and proceedings that
21 were begun before the effective date of the person's licensure
22 under chapter 454F, Hawaii Revised Statutes.



1 SECTION 33. There is appropriated out of the compliance
2 resolution fund established pursuant to section 26-9(o), Hawaii
3 Revised Statutes, the sum of \$894,077 or so much thereof as may
4 be necessary for fiscal year 2010-2011 for all expenses for
5 establishing and maintaining the licensing regime created by
6 chapter 454F, Hawaii Revised Statutes, and the hiring of and
7 continued funding for positions in the division of financial
8 institutions authorized under Act 32, Special Session Laws of
9 Hawaii 2009, for which moneys were appropriated under section
10 11, Act 32, Special Session Laws of Hawaii 2009, including one
11 permanent working supervisor exempt from chapter 76, Hawaii
12 Revised Statutes; three permanent examiners exempt from chapter
13 76, Hawaii Revised Statutes; three temporary examiners exempt
14 from chapter 76, Hawaii Revised Statutes; and two permanent
15 office assistants, one of whom may be paid out of the mortgage
16 loan recovery fund established by section 454F-C, Hawaii Revised
17 Statutes.

18 The sum appropriated shall be expended by the division of
19 financial institutions of the department of commerce and
20 consumer affairs for the purposes of this Act.

21 SECTION 34. To timely implement the licensure requirements
22 of chapter 454F, Hawaii Revised Statutes, the director of



1 commerce and consumer affairs, pursuant to the authority granted
2 by section 78-27, Hawaii Revised Statutes, may execute
3 agreements with the director of human resources development and
4 the director of taxation to participate in a program of
5 temporary exchange of employees that allows employees of the
6 department of human resources development and the department of
7 taxation to assist the division of financial institutions of the
8 department of commerce and consumer affairs in processing
9 applications for licensure under chapter 454F, Hawaii Revised
10 Statutes. The director of human resources development and the
11 director of taxation shall exercise their respective authority
12 under section 78-27, Hawaii Revised Statutes, to participate
13 fully and in good faith in agreements entered into pursuant to
14 this section.

15 SECTION 35. This Act, including the repeal of chapter 454,
16 Hawaii Revised Statutes, effectuated by section 29, does not
17 affect rights and duties that matured, penalties that were
18 incurred, and proceedings that were begun before its effective
19 date.

20 SECTION 36. In codifying the new sections added by section
21 3 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating
2 the new sections in this Act.

3 SECTION 37. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 38. This Act shall take effect on July 1, 2010;
6 provided that sections 6, 7, 25, and 29 shall take effect on
7 January 1, 2011; provided further that sections 30 and 31 shall
8 take effect upon approval.

9



Report Title:

Secure and Fair Enforcement of Mortgage Licensing Act;
Residential Mortgage; Appropriation

Description:

Makes amendments to the application, licensing, and regulatory requirements of the Secure and Fair Mortgage Licensing Act. Establishes the mortgage recovery fund to protect consumers injured by violations of chapter 454F, HRS. Includes mortgage loan originator companies in the regulatory system established by chapter 454F. Authorizes the commissioner of financial institutions to hire temporary and permanent staff to effectuate the purposes of chapter 454F, HRS. Effective July 1, 2010.
(CD1)

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

