

JAN 25 2012

A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION.

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

1 SECTION 1. Chapter 454F, Hawaii Revised Statutes, is
2 amended by adding two new sections to be appropriately
3 designated and to read as follows:

4 "§454F- Mortgage servicer companies; loan originators.

5 Employees who perform mortgage loan originator activities for a
6 mortgage servicer company are exempt from registration and
7 licensure as a mortgage loan originator provided that:

8 (1) The employee's actions are part of the employee's
9 duties as an employee of the mortgage servicer
10 company; and

11 (2) The employee only provides mortgage loan originator
12 services with respect to a residential mortgage loan
13 modification.

14 "§454F- Nonprofit organizations; loan originators. (a)

15 Employees who perform mortgage loan originator activities for a
16 nonprofit organization are exempt from registration and
17 licensure as a mortgage loan originator provided:

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- 1 (1) The employee's actions are part of the employee's
2 duties as an employee of the nonprofit organization;
- 3 (2) The employee only provides mortgage loan originator
4 services with respect to residential mortgage loans
5 with terms favorable to the borrower; and
- 6 (3) The nonprofit organization registers with the
7 Nationwide Mortgage Licensing System.
- 8 (b) The commissioner shall periodically examine the books
9 and activities of nonprofit organizations and shall revoke an
10 organization's registration as a nonprofit organization with the
11 Nationwide Mortgage Licensing System if the nonprofit
12 organization fails to meet the requirements to be a nonprofit
13 organization.
- 14 (c) In determining whether a residential mortgage loan has
15 terms favorable to the borrower, the commissioner shall examine:
- 16 (1) The interest rate that the home loan would carry;
17 (2) The charges that are imposed on the borrower for
18 origination, application, closing, and other costs;
19 (3) Whether the mortgage includes any predatory
20 characteristics;
21 (4) The borrower's ability to repay the loan; and
22 (5) The term of the mortgage."

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

3 1. By adding four new definitions to be appropriately
4 inserted and to read as follows:

5 "Housing finance agency" means any authority:

6 (1) That helps meet the affordable housing needs of the
7 residents of the State;

8 (2) That is supervised directly or indirectly by the State
9 and includes nonprofit organizations;

10 (3) That is subject to audit and review by the State; and

11 (4) Whose activities make it eligible to be a member of
12 the National Council of State Housing Agencies.

13 "Mortgage servicer company" means a mortgage service
14 company licensed under chapter 454M.

15 "Nonprofit organization" means an organization that:

16 (1) Has the status of a tax-exempt organization under
17 Section 501(c)(3) of the Internal Revenue Code of
18 1986, as amended;

19 (2) Promotes affordable housing or provides homeownership
20 education or similar services;

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1 (3) Conducts its activities in a manner that serves public
2 or charitable purposes, rather than commercial
3 purposes;

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

8 (5) Compensates its employees in a manner that does not
9 incentivize employees to act other than in the best
10 interests of its clients; and

11 (6) Provides, or identifies for the borrower, residential
12 mortgage loans with terms favorable to the borrower
13 and comparable to mortgage loans and housing
14 assistance provided under government housing
15 assistance programs.

16 "Residential mortgage loan modification" means:

17 (1) Modification of existing residential mortgage loans
18 which generally includes a change in interest,
19 principal, or term of loan; or

20 (2) The processing of the approval of loan assumptions.

21 "Residential mortgage loan modification" does not include
22 origination of mortgage loans."

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1 2. By amending the definition of "sponsor" to read as
2 follows:

3 ""Sponsor" means to [~~create~~]:

4 (1) Create a relationship through the Nationwide Mortgage
5 Licensing System [~~for the purpose of appropriately~~
6 ~~supervising a mortgage loan originator's activities.~~];
7 and

8 (2) Appropriately supervise a mortgage loan originator's
9 activities."

10 SECTION 3. Section 454F-1.5, Hawaii Revised Statutes, is
11 amended by amending subsection (a) to read as follows:

12 "(a) All mortgage loan originators, mortgage loan
13 originator companies, exempt sponsoring mortgage loan originator
14 companies, nonprofit organizations, mortgage servicer companies,
15 and [~~any~~] every other person in this State that originates a
16 residential mortgage loan, unless exempt under section 454F-2,
17 shall register with the Nationwide Mortgage Licensing System."

18 SECTION 4. Section 454F-1.6, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~+~~**\$454F-1.6**~~+~~ **Presumption of control.** An individual is
21 presumed to control a mortgage loan originator company if that
22 individual is a director, general partner, managing [~~director,~~]

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1 member, or executive officer of that mortgage loan originator
2 company."

3 SECTION 5. Section 454F-1.7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~f~~]**\$454F-1.7**[~~f~~] **Duties of qualified individual and branch**

6 **manager.** (a) A qualified individual shall have the duty to
7 manage and supervise the mortgage loan origination activities of
8 a licensed mortgage loan originator company's principal office
9 and the licensed mortgage loan originators located at or working
10 out of [~~that location.~~] the principal office and all company
11 branch offices. A qualified individual shall hold a license as
12 a mortgage loan originator issued pursuant to this chapter.

13 (b) A branch manager shall have the duty to directly
14 manage and supervise a licensed mortgage loan originator
15 company's branch office and the licensed mortgage loan
16 originators located at or working out of that location. A
17 branch manager shall be physically present in the branch office
18 and shall hold a license as a mortgage loan originator issued
19 pursuant to this chapter.

20 (c) A qualified individual for a mortgage loan originator
21 company [~~and a branch manager for a branch office~~] shall be
22 responsible for:

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- 1 (1) Supervising the maintenance and accounting of client
2 trust accounts and disbursements from those accounts;
- 3 (2) Supervising the maintenance of all records, contracts,
4 and documents of the mortgage loan originator company;
- 5 (3) Supervising all mortgage loan originator agreements
6 and mortgage loan documents and the handling of these
7 documents by the licensed mortgage loan originators
8 who are employed by or are independent contractors of
9 the mortgage loan originator company;
- 10 (4) Supervising all licensed mortgage loan originators who
11 are employed by or are independent contractors of the
12 mortgage loan originator company;
- 13 (5) Developing and enforcing policies and procedures
14 relating to the handling of residential mortgage loan
15 transactions and the professional conduct of the
16 licensed mortgage loan originators and other staff;
- 17 (6) Developing and monitoring compliance with a policy on
18 continuing education requirements for all licensed
19 mortgage loan originators who are employed by or are
20 independent contractors of the mortgage loan
21 originator company pursuant to the requirements of
22 this chapter and the rules of the commissioner;

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- 1 (7) Ensuring that the licenses of all mortgage loan
2 originators who are employed by or are independent
3 contractors of the mortgage loan originator company,
4 and the license of the mortgage loan originator
5 company are current and active, and that all required
6 fees are timely paid to the mortgage loan recovery
7 fund;
- 8 (8) Establishing and conducting a training program for all
9 licensed mortgage loan originators who are employed by
10 or are independent contractors of the mortgage loan
11 originator company;
- 12 (9) Ensuring that all licensed mortgage loan originators
13 who are employed by or are independent contractors of
14 the mortgage loan originator company are provided
15 adequate information and training on the latest
16 amendments to licensing laws and rules and any other
17 applicable laws and rules;
- 18 (10) Notifying the commissioner of the termination of the
19 employment or independent contractor relationship of
20 licensed mortgage loan originators who were employed
21 by or were independent contractors of the mortgage
22 loan originator company upon the termination of

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1 employment or the independent contractor relationship;
2 and

3 (11) Ensuring that the records, loan documents, and
4 agreements including mortgage loan originator
5 agreements are retained for seven years on paper or in
6 electronic format by the mortgage loan originator
7 company.

8 (d) A branch manager for a branch office shall be
9 responsible for supervising:

10 (1) The maintenance of all records, contracts, and
11 documents of the mortgage loan originator company
12 branch office;

13 (2) All mortgage loan originator agreements and mortgage
14 loan documents and the handling of these documents by
15 the licensed mortgage loan originators or independent
16 contractors located at or working out of the mortgage
17 loan originator company branch office; and

18 (3) All licensed mortgage loan originators who are
19 employed by, or are independent contractors of, the
20 mortgage loan originator company and who are located
21 at or working out of the mortgage loan originator
22 company branch office."

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1 SECTION 6. Section 454F-1.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "[+]§454F-1.8[+] Sponsorship by mortgage loan origination
4 company [~~ex~~], exempt sponsoring mortgage loan originator
5 company [~~-~~], or nonprofit organizations. All mortgage loan
6 originators shall be sponsored by a mortgage loan originator
7 company [~~ex~~], by an exempt sponsoring mortgage loan originator
8 company [~~-~~], or a nonprofit organization. At no time shall a
9 mortgage loan originator be sponsored by more than one Hawaii
10 licensed mortgage loan originator company, exempt sponsoring
11 mortgage loan originator company, or nonprofit organization."

12 SECTION 7. Section 454F-2, Hawaii Revised Statutes, is
13 amended to read as follows:

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

16 (1) An exempt registered mortgage loan originator[~~7~~] when
17 acting for an insured depository institution[~~7~~—a
18 subsidiary of an insured depository institution
19 regulated by a federal banking agency,~~7~~] or an
20 institution regulated by the Farm Credit
21 Administration;

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

- 1 (6) A person or entity solely involved in extensions of
2 credit relating to timeshare plans, as the term is
3 defined in Section 101(53D) of Title 11, United States
4 Code;
- 5 (7) An exempt sponsoring mortgage loan originator company
6 as defined by this chapter except as otherwise
7 provided by this chapter; ~~[or]~~
- 8 (8) An insured depository institution~~[-]~~;
- 9 (9) An institution regulated by the Farm Credit
10 Administration; or
- 11 (10) Individuals who act as loan originators as employees
12 of government agencies or of housing finance
13 agencies."

14 SECTION 8. Section 454F-4.9, Hawaii Revised Statutes, is
15 amended by amending subsection (a) to read as follows:

16 "(a) An application for licensure pursuant to this chapter
17 shall be considered abandoned if an applicant fails to provide
18 evidence of continued efforts to complete the licensing
19 application process for ~~[six consecutive months.]~~ thirty days.
20 The thirty-day period shall begin on the last day of contact
21 with the division by the applicant. The commissioner may extend
22 this period for good cause. No refund of filing fees shall be

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1 provided to an applicant for an abandoned application. The
2 commissioner shall not be required to act on any abandoned
3 application and is not required to retain abandoned applications
4 or supporting documents. The commissioner may withdraw
5 abandoned applications from the Nationwide Mortgage Licensing
6 System."

7 SECTION 9. Section 454F-8, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) The minimum standards for license renewal for
10 mortgage loan originator companies shall include the following:

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

14 (2) The mortgage loan originator company's [~~branch manager~~
15 ~~and~~] qualified individual and every branch manager
16 have satisfied the minimum standards for license
17 renewal; and

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

20 SECTION 10. Section 454F-22, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 "§454F-22 Mortgage loan originator, mortgage loan
2 originator company, and exempt sponsoring mortgage loan
3 originator company fees. (a) A mortgage loan originator shall
4 pay the following fees to obtain and maintain a valid mortgage
5 loan originator license:

- 6 (1) Initial application fee of [~~\$500~~] \$550;
7 (2) Annual license renewal fee of [~~\$300~~] \$400;
8 (3) Reinstatement fee of \$100;
9 (4) Late fee of \$25 per day; and
10 (5) Criminal background check fee of \$35, or of an amount
11 determined by the commissioner by rule pursuant to
12 chapter 91.

13 (b) A mortgage loan originator company shall pay the
14 following fees to maintain a valid mortgage loan originator
15 company license or branch license:

- 16 (1) Fees payable for a principal office of a mortgage loan
17 originator company:
18 (A) Initial application fee of \$900;
19 (B) Annual license renewal fee of \$600;
20 (C) Reinstatement fee of \$100;
21 (D) Late fee of \$25 per day; and

1 (E) Criminal background check fee of \$35, or of an
2 amount determined by the commissioner by rule
3 pursuant to chapter 91, for each control person,
4 executive officer, director, general partner, and
5 manager; and

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

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

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

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

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

12 (c) An exempt sponsoring mortgage loan originator company
13 shall pay the following [~~fees~~] fees to maintain a valid
14 registration in the Nationwide Mortgage Licensing System:

15 (1) Initial registration fee of \$200;

16 (2) Annual registration renewal fee of \$150; and

17 (3) Late fee of \$25 per day.

18 (d) A nonprofit organization shall pay the following fees
19 to maintain a valid registration as a nonprofit organization in
20 the Nationwide Mortgage Licensing System:

21 (1) Initial registration fee of \$200;

22 (2) Annual registration renewal fee of \$150; and

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

2 ~~(d)~~ (e) In addition to fees charged by the Nationwide
3 Mortgage Licensing System, a licensee shall pay to the
4 commissioner a fee of ~~[\$50]~~ \$100 for each of the following
5 amendments to information provided to the Nationwide Mortgage
6 Licensing System that require the review of the commissioner:

7 (1) Change of physical ~~[location, including address~~
8 ~~change]~~ or mailing address for branch office or
9 principal place of business;

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

11 (3) Change of mortgage loan originator's sponsor;

12 (4) Change of qualified individual;

13 ~~(3)~~ (5) Change of branch manager; ~~[or]~~ and

14 ~~(4)~~ (6) Change of mortgage loan originator company's
15 legal name.

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

18 ~~(e)~~ (f) The fees established by this section are
19 nonrefundable and are in addition to any fees established and
20 charged by the Nationwide Mortgage Licensing System, an approved
21 educational course provider, an approved educational testing
22 provider, a law enforcement agency for fingerprints and

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1 background checks, or a credit reporting agency used by the
2 Nationwide Mortgage Licensing System.

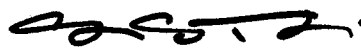
3 [~~f~~] (g) The commissioner may establish, by rule pursuant
4 to chapter 91, any other fees or charges necessary for the
5 administration of this chapter."

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect upon its approval.

9

10

INTRODUCED BY: 

11

BY REQUEST

12

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Report Title:

Mortgage Loan Originators; Mortgage Loan Originator Companies;
Fees

Description:

Amends the Secure and Fair Enforcement for Mortgage Licensing Act to reflect recent federal changes and adjust fees in consideration of the new regulatory requirements.

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

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO MORTGAGE LOAN ORIGINATION.

PURPOSE: The purpose of this bill is to amend chapter 454F, Hawaii Revised Statutes (HRS), to make it compliant with the federal Secure and Fair Enforcement ("SAFE") for Mortgage Licensing Act of 2008.

MEANS: Add two new sections to chapter 454F and amend sections 454F-1, 454F-1.5(a), 454F-1.6, 454F-1.7, 454F-1.8, 454F-2, 454F-4.9, and 454F-22, HRS.

JUSTIFICATION: As this new federal program continues to evolve, the states must continue to make amendments to keep the state law current with the new federal law and guidelines.

The U.S. Department of Housing and Urban Development ("HUD") finalized the federal rules for the federal SAFE Mortgage Licensing Act. First, HUD has determined that employees of a bona fide nonprofit organization are outside of the range of individuals that the SAFE Act requires states to subject to licensing requirements. Therefore, if a nonprofit organization can meet the threshold requirements of HUD's rule section 3400.103, it will need to register through the Nationwide Mortgage Licensing System and Registry ("NMLS") as a nonprofit organization and its employees will be exempt from licensure.

Second, HUD allowed states to determine the level of licensure for mortgage service companies and their employees. The Division of Financial Institutions recognizes the competing concerns raised by this issue -

the need to ensure that homeowners undergoing loan modifications to their mortgages are assisted by individuals of integrity, experience, and competency, and the need to avoid burdening such individuals and possibly deterring assistance to troubled homeowners by placing additional requirements on loan modifiers at the very time their assistance to provide material modifications to troubled homeowners is in significant demand. Therefore, mortgage servicer companies who provide residential mortgage loan modifications will need to register through NMLS and their employees will be exempt from licensure.

Fees were adjusted to reflect the additional regulatory requirements and monitoring required for these licensees.

Impact on the public: Continues to protect the public and strengthens the laws on mortgage loans origination.

Impact on the department and other agencies:
None.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	CCA-104.
OTHER AFFECTED AGENCIES:	None.
EFFECTIVE DATE:	July 1, 2012.