



EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

**GOV. MSG. NO. 1301**

July 1, 2014

The Honorable Donna Mercado Kim,  
President  
and Members of the Senate  
Twenty-Seventh State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

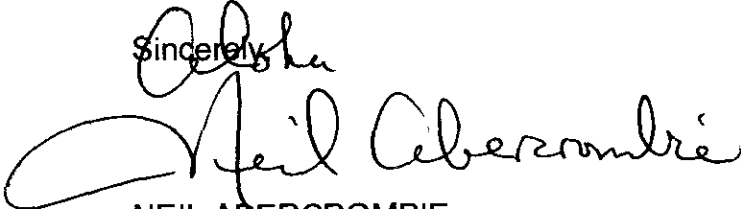
The Honorable Joseph M. Souki,  
Speaker and Members of the  
House of Representatives  
Twenty-Seventh State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Kim, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 1, 2014, the following bill was signed into law:

SB2817 SD2 HD1

RELATING TO SECURE AND FAIR  
ENFORCEMENT FOR MORTGAGE LICENSING  
ACT  
**ACT 198 (14)**

Sincerely,  
  
NEIL ABERCROMBIE  
Governor, State of Hawaii

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# A BILL FOR AN ACT

RELATING TO SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING  
ACT.

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

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

3 1. By adding five new definitions to be appropriately  
4 inserted and to read:

5 "Elder" means an individual who is sixty-two years of age or  
6 older.

7 "Offers or negotiates terms of a residential mortgage loan"  
8 means:

9 (1) Presents for consideration by a borrower or  
10 prospective borrower particular residential mortgage  
11 loan terms;

12 (2) Communicates directly or indirectly with a borrower or  
13 prospective borrower for the purpose of reaching a  
14 mutual understanding about prospective residential  
15 mortgage loan terms; or

16 (3) Takes or gathers information from a borrower or  
17 prospective borrower for the purpose of recommending,



1           referring, or steering that borrower or prospective  
2           borrower directly or indirectly to a particular lender  
3           or set of residential mortgage loan terms, in  
4           accordance with a duty to or incentive from any person  
5           other than the borrower or prospective borrower.

6           "Principal office" means the office location where the  
7           company's core executive and administrative functions are  
8           primarily carried out.

9           "Regular business hours" means Monday through Friday,  
10          between the hours of 8:00 a.m. and 4:30 p.m., excluding state  
11          holidays.

12          "Sole proprietorship" means a mortgage loan originator  
13          business that is solely and personally owned and operated by an  
14          individual mortgage loan originator, and where there is no legal  
15          distinction between the individual business owner and the  
16          business."

17          2. By amending the definitions of "branch office", "exempt  
18          sponsoring mortgage loan originator company", "mortgage loan  
19          originator", "mortgage servicer company", "principal place of  
20          business", and "unique identifier" to read:

21          "Branch office" means any location[, ~~separate from the~~  
22          ~~principal place of business of the mortgage loan originator~~



1 ~~company]~~ in this State that is identified by any means to the  
2 public or customers as a location at which the licensee holds  
3 itself out as a mortgage loan originator company. [~~For mortgage  
4 loan originator companies headquartered out of state, a branch  
5 office may be its principal place of business.~~]

6 "Exempt sponsoring mortgage loan originator company" means  
7 any person exempt from or not included in the licensing  
8 requirements of this chapter who registers with ~~[+]~~NMLS~~[+]~~ for  
9 purposes of sponsoring a mortgage loan originator.

10 "Mortgage loan originator":

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

13 (A) Takes a residential mortgage loan application; or

14 (B) Offers or negotiates terms of a residential  
15 mortgage loan;

16 [~~(2) Means any individual who offers or negotiates the  
17 terms of a residential mortgage loan secured by a  
18 dwelling that served as the individual's residence,  
19 including a vacation home, or inherited property that  
20 served as the deceased's dwelling, provided that the  
21 individual does not act as a mortgage loan originator~~]



1 ~~or provide financing for such sales more than three~~  
2 ~~times in a calendar year,] and~~

3 ~~[(3)]~~ (2) Includes an independent contractor as defined in  
4 this section.

5 "Mortgage servicer company" means a mortgage servicer  
6 company licensed, or required to be licensed, under chapter 454M  
7 that ~~[employs one or more individuals who conduct]~~ conducts  
8 mortgage loan origination activity.

9 "Principal place of business" means a mortgage loan  
10 originator company's main office location in this State that is  
11 ~~[separate from a branch office unless the branch office is~~  
12 ~~specified as the principal place of business by a mortgage loan~~  
13 ~~originator company headquartered out of state and]~~ identified by  
14 any means to ~~[consumers]~~ the public or customers as a location  
15 at which the licensee holds itself out as a mortgage loan  
16 originator company.

17 "Unique identifier" means a number or other identifier  
18 assigned by protocols established by ~~[+]NMLS[+]~~."

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

21 "**§454F-2 Exemptions.** This chapter shall not apply to the  
22 following:

- 1           (1) An exempt registered mortgage loan originator when  
2           acting for an insured depository institution or an  
3           institution regulated by the Farm Credit  
4           Administration;
- 5           ~~[(2) Any individual who offers or negotiates terms of a~~  
6           ~~residential mortgage loan with, or on behalf of, an~~  
7           ~~immediate family member of the individual;~~
- 8           ~~+(3) Any individual who offers or negotiates terms of a~~  
9           ~~residential mortgage loan secured by a dwelling that~~  
10           ~~served as the individual's residence;~~
- 11          ~~+(4)]~~ (2) A licensed attorney who negotiates the terms of a  
12          residential mortgage loan on behalf of a client as an  
13          ancillary matter to the attorney's representation of  
14          the client unless the attorney is compensated by a  
15          lender, a mortgage loan originator company, or other  
16          mortgage loan originator or by an agent of a lender,  
17          mortgage loan originator company, or other mortgage  
18          loan originator;
- 19          ~~+(5)]~~ (3) A person or entity that only performs real estate  
20          brokerage activities and is licensed or registered by  
21          the State unless the person or entity is compensated  
22          by a lender, a mortgage loan originator company, or



1 other mortgage loan originator or by an agent of the  
2 lender, mortgage loan originator company, or other  
3 mortgage loan originator;

4 ~~[(6)]~~ (4) A person or entity solely involved in extensions  
5 of credit relating to timeshare plans, as the term is  
6 defined in title ~~[+]11[+]~~ United States Code section  
7 101(53D);

8 ~~[(7)]~~ (5) An exempt sponsoring mortgage loan originator  
9 company as defined by this chapter except as otherwise  
10 provided by this chapter;

11 ~~[(8)]~~ (6) An insured depository institution;

12 ~~[(9)]~~ (7) An institution regulated by the Farm Credit  
13 Administration; ~~[ex~~

14 ~~[(10)]~~ (8) Employees of government agencies or of housing  
15 finance agencies who act as mortgage loan  
16 originators~~[-]~~; or

17 (9) A mortgage servicer company that is exempt from  
18 chapter 454M, pursuant to section 454M-3."

19 SECTION 3. Section 454F-8, Hawaii Revised Statutes, is  
20 amended by amending subsections (b) and (c) to read as follows:

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

- 1 (1) The mortgage loan originator company continues to meet  
2 the minimum standards for licensure established  
3 pursuant to section 454F-5;
- 4 (2) The mortgage loan originator company's qualified  
5 individual and every branch manager have satisfied the  
6 minimum standards for license renewal; ~~and~~
- 7 (3) The mortgage loan originator company has paid all  
8 required fees for renewal of the license[-]; and
- 9 (4) The mortgage loan originator company is registered  
10 with the business registration division of the  
11 department of commerce and consumer affairs.
- 12 (c) The minimum standards for license renewal for a  
13 mortgage servicer company shall include the following:
- 14 (1) The mortgage servicer company continues to meet the  
15 minimum standards for licensure established pursuant  
16 to section 454F-5; ~~and~~
- 17 (2) The mortgage servicer company has paid all required  
18 fees for renewal of the license[-]; and
- 19 (3) The mortgage servicer company is registered with the  
20 business registration division of the department of  
21 commerce and consumer affairs."





1 SECTION 4. Section 454F-10.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§454F-10.5 Authorized places of business; designation of  
4 qualified individuals and branch managers; branch offices; [~~out-~~  
5 ~~of state headquarters;~~] principal office; relocation. (a)

6 Every mortgage loan originator company licensed under this  
7 chapter shall have and maintain a principal place of business in  
8 the State and shall designate a qualified individual [~~who is~~  
9 ~~licensed as a mortgage loan originator pursuant to this chapter~~  
10 ~~to oversee mortgage loan originators employed or contracted by~~  
11 ~~the company. If the qualified individual is physically located~~  
12 ~~at a branch office, the qualified individual may also be~~  
13 ~~designated as the branch manager.] to fulfill the duties and  
14 responsibilities of a qualified individual set forth in section  
15 454F-1.7.~~

16 (b) A mortgage loan originator company shall not maintain  
17 any branch offices in the State in addition to its principal  
18 place of business without the prior written approval of the  
19 commissioner. An application to establish a branch office shall  
20 be submitted through NMLS with a nonrefundable application fee  
21 as required by section 454F-22. A mortgage loan originator  
22 company shall designate a branch manager for each branch office



1 who is physically present in the branch office to oversee that  
2 branch office[~~. Every branch manager shall be licensed as a~~  
3 ~~mortgage loan originator pursuant to this chapter.~~] and fulfill  
4 the duties and responsibilities of a branch manager set forth in  
5 section 454F-1.7. At no time shall a branch manager oversee  
6 more than one branch office or principal place of business.

7 (c) A mortgage loan originator company shall not relocate  
8 any office in this State without the prior written approval of  
9 the commissioner. An application to relocate an office shall be  
10 submitted to the commissioner at least thirty days prior to  
11 relocating and shall set forth the reasons for the relocation,  
12 the street address of the proposed relocated office, and other  
13 information that may be required by the commissioner. An  
14 application to relocate an office pursuant to this subsection  
15 shall be submitted with a nonrefundable fee as required by  
16 section 454F-22.

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

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



1 (e) A mortgage loan originator company that maintains its  
2 ~~[headquarters]~~ principal office outside of the State shall:

3 (1) Designate an office in this State as its principal  
4 place of business in this State;

5 (2) Apply for and obtain approval from the commissioner to  
6 designate its principal place of business in this  
7 State as a branch office pursuant to this section; and

8 (3) Designate a qualified individual ~~[who shall hold a~~  
9 ~~license as a mortgage loan originator pursuant to this~~  
10 ~~chapter]~~; provided that the qualified individual may  
11 be the same person designated as the branch manager~~[-]~~  
12 of a branch office where the qualified individual is  
13 physically present.

14 (f) A mortgage loan originator company that maintains its  
15 ~~[headquarters]~~ principal office in this State shall designate a  
16 qualified individual who is physically present in the principal  
17 place of business ~~[office]~~ as its branch manager to oversee and  
18 manage that principal place of business ~~[office]~~. Such  
19 principal place of business shall not be considered a branch  
20 office for purposes of section 454F-22(c).

21 (g) The principal place of business and each branch office  
22 of the mortgage loan originator company shall be identified in



1 NMLS to consumers as a location at which the licensee holds  
2 itself out as a mortgage loan originator company. Each such  
3 location shall be open for business to the public during posted  
4 business hours which shall be during regular business hours. If  
5 a location is in a commercial building, then the business hours  
6 shall be posted on or adjacent to the main office door of the  
7 mortgage loan originator company's location, and visible to the  
8 public from outside the location. If a location is not in a  
9 commercial building, or such posting is not permitted by the  
10 commercial building, then the business hours shall be posted on  
11 the home page of the mortgage loan originator company's website,  
12 along with the address and phone number of the location.  
13 Business hours, whether posted at a location or on a mortgage  
14 loan originator company website, shall be displayed in a clear,  
15 conspicuous, and accurate manner to inform the consumer when the  
16 location will be open.

17 (h) The commissioner or the commissioner's authorized  
18 representatives shall be able to conduct an examination or  
19 investigation during regular business hours. If the  
20 commissioner or the commissioner's authorized representatives  
21 are denied access to any office, record, or file for any reason,  
22 such denial may be considered a violation of this chapter."



1 SECTION 5. Section 454F-12, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

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

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

9 (2) Deny, suspend, revoke, condition, or decline to renew  
10 a license if an applicant or licensee fails at any  
11 time to meet the requirements of section 454F-4, 454F-  
12 6, or [~~section~~] 454F-8, violates section 454F-17, or  
13 withholds information or makes a material misstatement  
14 in an application for a license or renewal of a  
15 license;

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

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

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

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



1 including immediate temporary orders to cease and  
2 desist;

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

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

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

16 SECTION 6. Section 454F-14, Hawaii Revised Statutes, is  
17 amended by amending subsection (f) to read as follows:

18 "(f) This section shall not apply to information or  
19 material relating to the employment history of, and publicly  
20 adjudicated disciplinary and enforcement actions against,  
21 mortgage loan originators, mortgage loan originator companies,



1 and mortgage servicer companies that are included in NMLS for  
2 access by the public."

3 SECTION 7. Section 454F-16, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "**§454F-16 Mortgage call reports.** Each licensee~~[7]~~ and  
6 exempt sponsoring mortgage loan originator company, as may be  
7 required by title 12 United States Code sections 5101 to 5116,  
8 shall submit quarterly to NMLS reports of condition, using the  
9 form entitled "~~[REPORT OF]~~ FINANCIAL CONDITION"~~[7]~~ or  
10 "RESIDENTIAL MORTGAGE LOAN ACTIVITY", which shall be in the form  
11 and contain the information as NMLS may require."

12 SECTION 8. Section 454F-19, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "**§454F-19 Unique identifier shown.** The unique identifier  
15 of any person originating a residential mortgage loan, except a  
16 person who is exempt from this chapter, shall be clearly shown  
17 on all residential mortgage loan application forms,  
18 solicitations, ~~[or]~~ and advertisements, including business cards  
19 or websites, and any other documents as established by rule or  
20 order of the commissioner."

21 SECTION 9. Section 454F-22, Hawaii Revised Statutes, is  
22 amended as follows:



1           1.    By amending subsection (b) to read:  
2           " (b) A sole [~~proprietor~~] proprietorship mortgage loan  
3 originator shall pay the following fees to obtain and maintain a  
4 valid sole proprietor mortgage loan originator license:

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

12           2.    By amending subsection (f) to read:  
13           " (f) A mortgage servicer company shall pay for a principal  
14 office the following fees to maintain a valid mortgage loan  
15 [~~originator company~~] servicer loan modification license:

- 16           (1)    Initial application fee of \$600;
- 17           (2)    Annual license renewal fee of \$600;
- 18           (3)    Reinstatement fee of \$100;
- 19           (4)    Late fee of \$25 per day; and
- 20           (5)    Criminal background check fee of \$35, or of an amount  
21           determined by the commissioner by rule pursuant to  
22           chapter 91, for each control person, executive



1 officer, director, general partner, and managing  
2 member."

3 SECTION 10. Section 454F-24, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~f~~]**\$454F-24**[~~f~~] **Mortgage servicer companies; mortgage loan**  
6 **originators.** An employee who performs mortgage loan originator  
7 activities for a mortgage servicer company is exempt from  
8 registration and licensure as a mortgage loan originator;  
9 provided that:

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

13 (2) The employee [~~only~~] provides mortgage loan originator  
14 services only with respect to a residential mortgage  
15 loan modification."

16 SECTION 11. Section 454F-25, Hawaii Revised Statutes, is  
17 amended by amending subsections (a) and (b) to read as follows:

18 "(a) An employee who performs mortgage loan originator  
19 activities for a nonprofit organization is exempt from  
20 registration and licensure as a mortgage loan originator;  
21 provided that:



- 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 [+]NMLS[+].
- 7 (b) The commissioner shall periodically examine the books  
8 and activities of nonprofit organizations as defined in section  
9 454F-1 and shall revoke an organization's registration as a  
10 nonprofit organization with [+]NMLS[+] if the nonprofit  
11 organization fails to meet the requirements to be a nonprofit  
12 organization."

13 SECTION 12. Section 454F-26, Hawaii Revised Statutes, is  
14 repealed.

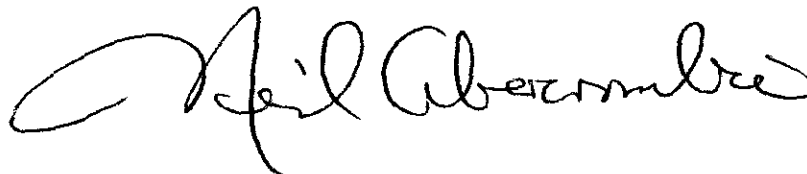
15 [~~{454F-26} Sole proprietorships, fees. Every mortgage  
16 loan originator company that consists of a single individual not  
17 exempt under section 454F-2 who engages in the business of a  
18 mortgage loan originator as a sole proprietorship shall be  
19 reimbursed by the division for the fees paid for the state  
20 mortgage loan originator's initial application and annual  
21 license renewal fees.~~"]



1 SECTION 13. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 14. This Act shall take effect on July 1, 2014.

APPROVED this 1 day of JUL, 2014

A handwritten signature in black ink, appearing to read "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII