

S.B. NO. 2817

JAN 23 2014

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 as follows:

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; or

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) Recommends, refers, or steers a borrower or
17 prospective borrower to a particular lender or set of

1 residential mortgage loan terms, in accordance with a
2 duty to or incentive from any person other than the
3 borrower or prospective borrower.

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

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

10 "Sole proprietor" means a single individual not exempt under
11 section 454F-2 who engages in the business of a mortgage loan
12 originator and owns all the assets of the business."

13 2. By amending the definitions of "branch office", "exempt
14 sponsoring mortgage loan originator company", "mortgage loan
15 originator", "mortgage servicer company", "principal place of
16 business", and "unique identifier" to read as follows:

17 "Branch office" means any location [~~separate from the~~
18 ~~principal place of business of the mortgage loan originator~~
19 ~~company]~~ in this State that is identified by any means to the
20 public or customers as a location at which the licensee holds
21 itself out as a mortgage loan originator company. [~~For mortgage~~
22 ~~loan originator companies headquartered out of state, a branch~~
23 ~~office may be its principal place of business.]~~

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

5 "Mortgage loan originator":

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

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

9 (B) Offers or negotiates terms of a residential
10 mortgage loan;

11 [~~(2)~~ Means any individual who offers or negotiates the
12 terms of a residential mortgage loan secured by a
13 dwelling that served as the individual's residence,
14 including a vacation home, or inherited property that
15 served as the deceased's dwelling; provided that the
16 individual does not act as a mortgage loan originator
17 or provide financing for such sales more than three
18 times in a calendar year;] and

19 [~~(3)~~] (2) Includes an independent contractor as defined in
20 this section.

21 "Mortgage servicer company" means a mortgage servicer
22 company licensed, or required to be licensed, under chapter 454M

1 that ~~[employs one or more individuals who conduct]~~ conducts
2 mortgage loan origination activity.

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

11 "Unique identifier" means a number or other identifier
12 assigned by protocols established by ~~[the {}NMLS[+]."~~

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

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

17 (1) An exempt registered mortgage loan originator when
18 acting for an insured depository institution or an
19 institution regulated by the Farm Credit
20 Administration;

21 ~~[(2) Any individual who offers or negotiates terms of a~~
22 ~~residential mortgage loan with, or on behalf of, an~~
23 ~~immediate family member of the individual;~~

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1 ~~(3) Any individual who offers or negotiates terms of a~~
2 ~~residential mortgage loan secured by a dwelling that~~
3 ~~served as the individual's residence;~~

4 ~~(4)]~~ (2) A licensed attorney who negotiates the terms of a
5 residential mortgage loan on behalf of a client as an
6 ancillary matter to the attorney's representation of
7 the client unless the attorney is compensated by a
8 lender, a mortgage loan originator company, or other
9 mortgage loan originator or by an agent of a lender,
10 mortgage loan originator company, or other mortgage
11 loan originator;

12 ~~(5)]~~ (3) 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 loan originator company, or
16 other mortgage loan originator or by an agent of the
17 lender, mortgage loan originator company, or other
18 mortgage loan originator;

19 ~~(6)]~~ (4) A person or entity solely involved in extensions
20 of credit relating to timeshare plans, as the term is
21 defined in title ~~[+]11[+]~~ United States Code section
22 101(53D);

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1 ~~[(7)]~~ (5) An exempt sponsoring mortgage loan originator
2 company as defined by this chapter except as otherwise
3 provided by this chapter;

4 ~~[(8)]~~ (6) An insured depository institution;

5 ~~[(9)]~~ (7) An institution regulated by the Farm Credit
6 Administration; ~~[or~~

7 ~~[(10)]~~ (8) Employees of government agencies or of housing
8 finance agencies who act as mortgage loan
9 originators ~~[-]~~; or

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

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

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

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

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

22 (3) The mortgage loan originator company has paid all
23 required fees for renewal of the license ~~[-]~~; and

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1 (4) The mortgage loan originator company is registered to
2 do business in this State, and is in good standing,
3 with the business registration division of the
4 department of commerce and consumer affairs.

5 (c) The minimum standards for license renewal for a
6 mortgage servicer company shall include the following:

7 (1) The mortgage servicer company continues to meet the
8 minimum standards for licensure established pursuant
9 to section 454F-5; ~~and~~

10 (2) The mortgage servicer company has paid all required
11 fees for renewal of the license~~[-]~~; and

12 (3) The mortgage servicer company is registered to do
13 business in this State, and is in good standing, with
14 the business registration division of the department
15 of commerce and consumer affairs."

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

18 "**§454F-10.5 Authorized places of business; designation of**
19 **qualified individuals and branch managers; branch offices; ~~out-~~**
20 **~~of state headquarters;~~ principal office; relocation. (a)**

21 Every mortgage loan originator company licensed under this
22 chapter shall have and maintain a principal place of business in
23 the State and shall designate a qualified individual ~~[who is~~

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1 ~~licensed as a mortgage loan originator pursuant to this chapter~~
2 ~~to oversee mortgage loan originators employed or contracted by~~
3 ~~the company. If the qualified individual is physically located~~
4 ~~at a branch office, the qualified individual may also be~~
5 ~~designated as the branch manager.] to fulfill the duties and~~
6 ~~responsibilities of a qualified individual set forth in section~~
7 ~~454F-1.7.~~

8 (b) A mortgage loan originator company shall not maintain
9 any branch offices in the State in addition to its principal
10 place of business without the prior written approval of the
11 commissioner. An application to establish a branch office shall
12 be submitted through NMLS with a nonrefundable application fee
13 as required by section 454F-22. A mortgage loan originator
14 company shall designate a branch manager for each branch office
15 who is physically present in the branch office to oversee that
16 branch office [~~. Every branch manager shall be licensed as a~~
17 ~~mortgage loan originator pursuant to this chapter.] and fulfill~~
18 ~~the duties and responsibilities of a branch manager set forth in~~
19 ~~section 454F-1.7. At no time shall a branch manager oversee~~
20 ~~more than one branch office or principal place of business.~~

21 (c) A mortgage loan originator company shall not relocate
22 any office in this State without the prior written approval of
23 the commissioner. An application to relocate an office shall be

1 submitted to the commissioner at least thirty days prior to
2 relocating and shall set forth the reasons for the relocation,
3 the street address of the proposed relocated office, and other
4 information that may be required by the commissioner. An
5 application to relocate an office pursuant to this subsection
6 shall be submitted with a nonrefundable fee as required by
7 section 454F-22.

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

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

12 (2) Specify the reasons for the closing.

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

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

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

20 (3) Designate a qualified individual [~~who shall hold a~~
21 ~~license as a mortgage loan originator pursuant to this~~
22 ~~chapter~~]; provided that the qualified individual may
23 be the same person designated as the branch manager[-]

1 of a branch office where the qualified individual is
2 physically present.

3 (f) A mortgage loan originator company that maintains its
4 ~~[headquarters]~~ principal office in this State shall designate a
5 qualified individual who is physically present in the principal
6 place of business ~~[office]~~ as its branch manager to oversee and
7 manage that principal place of business ~~[office]~~. Such
8 principal place of business shall not be considered a branch
9 office for purposes of section 454F-22(c).

10 (g) The principal place of business and each branch office
11 of the mortgage loan originator company shall be identified in
12 NMLS to consumers as a location at which the licensee holds
13 itself out as a mortgage loan originator company. Each such
14 location shall be open for business to the public during regular
15 business hours, and business hours shall be posted in a
16 conspicuous place. Should the commissioner or the
17 commissioner's authorized representatives appear at the office
18 of a mortgage loan originator company to conduct an examination
19 or investigation during regular business hours, and be denied
20 access to any office, record, or file for any reason, such
21 denial may be considered a violation of this chapter."

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

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

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

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

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

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

17 (5) Issue orders or directives under this chapter as
18 follows:

19 (A) Order or direct persons subject to this chapter
20 to cease and desist from conducting business,
21 including immediate temporary orders to cease and
22 desist;

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

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

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

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

16 "(f) This section shall not apply to information or
17 material relating to the employment history of, and publicly
18 adjudicated disciplinary and enforcement actions against,
19 mortgage loan originators, mortgage loan originator companies,
20 and mortgage servicer companies that are included in NMLS for
21 access by the public."

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

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1 "**§454F-16 Mortgage call reports.** Each licensee~~[7]~~ and
2 exempt sponsoring mortgage loan originator company, as may be
3 required by title 12 United States Code sections 5101 to 5116,
4 shall submit quarterly to NMLS reports of condition, using the
5 form entitled "~~[REPORT OF]~~ FINANCIAL CONDITION"~~[7]~~ or
6 "RESIDENTIAL MORTGAGE LOAN ACTIVITY", which shall be in the form
7 and contain the information as NMLS may require."

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

10 "**§454F-19 Unique identifier shown.** The unique identifier
11 of any person originating a residential mortgage loan, except a
12 person who is exempt from this chapter, shall be clearly shown
13 on all residential mortgage loan application forms,
14 solicitations, ~~[or]~~ and advertisements, including business cards
15 or websites, and any other documents as established by rule or
16 order of the commissioner."

17 SECTION 9. Section 454F-22, Hawaii Revised Statutes, is
18 amended by amending subsection (f) to read as follows:

19 "(f) A mortgage servicer company shall pay for a principal
20 office the following fees to maintain a valid mortgage loan
21 ~~[originator company]~~ servicer loan modification license:

- 22 (1) Initial application fee of \$600;
23 (2) Annual license renewal fee of \$600;

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- 1 (3) Reinstatement fee of \$100;
- 2 (4) Late fee of \$25 per day; and
- 3 (5) Criminal background check fee of \$35, or of an amount
- 4 determined by the commissioner by rule pursuant to
- 5 chapter 91, for each control person, executive
- 6 officer, director, general partner, and managing
- 7 member."

8 SECTION 10. Section 454F-24, Hawaii Revised Statutes, is

9 amended to read as follows:

10 "~~§~~454F-24~~§~~ **Mortgage servicer companies; mortgage loan**

11 **originators.** An employee who performs mortgage loan originator

12 activities for a mortgage servicer company is exempt from

13 registration and licensure as a mortgage loan originator;

14 provided that:

- 15 (1) The employee's actions are part of the employee's
- 16 duties as an employee of the mortgage servicer
- 17 company; and
- 18 (2) The employee ~~only~~ provides mortgage loan originator
- 19 services only with respect to a residential mortgage
- 20 loan modification."

21 SECTION 11. Section 454F-25, Hawaii Revised Statutes, is

22 amended by amending subsections (a) and (b) to read as follows:

1 "(a) An employee who performs mortgage loan originator
2 activities for a nonprofit organization is exempt from
3 registration and licensure as a mortgage loan originator;
4 provided that:

5 (1) The employee's actions are part of the employee's
6 duties as an employee of the nonprofit organization;

7 (2) The employee only provides mortgage loan originator
8 services with respect to residential mortgage loans
9 with terms favorable to the borrower; and

10 3. The nonprofit organization registers with ~~[the {}NMLS[+]~~.

11 (b) The commissioner shall periodically examine the books
12 and activities of nonprofit organizations as defined in section
13 454F-1 and shall revoke an organization's registration as a
14 nonprofit organization with ~~[the {}NMLS[+]~~ if the nonprofit
15 organization fails to meet the requirements to be a nonprofit
16 organization."

17 SECTION 12. Section 454F-26, Hawaii Revised Statutes, is
18 repealed.

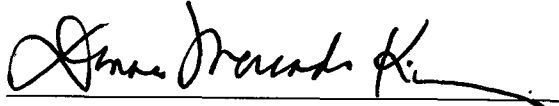
19 ~~["~~§454F-26~~ Sole proprietorships; fees. Every mortgage
20 loan originator company that consists of a single individual not
21 exempt under section 454F-2 who engages in the business of a
22 mortgage loan originator as a sole proprietorship shall be
23 reimbursed by the division for the fees paid for the state~~

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1 ~~mortgage loan originator's initial application and annual~~
2 ~~license renewal fees."]~~

3 SECTION 13. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 14. This Act shall take effect upon its approval.

6
7 INTRODUCED BY: 

8 BY REQUEST

Report Title:

Mortgage Loan Origination; Housekeeping

Description:

Adds definitions for clarity. Requires a mortgage loan originator company to be open during specified regular business hours to the public and for examination or investigation by the commissioner. Deletes exemptions for individuals facilitating mortgage loans for their family members and family property. Clarifies that a branch manager may not oversee more than one branch office or principal place of business. Excludes certain information included in NMLS from confidentiality provisions of the law.

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 SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

PURPOSE: The purpose of this bill is to amend chapter 454F, Hawaii Revised Statutes (HRS), primarily for housekeeping purposes, as changes made last session were not consistently made throughout the entire chapter, and because certain provisions warrant clarification.

MEANS: Amend sections 454F-1, 454F-2, 454F-8(b) and (c), 454F-10.5, 454F-12(a), 454F-14(f), 454F-16, 454F-19, 454F-22(f), 454F-24, and 454F-25(a) and (b), HRS, and repeal section 454F-26, HRS.

JUSTIFICATION: This bill adds or amends a number of definitions to add clarity to chapter 454F. Definitions are added for the terms elder, principal office, "offers or negotiates terms of a residential mortgage loan" (which is part of the mortgage loan originator definition), regular business hours, and sole proprietor. Amendments are made to definitions of branch office, mortgage loan originator, mortgage servicer company, and principal place of business. The name "NMLS" replaces the system's former name, the "Nationwide Mortgage Licensing System".

Exemptions from licensing are deleted for individuals who facilitate mortgage loans for their family members and family property.

The bill specifies that a licensee's failure to satisfy initial licensing criteria is grounds for license denial, suspension,

revocation, condition, or non-renewal. Additionally, registration and good standing with the Department of Commerce and Consumer Affairs are required for renewal of a mortgage loan originator company or a mortgage servicer company license.

The Commissioner of Financial Institutions' existing authority to issue a temporary cease and desist order is clarified as applying not only to licensees, but also to any person subject to chapter 454F.

The names for mortgage call report forms are updated, and the reporting requirement is clarified as applying to an exempt sponsoring mortgage loan originator company.

The bill clarifies that a mortgage loan originator company must have a separate branch manager at every branch. The company must keep and post regular business hours at each location, and during those hours, it is required to be open to the public for business, and to allow the Commissioner of Financial Institutions to conduct an examination or investigation.

Certain information concerning mortgage loan originator companies and mortgage servicer companies is exempted from confidentiality requirements as it is accessible by the public through NMLS.

The bill clarifies the existing fee schedules applicable to a mortgage servicer company for a mortgage loan servicer loan modification license.

The bill repeals reimbursement to a mortgage loan originator company consisting of a sole proprietor, because the Division of Financial Institutions was able to change the NMLS billing system to accommodate such licensees rendering reimbursement unnecessary.

Impact on the public: The public will benefit by having more predictable access to mortgage loan originator companies that keep and post regular business hours. This will also give the Commissioner of Financial Institutions and staff better access to such companies for examination and investigation. The public, including licensees and applicants, will benefit from clearer meaning of chapter 454F provisions and requirements.

Impact on the department and other agencies: The Division of Financial Institutions will be able to more readily determine which mortgage loan origination activity must be licensed, and the Division of Financial Institutions will need to allocate additional time for enforcement of unlicensed activity. Regular business hours for mortgage loan originator companies will give the Commissioner of Financial Institutions and staff better access to these companies for examination and investigation. The Department and the Division of Financial Institution's work will be simplified as NMLS has obviated the need to reimburse sole proprietors.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA 104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.