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A BILL FOR AN ACT

RELATING TO MORTGAGE INDUSTRY REGULATION.

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

1           SECTION 1. The purpose of this measure is to clarify the  
2 mortgage loan originators law, chapter 454F, Hawaii Revised  
3 Statutes, and the mortgage servicers law, chapter 454M, Hawaii  
4 Revised Statutes; to increase the consistency of the two  
5 chapters, which regulate related industries; to move mortgage  
6 servicer provisions that currently appear in chapter 454F to  
7 chapter 454M; and to allow mortgage servicers licensed under  
8 chapter 454M to perform loan modifications without the  
9 additional requirement of a mortgage loan servicer loan  
10 modification license under chapter 454F.

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

13           (1) By adding four new definitions to be appropriately  
14 inserted and to read as follows:

15           "C.F.R." means the Code of Federal Regulations.

16           "Consumer Financial Protection Bureau" means the agency of  
17 the United States government referenced in title 12 United  
18 States Code chapter 53, subchapter V.

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1        "Dwelling" means a residential structure or mobile home  
2 which contains one to four family housing units, or individual  
3 units of condominiums or cooperatives.

4        "Mortgage servicer" means a person licensed or required to  
5 be licensed under chapter 454M."

6        (2) By amending the definitions of "borrower", "Federal  
7 banking agencies", "licensee", "residential mortgage loan", and  
8 "residential mortgage loan modification" to read as follows:

9        "'Borrower" means [~~a person who has applied for~~] the  
10 obligor, maker, cosigner, or [obtained] guarantor under a  
11 residential mortgage loan [from or through a licensed mortgage  
12 loan originator or mortgage loan originator company or from a  
13 person required to be licensed as a mortgage loan originator or  
14 mortgage loan originator company under this chapter.] agreement.  
15 For purposes of this chapter, a borrower is included in the term  
16 consumer.

17        "Federal banking agencies" means the Board of Governors of  
18 the Federal Reserve System, the Comptroller of the Currency,  
19 [~~the Office of Thrift Supervision,~~] the National Credit Union  
20 Administration, and the Federal Deposit Insurance Corporation.

21        "Licensee" means [~~a mortgage loan originator, a mortgage~~  
22 ~~loan originator company, a mortgage servicer company, unless~~

1 ~~exempt under chapter 454M, or~~ a person who is licensed or  
2 required to be licensed under this chapter. Licensee does not  
3 include an exempt registered mortgage loan originator, exempt  
4 sponsoring mortgage loan originator company, or nonprofit  
5 organization as defined by this section.

6 "Residential mortgage loan" or [~~"residential mortgage~~  
7 ~~transaction"~~] "mortgage loan" means any loan primarily for  
8 personal, family, or household use that is secured by a  
9 mortgage, deed of trust, or other equivalent consensual security  
10 interest on a dwelling [~~as defined in section 103(v) of the~~  
11 ~~Truth in Lending Act, 15 United States Code section 1602]~~ or  
12 residential real estate [-] upon which is constructed or intended  
13 to be constructed a dwelling, and includes refinancings, reverse  
14 mortgages, home equity lines of credit, and other first and  
15 additional lien loans that meet the qualifications listed in  
16 this definition.

17 "Residential [~~mortgage~~] loan modification" or "loan  
18 modification means[-

19 ~~(1) Modification of]~~ a temporary or permanent change to  
20 the terms of a borrower's existing residential  
21 mortgage [~~loans which generally includes a change in~~  
22 ~~interest, principal, or term of loan; or~~

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1       ~~(2) The processing of the approval of loan assumptions.]~~  
2           loan agreement, mutually agreed to between a borrower  
3           and a lender.

4       ~~["Residential mortgage loan modification" does not include~~  
5 ~~origination of mortgage loans.] "~~

6       (3) By repealing the definition of "mortgage servicer  
7           company".

8       ~~["Mortgage servicer company" means a mortgage servicer~~  
9 ~~company licensed, or required to be licensed, under chapter 454M~~  
10 ~~that conducts mortgage loan origination activity."]~~

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

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

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

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1           "§454F-1.6 Presumption of control. An individual is  
2 presumed to control a mortgage loan originator company [~~or a~~  
3 ~~mortgage servicer company~~] if that individual is a director,  
4 general partner, managing member, or executive officer who  
5 directly or indirectly has the right to vote ten per cent or  
6 more of a class of voting securities or has the power to sell or  
7 direct the sale of ten per cent or more of a class of voting  
8 securities of that [~~mortgage loan originator company or mortgage~~  
9 ~~servicer company.~~] licensee or applicant."

10           SECTION 5. Section 454F-2, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "§454F-2 Exemptions. This chapter shall not apply to the  
13 following:

- 14           (1) An exempt registered mortgage loan originator when  
15 acting for an insured depository institution or an  
16 institution regulated by the Farm Credit  
17 Administration;
- 18           (2) A licensed attorney who negotiates the terms of a  
19 residential mortgage loan on behalf of a client as an  
20 ancillary matter to the attorney's representation of  
21 the client unless the attorney is compensated by a  
22 lender, a mortgage loan originator company, or other

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- 1 mortgage loan originator or by an agent of a lender,  
2 mortgage loan originator company, or other mortgage  
3 loan originator;
- 4 (3) A person or entity that only performs real estate  
5 brokerage activities and is licensed or registered by  
6 the State unless the person or entity is compensated  
7 by a lender, a mortgage loan originator company, or  
8 other mortgage loan originator or by an agent of the  
9 lender, mortgage loan originator company, or other  
10 mortgage loan originator;
- 11 (4) A person or entity solely involved in extensions of  
12 credit relating to timeshare plans, as the term is  
13 defined in title 11 United States Code section  
14 101(53D);
- 15 (5) An exempt sponsoring mortgage loan originator company  
16 as defined by this chapter except as otherwise  
17 provided by this chapter;
- 18 (6) An insured depository institution;
- 19 (7) An institution regulated by the Farm Credit  
20 Administration;
- 21 (8) Employees of government agencies or of housing finance  
22 agencies who act as mortgage loan originators; or

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1       ~~[(9) A mortgage servicer company that is exempt from~~  
2       ~~chapter 454M, pursuant to section 454M-3, or~~  
3       ~~(10)]~~ (9) A seller of real property who offers or  
4       negotiates terms of a residential mortgage loan that  
5       is financed by the seller and secured by the seller's  
6       own real property; provided that:  
7       (A) The seller is a person, estate, or trust that  
8       transacts three or fewer residential mortgage  
9       loans in one calendar year;  
10       (B) The seller is not a loan originator for purposes  
11       of the loan originator qualification requirements  
12       in 12 ~~[Code of Federal Regulations]~~ C.F.R.  
13       section 1026.36(f) and (g);  
14       (C) The seller has not constructed or acted as the  
15       construction contractor for the residence on the  
16       property in the ordinary course of the seller's  
17       business;  
18       (D) The interest rate for the loan does not exceed  
19       the State's usury limit; provided that the  
20       exemptions from usury specified in section 478-8  
21       shall not apply to transactions subject to this  
22       paragraph;

- 1 (E) The seller shall provide to the buyer the terms  
2 of the financing including:
- 3 (i) A current title search including any liens  
4 against the property;
- 5 (ii) The interest rate;
- 6 (iii) Monthly principal and interest payments;
- 7 (iv) Any prepayment penalty;
- 8 (v) Any late payment charges;
- 9 (vi) The payment schedule;
- 10 (vii) The total amount of interest that the  
11 mortgagor will pay over the term of the loan  
12 expressed as a percentage of the loan  
13 amount;
- 14 (viii) A calculation of projected aggregate monthly  
15 payments including principal and interest;
- 16 (ix) Estimated closing costs if closing costs are  
17 included in loan costs and estimated cash to  
18 close if closing costs are not included in  
19 loan costs. For purposes of this paragraph,  
20 closing costs shall include recording fees,  
21 transfer taxes, prepaid costs such as  
22 homeowner's insurance premiums or property



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1 taxes, and appraisal costs charged to the  
2 mortgagor;

3 (x) The seller's contact information including  
4 name, address, phone number, electronic mail  
5 address, and alternate contact information  
6 to the extent available; and

7 (xi) A statement that the seller will acquire a  
8 security interest in the buyer's dwelling  
9 and that the buyer may lose the dwelling in  
10 the event of a loan default;

11 (F) The seller shall provide a disclaimer, to be  
12 initialed by the buyer, which states, "BUYER  
13 ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER  
14 IN THIS TRANSACTION AND GRANTING THE SELLER A  
15 MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES  
16 SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING  
17 BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF  
18 BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT  
19 THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND  
20 OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT  
21 ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS  
22 FULLY ADVISED IN THIS MATTER."; and

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1           (G) A residential mortgage loan shall be recorded  
2                         with the land court or bureau of conveyances as  
3                         applicable."

4           SECTION 6. Section 454F-3, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6           "(a) Effective January 1, 2011, or such later date  
7 approved by the United States Department of Housing and Urban  
8 Development pursuant to the authority granted under Public Law  
9 110-289, section 1508(e), title 12 United States Code section  
10 5107(e), a person, unless specifically exempted from this  
11 chapter, shall not engage in the business of a mortgage loan  
12 originator or mortgage loan originator company with respect to  
13 any dwelling located in this State without first obtaining and  
14 maintaining annually, a license under this chapter. Each  
15 licensed mortgage loan originator[~~7~~] or mortgage loan originator  
16 company[~~7~~, ~~or mortgage servicer company~~] shall register with and  
17 maintain a valid unique identifier issued by NMLS and shall  
18 submit to NMLS any reports that shall be in a form and contain  
19 information as NMLS may require."

20           SECTION 7. Section 454F-5, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

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1           "(a) The commissioner shall not issue a license pursuant  
2 to this chapter unless the commissioner makes at a minimum the  
3 following findings:

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

13          (2) The applicant, [~~if~~] or in the case of an applicant  
14          that is not an individual, each of the applicant's  
15          control persons, executive officers, directors,  
16          general partners, and managing members, has not been  
17          convicted of, or pled guilty or nolo contendere, or  
18          been granted a deferred acceptance of a guilty plea  
19          under federal law or under chapter 853 to a felony in  
20          a domestic, foreign, or military court:

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- 1 (A) During the seven-year period preceding the date  
2 of the application for licensing and  
3 registration; or
- 4 (B) At any time preceding the date of application, if  
5 the felony involved an act of fraud, dishonesty,  
6 breach of trust, or money laundering;  
7 provided that any pardon of a conviction shall not be  
8 deemed a conviction for purposes of this section;
- 9 (3) The applicant, [~~if~~] or in the case of an applicant  
10 that is not an individual, each of the applicant's  
11 control persons, executive officers, directors,  
12 general partners, and managing members, has  
13 demonstrated financial responsibility, character, and  
14 general fitness to command the confidence of the  
15 community and to warrant a determination that the  
16 applicant shall operate honestly, fairly, and  
17 efficiently pursuant to this chapter. For purposes of  
18 this paragraph, a person is not financially  
19 responsible when the person has shown a disregard in  
20 the management of the person's financial condition. A  
21 determination that a person has shown a disregard in

1 the management of the person's financial condition may  
2 be based on:

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

5 (B) Current outstanding tax liens or other government  
6 liens and filings;

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

8 (D) A pattern of seriously delinquent accounts within  
9 the past three years;

10 (4) The applicant, [~~if~~] or in the case of an applicant  
11 that is not an individual, each of the applicant's  
12 control persons, executive officers, directors,  
13 general partners, and managing members, has not been  
14 convicted of, plead guilty or nolo contendere to, or  
15 been granted a deferred acceptance of a guilty plea  
16 under federal law or chapter 853 to any misdemeanor  
17 involving an act of fraud, dishonesty, breach of  
18 trust, or money laundering;

19 (5) The applicant, [~~if~~] or in the case of an applicant  
20 that is not an individual, each individual mortgage  
21 loan originator who is employed by the mortgage loan  
22 originator company or who provides exclusive services

1 to the applicant as a mortgage loan originator, has  
2 completed the pre-licensing education requirement  
3 described in section 454F-6;

4 (6) The applicant, [~~if~~] or in the case of an applicant  
5 that is not an individual, each individual mortgage  
6 loan originator who is employed by the mortgage loan  
7 originator company or who provides exclusive services  
8 to the applicant as a mortgage loan originator, has  
9 passed a written test that meets the test requirements  
10 in section 454F-7; and

11 (7) The applicant has met the mortgage loan recovery fund  
12 requirement as required in section 454F-41."

13 SECTION 8. Section 454F-6, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) An applicant for licensure as a mortgage loan  
16 originator shall complete at least twenty hours of pre-licensing  
17 education approved in accordance with subsection (b) that  
18 includes:

19 (1) Three hours of federal law and regulations and three  
20 hours of [~~state~~] the State's law and rules;

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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 Upon completion of the pre-licensing education, an individual  
7 has up to twelve months to submit an application for licensure  
8 as a mortgage loan originator. An individual who submits an  
9 application after the twelve months have expired will be  
10 required to repeat the pre-licensing education requirements."

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

13           "(b) A written test shall not be treated as a qualified  
14 written test for purposes of subsection (a) unless the test  
15 adequately measures the applicant's knowledge and comprehension  
16 in appropriate subject areas, including:

17           (1) Ethics;

18           (2) Federal law and regulations pertaining to mortgage  
19           origination;

20           (3) [~~State~~] The State's law and rules pertaining to  
21           mortgage origination; and

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1 (4) Federal and [state] the State's law, rules, and  
2 regulations, including instruction on fraud, consumer  
3 protection, the nontraditional mortgage marketplace,  
4 and fair lending issues."

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

7 "§454F-8 Standards for license renewal. (a) The minimum  
8 standards for license renewal for mortgage loan originators  
9 shall include the following:

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

12 (2) The mortgage loan originator has satisfied the annual  
13 continuing education requirements in section 454F-9  
14 prior to requesting renewal; and

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

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

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



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

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1 reinstatement of expired licenses consistent with section  
2 454F-8.5 and the standards established by NMLS."

3 SECTION 11. Section 454F-9, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Each year, a licensed mortgage loan originator shall  
6 complete at least eight hours of education approved in  
7 accordance with subsection (b) that shall include:

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

9 (2) One hour of [state] the State's law and rules;

10 (3) Two hours of ethics that shall include instruction on  
11 fraud, consumer protection, and fair lending issues;  
12 and

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

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

17 "§454F-10 Authority to require license. In addition to  
18 any other duties imposed upon the commissioner, the commissioner  
19 shall require mortgage loan originators [7] and mortgage loan  
20 originator companies [~~7 and mortgage servicer companies~~] to be  
21 licensed and registered through NMLS. The commissioner is  
22 authorized to participate in NMLS. The commissioner may

1 establish by rule pursuant to chapter 91, requirements for  
2 mortgage loan originators[~~7~~] and mortgage loan originator  
3 companies, [~~and mortgage servicer companies,~~] including:

- 4 (1) Background checks of:
  - 5 (A) Criminal history through fingerprint or other
  - 6 databases;
  - 7 (B) Civil or administrative records;
  - 8 (C) Credit history; and
  - 9 (D) Any other source deemed necessary by NMLS;
- 10 (2) Fees to apply for or renew licenses through NMLS;
- 11 (3) The setting or resetting as necessary of license
- 12 renewal and reporting dates;
- 13 (4) Requirements for amending or surrendering a license;
- 14 and
- 15 (5) Any other activity the commissioner deems necessary to
- 16 participate in NMLS."

17 SECTION 13. Section 454F-14, Hawaii Revised Statutes, is  
18 amended by amending subsection (f) to read as follows:

19 "(f) This section shall not apply to information or  
20 material relating to the employment history of, and publicly  
21 adjudicated disciplinary and enforcement actions against,  
22 mortgage loan originators[~~7~~] and mortgage loan originator

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

3 SECTION 14. Section 454F-17, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§454F-17 Prohibited practices. It shall be a violation  
6 of this chapter for a licensee or person subject to this chapter  
7 to:

- 8 (1) Directly or indirectly employ any scheme, device, or  
9 artifice to defraud or mislead borrowers or lenders or  
10 to defraud any person;
- 11 (2) Engage in any unfair or deceptive practice related to  
12 mortgage loan origination activities toward any  
13 person;
- 14 (3) Obtain property by fraud or misrepresentation;
- 15 (4) Solicit or enter into any contract with a borrower or  
16 an applicant for a residential mortgage loan that  
17 provides in substance that the person or individual  
18 subject to this chapter may earn a fee or commission  
19 through "best efforts" to obtain a residential  
20 mortgage loan even though no loan is actually obtained  
21 for the borrower[~~]~~ or applicant for a residential  
22 mortgage loan;

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- 1           (5) Solicit, advertise, or enter into a contract for  
2           specific interest rates, points, or other financing  
3           terms unless the terms are actually available at the  
4           time of soliciting, advertising, or contracting;
- 5           (6) Conduct any business covered by this chapter without  
6           holding a valid license as required under this  
7           chapter, or assist or aid and abet any person in the  
8           conduct of business under this chapter without a valid  
9           license as required under this chapter;
- 10          (7) Fail to make disclosures as required by this chapter  
11          and any other applicable state or federal law  
12          including rules or regulations adopted pursuant to  
13          state or federal law;
- 14          (8) Fail to comply with this chapter or any order or rule  
15          issued or adopted under the authority of this chapter,  
16          or fail to comply with any other state or federal law,  
17          including the rules and regulations adopted pursuant  
18          to state or federal law applicable to any business  
19          authorized or conducted pursuant to this chapter;
- 20          (9) Make, in any manner, any false or deceptive statement  
21          or representation, including with regard to the rates,  
22          points, or other financing terms or conditions for a

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- 1 residential mortgage loan, or engage in bait and  
2 switch advertising;
- 3 (10) Negligently or knowingly make any false statement or  
4 provide any misleading information or knowingly and  
5 wilfully make any omission of material fact in  
6 connection with any information or reports filed with  
7 a governmental agency or NMLS, including an  
8 application for a license under this chapter, or in  
9 connection with any examination or investigation  
10 conducted by the commissioner or another government  
11 agency;
- 12 (11) Make any payment, threat, or promise, directly or  
13 indirectly, to any person for the purposes of  
14 influencing the independent judgment of the person in  
15 connection with a residential mortgage loan, or make  
16 any payment, threat, or promise, directly or  
17 indirectly, to any appraiser of a property for the  
18 purpose of influencing the independent judgment of the  
19 appraiser with respect to the value of a property;
- 20 (12) Cause or require a borrower to obtain property  
21 insurance coverage in an amount that exceeds the

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- 1 replacement cost of the improvements as established by  
2 the property insurer;
- 3 (13) Fail to truthfully account for moneys belonging to a  
4 party to a residential mortgage loan transaction;
- 5 (14) Deliver a misleading or deceptive communication or  
6 advertisement, whether written, electronic, or oral,  
7 when marketing or soliciting a residential mortgage  
8 loan; provided that:
- 9 (A) A communication or advertisement that uses the  
10 name or trademark of a financial institution as  
11 defined in section 412:1-109 or its affiliates or  
12 subsidiaries, or infers that the communication or  
13 advertisement is from, endorsed by, is related  
14 to, or is the responsibility of the financial  
15 institution is a misleading or deceptive  
16 communication;
- 17 (B) Advertising that a specific interest rate,  
18 points, or financial terms are available when the  
19 rates, points, or financial terms are not  
20 actually available is a misleading or deceptive  
21 communication;

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- 1           (15)   Fill in or complete any blank on a final residential  
2           mortgage loan application that requests material  
3           information including financial information without  
4           adequate supporting documentation provided by the  
5           borrower;
- 6           (16)   Fill in or complete any blank on any mortgage or note  
7           evidencing or securing the residential mortgage loan  
8           which relates to the amount, interest rate, term, or  
9           monthly payment of the residential mortgage loan;
- 10          (17)   Originate a residential mortgage loan based primarily  
11          on the current market value of the borrower's  
12          collateral rather than on the borrower's ability to  
13          repay the loan according to its terms; provided that  
14          the sale of the property is made to a bona fide buyer;  
15          and provided further that this paragraph shall not  
16          apply to a reverse mortgage as defined under [title]  
17          12 [~~Code of Federal Regulations~~] C.F.R. section  
18          [~~226.33,~~] 1026.33;
- 19          (18)   Advertise terms of a residential mortgage loan in  
20          violation of [~~section 226.16~~] 12 C.F.R. section  
21          1026.16 or [~~226.24 of Regulation Z of the Board of~~  
22          ~~Governors of the Federal Reserve System,~~] 1026.24; or



1           (19) Encourage a borrower to misrepresent, inflate, or  
2                    fabricate the source or amount of a borrower's actual  
3                    income or assets in the application or underwriting  
4                    process for a residential mortgage loan."

5           SECTION 15. Section 454F-22, Hawaii Revised Statutes, is  
6 amended to read as follows:

7           "§454F-22 Mortgage loan originator, mortgage loan  
8 originator company, exempt sponsoring mortgage loan originator  
9 company, and nonprofit [~~organizations, and mortgage service~~  
10 ~~company~~] organization fees. (a) Except as provided in  
11 subsection (b), a mortgage loan originator shall pay the  
12 following fees to obtain and maintain a valid mortgage loan  
13 originator license:

- 14           (1) Initial application fee of \$600;  
15           (2) Annual license renewal fee of \$350;  
16           (3) Reinstatement fee of \$100;  
17           (4) Late fee of \$25 per day; and  
18           (5) Criminal background check fee of \$35, or of an amount  
19                    determined by the commissioner by rule pursuant to  
20                    chapter 91.

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1           (b) A sole proprietorship mortgage loan originator shall  
2 pay the following fees to obtain and maintain a valid sole  
3 proprietor mortgage loan originator license:

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

11           (c) A mortgage loan originator company shall pay the  
12 following fees to maintain a valid mortgage loan originator  
13 company license or branch license:

- 14           (1) Fees payable for a principal office of a mortgage loan  
15           originator company:
  - 16           (A) Initial application fee of \$900;
  - 17           (B) Processing fee of \$35 for each control person;
  - 18           (C) Annual license renewal fee of \$600;
  - 19           (D) Reinstatement fee of \$100;
  - 20           (E) Late fee of \$25 per day; and
  - 21           (F) Criminal background check fee of \$35, or of an  
22           amount determined by the commissioner by rule

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1                   pursuant to chapter 91, for each control person,  
2                   executive officer, director, general partner, and  
3                   manager; and

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

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

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

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

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

10           (d) An exempt sponsoring mortgage loan originator company  
11 shall pay the following fees to maintain a valid registration in  
12 NMLS:

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

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

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

16           (e) A nonprofit organization shall pay the following fees  
17 to maintain a valid registration as a nonprofit organization in  
18 NMLS:

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

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

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

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1       ~~[(f)] A mortgage servicer company shall pay for a principal~~  
2 ~~office the following fees to maintain a valid mortgage loan~~  
3 ~~servicer loan modification license:~~

- 4       ~~(1) Initial application fee of \$600;~~
- 5       ~~(2) Annual license renewal fee of \$600;~~
- 6       ~~(3) Reinstatement fee of \$100;~~
- 7       ~~(4) Late fee of \$25 per day; and~~
- 8       ~~(5) Criminal background check fee of \$35, or of an amount~~  
9       ~~determined by the commissioner by rule pursuant to~~  
10       ~~chapter 91, for each control person, executive~~  
11       ~~officer, director, general partner, and managing~~  
12       ~~member.~~

13       ~~(g)]~~ (f) In addition to fees charged by NMLS, a licensee  
14 shall pay to the commissioner a fee of \$100 for each of the  
15 following amendments to information provided to NMLS that  
16 require the review of the commissioner:

- 17       (1) Change of physical location or mailing address for  
18       branch office or principal place of business;
- 19       (2) Addition or deletion of a "d/b/a" assignment;
- 20       (3) Change of mortgage loan originator's sponsor;
- 21       (4) Change of qualified individual;
- 22       (5) Change of branch manager; and

1           (6) Change of mortgage loan originator company's legal  
2           name.

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

5           ~~[-(h)-]~~ (g) The fees established by this section are  
6 nonrefundable and are in addition to any fees established and  
7 charged by NMLS, an approved educational course provider, an  
8 approved educational testing provider, a law enforcement agency  
9 for fingerprints and background checks, or a credit reporting  
10 agency used by NMLS.

11           ~~[-(i)-]~~ (h) The commissioner may establish, by rule pursuant  
12 to chapter 91, any other fees or charges necessary for the  
13 administration of this chapter."

14           SECTION 16. Section 454F-24, Hawaii Revised Statutes, is  
15 amended to read as follows:

16           "§454F-24 ~~[Mortgage servicer companies,]~~ Limited exemption  
17 for mortgage loan originators ~~[-]~~ employed by mortgage servicers.

18 An employee who performs mortgage loan originator activities for  
19 a mortgage servicer ~~[company]~~ is exempt from registration and  
20 licensure as a mortgage loan originator~~[-]~~, provided that:

- 1           (1) The employee's actions are part of the employee's  
2           duties as an employee of the mortgage servicer  
3           ~~[company]~~; and
- 4           (2) The ~~[employee provides]~~ employee's mortgage loan  
5           originator services ~~[only with respect]~~ are limited to  
6           [a] residential mortgage loan [modification,]  
7           modifications and processing the approval of loan  
8           assumptions."

9           SECTION 17. Section 454F-41, Hawaii Revised Statutes, is  
10          amended by amending subsections (b) and (c) to read as follows:

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

- 15           (1) The sum of \$300 for each principal office location of  
16           a mortgage loan originator company ~~[or mortgage~~  
17           ~~servicer 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 NMLS, a mortgage loan  
2 recovery fund fee as follows for deposit in the mortgage loan  
3 recovery fund:

4 (1) The sum of \$200 for each principal office location of  
5 a mortgage loan originator company [~~or a mortgage~~  
6 ~~servicer company~~];

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

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

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

13 SECTION 18. Section 454M-1, Hawaii Revised Statutes, is  
14 amended as follows:

15 (1) By adding two new definitions to be appropriately  
16 inserted and to read as follows:

17 "Dwelling" means a residential structure or mobile home  
18 which contains one to four family housing units, or individual  
19 units of condominiums or cooperatives.

20 "Residential real estate" means any real property located  
21 in this State, upon which a dwelling is constructed or intended  
22 to be constructed."

1           (2) By amending the definitions of "borrower", "loan  
2 modification", "person", and "residential mortgage loan" to read  
3 as follows:

4           ""Borrower" means the obligor, maker, cosigner, or  
5 guarantor under a mortgage loan agreement. For purposes of this  
6 chapter, a borrower [~~may also be referred to as a~~] is included  
7 in the term consumer.

8           "~~Loan~~ Residential loan modification" or "loan  
9 modification" means a temporary or permanent change to the terms  
10 of a borrower's existing residential mortgage loan agreement,  
11 mutually agreed to between a borrower and a lender.

12           "Person" means an individual, sole proprietorship,  
13 partnership, corporation, limited liability company, limited  
14 liability partnership, or other association[~~, or other~~  
15 ~~organization.~~] of individuals, however organized.

16           "Residential mortgage loan" or "mortgage loan" means [a  
17 ~~mortgage loan, home equity loan, or reverse mortgage~~] any  
18 loan[~~r~~] primarily for personal, family, or household use that is  
19 secured by a [~~first or subordinate lien on residential real~~  
20 ~~property located in Hawaii, including a refinancing of any~~  
21 ~~secured loan on residential real property located in Hawaii,~~  
22 ~~upon which.~~



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1       ~~(1) There is or will be constructed a structure or~~  
2           ~~structures designed principally for occupancy by one~~  
3           ~~to four families, including individual units of~~  
4           ~~condominiums and cooperatives; or~~

5       ~~(2) A manufactured home is located or will be placed on~~  
6       ~~the real property, using proceeds of the loan.] mortgage, deed~~  
7       ~~of trust, or other consensual security interest on a dwelling or~~  
8       ~~residential estate upon which is constructed or intended to be~~  
9       ~~constructed a dwelling, and includes refinancings, reverse~~  
10       ~~mortgages, home equity lines of credit, and other first and~~  
11       ~~additional lien loans that meet the qualifications listed in~~  
12       ~~this definition."~~

13       SECTION 19. Section 454M-2, Hawaii Revised Statutes, is  
14       amended to read as follows:

15       "**§454M-2 License required.** (a) No person except those  
16       exempted under this chapter shall engage in the business of  
17       mortgage servicing without a license as provided in this  
18       chapter.

19       (b) No person shall engage in the business of mortgage  
20       servicing in this State unless the person providing services has  
21       a physical presence in the State pursuant to section 454M-  
22       5(b)(6).

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1       ~~[(c) No person licensed as a mortgage servicer shall~~  
2 ~~provide mortgage loan modifications or any other services that~~  
3 ~~would require licensing pursuant to chapter 454F without first~~  
4 ~~complying with the licensure requirements under chapter 454F.]"~~

5       SECTION 20. Section 454M-4, Hawaii Revised Statutes, is  
6 amended as follows:

7       (1) By amending subsection (a) to read as follows:

8       "(a) The commissioner may approve a license or license  
9 renewal application upon receipt of a complete application;  
10 provided that an applicant for licensure shall file an  
11 application on a form prescribed by NMLS or by the commissioner  
12 and shall pay an application fee of \$675. Each license shall  
13 expire on December 31 of each calendar year unless the license is  
14 renewed. A licensee may apply for license renewal by filing a  
15 renewal statement on a form prescribed by NMLS or by the  
16 commissioner and paying a renewal fee of [~~\$425,~~ \$600, at least  
17 four weeks prior to December 31. The minimum standards for  
18 license renewal shall include the following:

19       (1) The licensee continues to meet the minimum standards  
20       for licensure established pursuant to this section;

21       (2) The licensee has paid all required fees for renewal of  
22       the license; and

1       (3) The licensee is registered with the business  
2           registration division of the department of commerce  
3           and consumer affairs.

4 All fees paid pursuant to this section, including fees paid in  
5 connection with an application, shall be nonrefundable. No fee  
6 paid pursuant to this section shall be prorated if the license  
7 is surrendered, revoked, or suspended prior to the expiration of  
8 the period for which it was approved."

9       (2) By amending subsection (g) to read as follows:

10       "(g) A mortgage servicer licensee may change the  
11 licensee's name or the address of any of the licensee's offices  
12 specified on the most recent filing with NMLS if:

13       (1) The licensee files the change with NMLS and, in the  
14 case of the principal office or a branch office,  
15 provides directly to the commissioner a bond rider or  
16 endorsement, or addendum, as applicable, to any bond on  
17 file with the commissioner that reflects the new name  
18 or address of the principal office or branch office;  
19       [and]

20       (2) The commissioner approves the change in writing[-]; and

21       (3) The mortgage servicer pays to the commissioner a fee  
22       of \$100, and any fees charged by NMLS."

1 (3) By amending subsection (j) to read as follows:

2 "(j) Before a mortgage servicer's license becomes  
3 effective, the applicant or licensee shall file with the  
4 commissioner a surety bond written by a surety authorized to  
5 write surety bonds in this State, covering the applicant or  
6 ~~[licensee's principal office and any branch office from which the~~  
7 ~~applicant or licensee acts as a mortgage servicer,~~] licensee in  
8 a penal sum of \$100,000. No mortgage servicer licensee shall act  
9 as a mortgage servicer in this State without maintaining the  
10 surety bond required by this section.

11 The surety bond shall be:

12 (1) In a form approved by the attorney general of this  
13 State; and

14 (2) Conditioned upon the mortgage servicer  
15 licensee faithfully performing any and all written  
16 agreements or commitments with or for the benefit of  
17 borrowers and mortgagees, truly and faithfully  
18 accounting for all funds received from a borrower  
19 or mortgagee in the person's capacity as a mortgage  
20 servicer, and conducting the mortgage business  
21 consistent with the provisions of this chapter to perform  
22 any written agreements or commitments."

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1 SECTION 21. Section 454M-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (m) to read as follows:

3 "(m) Where this chapter requires [~~compliance~~] a person to  
4 comply with procedures, actions, standards, disclosures,  
5 notices, format, content, or other requirements of the Real  
6 Estate Settlement Procedures Act, the required compliance  
7 applies to any person subject to this chapter, whether or not  
8 the Real Estate Settlement Procedures Act applies to that person  
9 or transaction."

10 SECTION 22. Section 454M-6, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) It shall be a violation of this chapter for any  
13 mortgage servicer in the course of any mortgage loan transaction  
14 to fail to comply with any:

15 (1) Applicable federal law or regulation related to  
16 mortgage servicing, including but not limited to:

17 (A) The Real Estate Settlement Procedures Act,  
18 including the mortgage loan servicing transfer,  
19 escrow account administration, and borrower  
20 request for information and error resolution  
21 requirements;

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- 1 (B) The Truth in Lending Act, title 15 United States  
2 Code sections 1601 through 1667f, as amended, and  
3 Regulation Z adopted thereunder, [~~title~~] 12  
4 C.F.R. part [~~2267~~] 1026, as amended; or
- 5 (C) Rules and regulations issued or administered by  
6 the Consumer Financial Protection Bureau, and  
7 interpretations of the rules by the Consumer  
8 Financial Protection Bureau through interpretive  
9 rules, bulletins, statements of policy, and  
10 statements of guidance;
- 11 (2) Agreement with a governmental entity, agency, agent,  
12 or regulator, or state attorney general that applies  
13 to the mortgage servicer, including:
- 14 (A) A servicer participation agreement or other  
15 agreement to participate in the Home Affordable  
16 Modification Program or other Making Home  
17 Affordable program;
- 18 (B) Home Affordable Modification Program rules,  
19 including guidance provided by Making Home  
20 Affordable program handbooks, and supplemental  
21 directives; or

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1           (C) The National Mortgage Settlement reached in 2012  
2           by the federal government and forty-nine states,  
3           with the five largest mortgage servicers in the  
4           United States, to address mortgage servicing,  
5           foreclosure, and bankruptcy abuses;

6           (3) Order of a court or government regulator that applies  
7           to the mortgage servicer;

8           (4) Provision of this chapter or any rule adopted pursuant  
9           to this chapter; or

10          (5) Federal or state law, rule, or regulation."

11          SECTION 23. Section 454M-8.5, Hawaii Revised Statutes, is  
12          amended by amending subsection (c) to read as follows:

13          "(c) Each licensee or person subject to this chapter shall  
14          provide to the commissioner upon request the books and records  
15          relating to the operations of the licensee or person subject to  
16          this chapter. The commissioner shall have access to the books  
17          and records and shall be permitted to interview the officers,  
18          principals, mortgage loan originators, employees, independent  
19          contractors, agents, and customers of the [~~licensed mortgage~~  
20          ~~loan originator~~] licensee or person subject to this chapter  
21          concerning their business."

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1 SECTION 24. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 25. This Act, upon its approval, shall take effect  
4 on July 1, 2016.

5

6

INTRODUCED BY: \_\_\_\_\_



BY REQUEST

7

JAN 25 2016



# H.B. NO. 2321

**Report Title:**

Mortgage Loan Originators; Mortgage Servicers; Division of Financial Institutions; Chapter 454F; Chapter 454M; Secure and Fair Enforcement for Mortgage Licensing Act

**Description:**

Clarifies chapter 454F, Hawaii Revised Statutes, requirements for mortgage loan originators, and chapter 454M, requirements for mortgage servicers. Amends various definitions, including the definition of "residential mortgage loan". Moves mortgage servicer provisions that appear in chapter 454F, to chapter 454M, including a fee for a name or address change, that will apply to all mortgage servicers. Abolishes the mortgage loan servicer loan modification license under chapter 454F. Updates references to federal regulations.

*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 INDUSTRY REGULATION.

PURPOSE: To add clarity and consistency to various existing provisions of the mortgage loan origination law, and the mortgage servicers law, chapters 454F and 454M of the Hawaii Revised Statutes, respectively; to update references to federal regulations and more closely track a federal regulatory definition of "residential mortgage loan"; to move mortgage servicer provisions that appear in chapter 454F, to chapter 454M; and to abolish the mortgage loan servicer loan modification ("MLSLM") license under chapter 454F, by:

### Chapter 454F:

- (1) Amending § 454F-1 to add definitions of "C.F.R.", "Consumer Financial Protection Bureau", "dwelling", and "mortgage servicer"; to amend definitions of "borrower", "federal banking agencies", "licensee", "residential mortgage loan", and "residential mortgage loan modification"; and to repeal the definition of "mortgage servicer company". These changes will add clarity to the chapter, and consistency to terms common to chapters 454F and 454M, and compliance will be enhanced by more closely tracking a federal regulatory definition of "residential mortgage loan";
- (2) Amending § 454F-1.5(a) to add exempt registered mortgage loan originators to those required to register with NMLS, because registration is necessary for

tracking purposes; and to delete the requirement that mortgage servicers register with NMLS, because the commissioner may already require registration under chapter 454M;

- (3) Amending §§ 454F-1.5, 454F-1.6, 454F-2(9), 454F-8(c) and (d), 454F-10, 454F-14(f), 454F-22(f), and 454F-41(b) and (c) to delete references to, and requirements of, a mortgage servicer company, because this measure moves mortgage servicer requirements to chapter 454M;
- (4) Amending §§ 454F-2(10), and 454F-17(17) and (18) to streamline or update references to federal regulations;
- (5) Amending § 454F-5(a) to clarify the persons who must meet background qualifications before an applicant may be issued a license under the chapter;
- (6) Amending §§ 454F-6(a), 454F-7, and 454F-9(a) to clarify that state law education and testing requirements for licensure and renewal refer to the law of this State;
- (7) Amending § 454F-17(4) to clarify that a fee cannot be earned for unsuccessful efforts to obtain a residential mortgage loan for a borrower or loan applicant;
- (8) Amending § 454F-24 to clarify that a mortgage loan originator license is not required for certain employees of mortgage servicers, if the employee's mortgage loan originator services are limited to residential mortgage loan modifications and processing the approval of loan assumptions;

- (9) Amending § 454F-41(b) and (c) to remove the requirement that mortgage servicers pay into the mortgage loan recovery fund if they are licensed to perform loan modifications under chapter 454M. This is because this measure does not require chapter 454F licensing for loan modifications, and it migrates mortgage servicer requirements to chapter 454M, under which a mortgage servicer licensee may provide loan modification services.

Chapter 454M:

- (10) Amending § 454M-1 to add consistency to the definitions in chapters 454M and 454F, by: adding definitions of "dwelling", and "residential real property"; and amending definitions of "borrower", "loan modification", "person", and "residential mortgage loan". These changes will add clarity to the chapter, and consistency to terms common to chapters 454F and 454M, and compliance will be enhanced by more closely tracking a federal regulatory definition of "residential mortgage loan";
- (11) Deleting § 454M-2(c) to remove the requirement that a mortgage servicer hold a license under chapter 454F in order to perform loan modifications, as mortgage servicers commonly provide loan modifications and this measure would allow mortgage servicer licensees to provide loan modifications;
- (12) Amending § 454M-4(a) to change the mortgage servicer annual renewal fee from \$425 to \$600, because a mortgage servicer performing loan modifications will no longer need a license under chapter 454F; and to insert license

- renewal standards, which are currently in § 454F-8(a), as part of the migration of mortgage servicer requirements from chapter 454F to chapter 454M;
- (13) Amending § 454M-4(g) to add a \$100 fee for a change of name or address of a mortgage servicer licensee. For many mortgage servicers, this is not a new fee because they pay name and address change fees of the same amount under chapter 454F, if they hold a mortgage loan servicer loan modification ("MLSLM") license. Because this proposal would allow licensed mortgage servicers to perform loan modifications without an MLSLM license under chapter 454F, this provision is needed for DFI to recoup staff time for such changes requested by mortgage servicers - the time involved is similar whether the request is from an MLSLM or a mortgage servicer;
- (14) Amending § 454M-4(j) to change the language of who must be covered by the mortgage servicer surety bond, so as to avoid ambiguity;
- (15) Amending § 454M-5(m) to add language clarifying required compliance with the Real Estate Settlement Procedures Act, to enhance compliance with this chapter;
- (16) Amending § 454M-6(b) to update a reference to federal regulations; and
- (17) Amending § 454M-8.5(c) to clarify that the commissioner shall have access to books, records, and various personnel of the mortgage servicer, rather than of the mortgage loan originator, as the

latter industry is covered by chapter 454F.

## MEANS:

Amend sections 454F-1, 454F-1.5(a), 454F-1.6, 454F-2, 454F-3(a), 454F-5(a), 454F-6(a), 454F-7(b), 454F-8(c) and (d), 454F-9(a), 454F-10, 454F-14(f), 454F-17, 454F-22(f), (g), (h), and (i), 454F-24, 454F-41(b) and (c), 454M-1, 454M-2(c), 454M-4(a), (g) and (j), 454M-5(m), 454M-6(b), and 454M-8.5(c), Hawaii Revised Statutes.

## JUSTIFICATION:

The mortgage loan originator and mortgage servicer industries and laws overlap to a degree. Currently, some terms are used in both chapters 454F and 454M, but have different definitions causing confusion for licensees. Some laws that apply to mortgage servicers appear in the mortgage loan originator chapter. This measure will add clarity and consistency to the two chapters, and make them easier to understand, by amending definitions, consolidating mortgage servicer provisions into chapter 454M, and allowing licensed mortgage servicers to perform loan modifications under chapter 454M, without also needing a special MLSLM license under chapter 454F.

Impact on the public: None.

Impact on the department and other agencies:

This measure would enhance the execution of licensing, examination, and enforcement responsibilities by the division of financial institutions ("DFI"). DFI licensing workload and inquiries would be reduced and resources would be redirected to other mortgage industry matters by abolishing the requirement that a mortgage servicer licensed under chapter 454M also hold an MLSLM license under chapter 454F in order to make loan modifications. Licensing revenue from chapters 454F and 454M would remain virtually unchanged because lost MLSLM license fees would be offset by the increased mortgage servicer license renewal

fee. Similarly, as most mortgage servicers also hold an MLSLM license, the increased mortgage servicer licensing renewal fee would be offset by savings from the abolished MLSLM license requirement. A fee for a mortgage servicer name or address change will only minimally increase DFI's licensing revenues since many mortgage servicers are already subject to the same fees under chapter 454F, because they hold an MLSLM license. As well, mortgage servicers do not tend to change their names or addresses with any frequency.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-104.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: July 1, 2016.