
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 Act is to make various
2 amendments to the mortgage loan originators law, chapter 454F,
3 Hawaii Revised Statutes, and the mortgage servicers law, chapter
4 454M, Hawaii Revised Statutes. This measure clarifies the scope
5 of activities subject to each of the two chapters, which
6 regulate related industries, including by moving mortgage
7 servicer provisions that currently appear in chapter 454F to
8 chapter 454M and deleting provisions and references relating to
9 servicer companies currently in chapter 454F as this class of
10 licenses are regulated entirely under chapter 454M. This
11 measure also makes the terminology used in each chapter
12 consistent with the other and updates references to controlling
13 federal laws.

14 SECTION 2. Chapter 454M, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:



1 "§454M- Confidentiality. (a) Except as otherwise
2 provided in Public Law 110-289, section 1512, the requirements
3 under any federal or state law regarding the privacy or
4 confidentiality of any information or material provided to NMLS,
5 and any privilege arising under federal or state law, including
6 the rules of any federal or state court, with respect to the
7 information or material shall continue to apply to the
8 information or material after the information or material has
9 been disclosed to NMLS. The information and material may be
10 shared with all state and federal regulatory officials with
11 mortgage industry oversight authority without the loss of
12 privilege or the loss of confidentiality protections provided by
13 federal or state law.

14 (b) For these purposes, the commissioner is authorized to
15 enter into agreements or sharing arrangements with other
16 governmental agencies, the Conference of State Bank Supervisors,
17 the American Association of Residential Mortgage Regulators, or
18 other associations representing governmental agencies as
19 established by rule or order of the commissioner.

20 (c) Information or material that is subject to a privilege
21 or confidentiality under subsection (a) shall not be subject to:



1 (1) Disclosure under any federal or state law governing
2 the disclosure to the public of information held by an
3 officer or an agency of the federal government or a
4 state; or

5 (2) Subpoena or discovery, or admission into evidence, in
6 any private civil action or administrative process,
7 unless with respect to any privilege held by NMLS
8 applicable to the information or material; provided
9 that the person to whom the information or material
10 pertains waives, in whole or in part, in the
11 discretion of such person, that privilege.

12 (d) Notwithstanding chapter 92F, the examination process
13 and related information and documents, including the reports of
14 examination, are confidential and are not subject to discovery
15 or disclosure in civil or criminal lawsuits.

16 (e) Notwithstanding any law to the contrary, the
17 disclosure of confidential supervisory information or any
18 information or material described in subsection (a) that is
19 inconsistent with subsection (a) shall be superseded by the
20 requirements of this section.



1 (f) This section shall not apply to information or
2 material relating to the employment history of, and publicly
3 adjudicated disciplinary and enforcement actions against,
4 mortgage loan originators, mortgage loan originator companies,
5 and mortgage servicers that are included in NMLS for access by
6 the public."

7 SECTION 3. Section 454F-1, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding four new definitions to be appropriately
10 inserted and to read:

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

12 "Consumer Financial Protection Bureau" means the Bureau of
13 Consumer Financial Protection established under title 12 United
14 States Code chapter 53, subchapter V.

15 "Dwelling" means a residential structure or mobile home
16 that contains one to four family housing units or individual
17 units of condominiums or cooperatives.

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



1 2. By amending the definitions of "borrower", "federal
2 banking agencies", "licensee", "residential mortgage loan", and
3 "residential mortgage loan modification" to read:

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

12 "Federal banking agencies" means the Board of Governors of
13 the Federal Reserve System, the Comptroller of the Currency,
14 ~~[the Office of Thrift Supervision,]~~ the National Credit Union
15 Administration, and the Federal Deposit Insurance Corporation.

16 "Licensee" means ~~[a mortgage loan originator, a mortgage~~
17 ~~loan originator company, a mortgage servicer company, unless~~
18 ~~exempt under chapter 454M, or]~~ a person who is licensed or
19 required to be licensed under this chapter. Licensee does not
20 include an exempt registered mortgage loan originator, exempt



1 sponsoring mortgage loan originator company, or nonprofit
2 organization as defined by this section.

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

14 "Residential [~~mortgage~~] loan modification" or "loan
15 modification" means [+

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



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 deleting 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 4. 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 5. Section 454F-1.6, Hawaii Revised Statutes, is
21 amended to read as follows:



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~~].

10 SECTION 6. 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[~~r~~], except as otherwise provided by
18 this chapter;
- 19 (2) A licensed attorney who negotiates the terms of a
20 residential mortgage loan on behalf of a client as an
21 ancillary matter to the attorney's representation of



1 the client unless the attorney is compensated by a
2 lender, a mortgage loan originator company, or other
3 mortgage loan originator or by an agent of a lender,
4 mortgage loan originator company, or other mortgage
5 loan originator;

6 (3) A person or entity that only performs real estate
7 brokerage activities and is licensed or registered by
8 the State unless the person or entity is compensated
9 by a lender, a mortgage loan originator company, or
10 other mortgage loan originator or by an agent of the
11 lender, mortgage loan originator company, or other
12 mortgage loan originator;

13 (4) A person or entity solely involved in extensions of
14 credit relating to timeshare plans, as the term is
15 defined in title 11 United States Code section
16 101(53D);

17 (5) An exempt sponsoring mortgage loan originator company
18 as defined by this chapter except as otherwise
19 provided by this chapter;

20 (6) An insured depository institution;



- 1 (7) An institution regulated by the Farm Credit
2 Administration;
- 3 (8) Employees of government agencies or of housing finance
4 agencies who act as mortgage loan originators; or
5 ~~[-(9) A mortgage servicer company that is exempt from
6 chapter 454M, pursuant to section 454M 3; or~~
7 ~~-(10)]~~ (9) A seller of real property who offers or
8 negotiates terms of a residential mortgage loan that
9 is financed by the seller and secured by the seller's
10 own real property; provided that:
- 11 (A) The seller is a person, estate, or trust that
12 transacts three or fewer residential mortgage
13 loans in one calendar year;
- 14 (B) The seller is not a loan originator for purposes
15 of the loan originator qualification requirements
16 in 12 ~~[Code of Federal Regulations]~~ C.F.R.
17 section 1026.36(f) and (g);
- 18 (C) The seller has not constructed or acted as the
19 construction contractor for the residence on the
20 property in the ordinary course of the seller's
21 business;



- 1 (D) The interest rate for the loan does not exceed
2 the State's usury limit; provided that the
3 exemptions from usury specified in section 478-8
4 shall not apply to transactions subject to this
5 paragraph;
- 6 (E) The seller shall provide to the buyer the terms
7 of the financing including:
- 8 (i) A current title search including any liens
9 against the property;
 - 10 (ii) The interest rate;
 - 11 (iii) Monthly principal and interest payments;
 - 12 (iv) Any prepayment penalty;
 - 13 (v) Any late payment charges;
 - 14 (vi) The payment schedule;
 - 15 (vii) The total amount of interest that the
16 mortgagor will pay over the term of the loan
17 expressed as a percentage of the loan
18 amount;
 - 19 (viii) A calculation of projected aggregate monthly
20 payments including principal and interest;



- 1 (ix) Estimated closing costs if closing costs are
- 2 included in loan costs and estimated cash to
- 3 close if closing costs are not included in
- 4 loan costs. For purposes of this paragraph,
- 5 closing costs shall include recording fees,
- 6 transfer taxes, prepaid costs such as
- 7 homeowner's insurance premiums or property
- 8 taxes, and appraisal costs charged to the
- 9 mortgagor;

- 10 (x) The seller's contact information including
- 11 name, address, phone number, electronic mail
- 12 address, and alternate contact information
- 13 to the extent available; and

- 14 (xi) A statement that the seller will acquire a
- 15 security interest in the buyer's dwelling
- 16 and that the buyer may lose the dwelling in
- 17 the event of a loan default;

- 18 (F) The seller shall provide a disclaimer, to be
- 19 initialed by the buyer, which states, "BUYER
- 20 ACKNOWLEDGES RECEIVING FINANCING FROM THE SELLER
- 21 IN THIS TRANSACTION AND GRANTING THE SELLER A



1 MORTGAGE. THIS CAN HAVE SERIOUS CONSEQUENCES
 2 SHOULD BUYER FAIL TO MAKE ANY PAYMENTS INCLUDING
 3 BUT NOT LIMITED TO FORECLOSURE AND THE LOSS OF
 4 BUYER'S PROPERTY. THEREFORE, IT IS IMPORTANT
 5 THAT BUYER UNDERSTANDS ALL FINANCING TERMS AND
 6 OBLIGATIONS AND OBTAINS PROFESSIONAL EXPERT
 7 ADVICE TO THE EXTENT NECESSARY TO ENSURE BUYER IS
 8 FULLY ADVISED IN THIS MATTER."; and

9 (G) A residential mortgage loan shall be recorded
 10 with the land court or bureau of conveyances as
 11 applicable."

12 SECTION 7. Section 454F-3, Hawaii Revised Statutes, is
 13 amended by amending subsection (a) to read as follows:

14 "(a) Effective January 1, 2011, or such later date
 15 approved by the United States Department of Housing and Urban
 16 Development pursuant to the authority granted under Public Law
 17 110-289, section 1508(e), title 12 United States Code section
 18 5107(e), a person, unless specifically exempted from this
 19 chapter, shall not engage in the business of a mortgage loan
 20 originator or mortgage loan originator company with respect to
 21 any dwelling located in this State without first obtaining and



1 maintaining annually, a license under this chapter. Each
2 licensed mortgage loan originator~~[7]~~ or mortgage loan originator
3 company ~~[, or mortgage servicer company]~~ shall register with and
4 maintain a valid unique identifier issued by NMLS and shall
5 submit to NMLS any reports that shall be in a form and contain
6 information as NMLS may require."

7 SECTION 8. Section 454F-5, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) The commissioner shall not issue a license pursuant
10 to this chapter unless the commissioner makes at a minimum the
11 following findings:

12 (1) The applicant, ~~[if]~~ or in the case of an applicant
13 that is not an individual, each of the applicant's
14 control persons, executive officers, directors,
15 general partners, and managing members, has never had
16 a mortgage loan originator or a mortgage loan
17 originator company license revoked in any
18 jurisdiction; provided that a subsequent formal
19 vacation of a revocation shall not be deemed a
20 revocation;



1 (2) The applicant, [~~if~~] or in the case of an applicant
2 that is not an individual, each of the applicant's
3 control persons, executive officers, directors,
4 general partners, and managing members, has not been
5 convicted of, or pled guilty or nolo contendere, or
6 been granted a deferred acceptance of a guilty plea
7 under federal law or under chapter 853 to a felony in
8 a domestic, foreign, or military court:

9 (A) During the seven-year period preceding the date
10 of the application for licensing and
11 registration; or

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

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

17 (3) The applicant, [~~if~~] or in the case of an applicant
18 that is not an individual, each of the applicant's
19 control persons, executive officers, directors,
20 general partners, and managing members, has
21 demonstrated financial responsibility, character, and



1 general fitness to command the confidence of the
2 community and to warrant a determination that the
3 applicant shall operate honestly, fairly, and
4 efficiently pursuant to this chapter. For purposes of
5 this paragraph, a person is not financially
6 responsible when the person has shown a disregard in
7 the management of the person's financial condition. A
8 determination that a person has shown a disregard in
9 the management of the person's financial condition may
10 be based on:

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

13 (B) Current outstanding tax liens or other government
14 liens and filings;

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

16 (D) A pattern of seriously delinquent accounts within
17 the past three years;

18 (4) The applicant, [~~if~~] or in the case of an applicant
19 that is not an individual, each of the applicant's
20 control persons, executive officers, directors,
21 general partners, and managing members, has not been



1 convicted of, plead guilty or nolo contendere to, or
2 been granted a deferred acceptance of a guilty plea
3 under federal law or chapter 853 to any misdemeanor
4 involving an act of fraud, dishonesty, breach of
5 trust, or money laundering;

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

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

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



1 SECTION 9. Section 454F-6, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

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

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

9 (2) Three hours of ethics, ~~[that]~~ which shall include
10 instruction on fraud, consumer protection, and fair
11 lending issues; and

12 (3) Two hours of training related to lending standards for
13 the nontraditional mortgage product marketplace.

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

19 SECTION 10. Section 454F-7, Hawaii Revised Statutes, is
20 amended by amending subsection (b) to read as follows:



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

- 5 (1) Ethics;
- 6 (2) Federal law and regulations pertaining to mortgage
7 origination;
- 8 (3) [~~State~~] The State's law and rules pertaining to
9 mortgage origination; and
- 10 (4) Federal and [~~state~~] the State's law, rules, and
11 regulations, including instruction on fraud, consumer
12 protection, the nontraditional mortgage marketplace,
13 and fair lending issues."

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

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

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



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

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

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

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

11 (2) The mortgage loan originator company's qualified
12 individual and every branch manager have satisfied the
13 minimum standards for license renewal;

14 (3) The mortgage loan originator company has paid all
15 required fees for renewal of the license; and

16 (4) The mortgage loan originator company is registered
17 with the business registration division of the
18 department of commerce and consumer affairs.

19 ~~[(c) The minimum standards for license renewal for a~~
20 ~~mortgage servicer company shall include the following:~~



- 1 ~~(1) The mortgage servicer company continues to meet the~~
2 ~~minimum standards for licensure established pursuant~~
3 ~~to section 454F-5;~~
- 4 ~~(2) The mortgage servicer company has paid all required~~
5 ~~fees for renewal of the license; and~~
- 6 ~~(3) The mortgage servicer company is registered with the~~
7 ~~business registration division of the department of~~
8 ~~commerce and consumer affairs.~~
- 9 ~~(d)]~~ (c) The license of a mortgage loan originator~~[7]~~ or
10 mortgage loan originator company~~[, or mortgage servicer company]~~
11 that fails to satisfy the minimum standards for license renewal
12 shall expire. The commissioner may adopt procedures for the
13 reinstatement of expired licenses consistent with section
14 454F-8.5 and the standards established by NMLS."

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

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

- 20 (1) Three hours of federal law and regulations;
21 (2) One hour of ~~[state]~~ the State's law and rules;



- 1 (3) Two hours of ethics that shall include instruction on
2 fraud, consumer protection, and fair lending issues;
3 and
- 4 (4) Two hours of training related to lending standards for
5 the nontraditional mortgage product marketplace."
- 6 SECTION 13. Section 454F-10, Hawaii Revised Statutes, is
7 amended to read as follows:
- 8 "**§454F-10 Authority to require license.** In addition to
9 any other duties imposed upon the commissioner, the commissioner
10 shall require mortgage loan originators~~[7]~~ and mortgage loan
11 originator companies~~[7, and mortgage servicer companies]~~ to be
12 licensed and registered through NMLS. The commissioner is
13 authorized to participate in NMLS. The commissioner may
14 establish by rule pursuant to chapter 91, requirements for
15 mortgage loan originators~~[7]~~ and mortgage loan originator
16 companies, ~~[and mortgage servicer companies,7]~~ including:
- 17 (1) Background checks of:
- 18 (A) Criminal history through fingerprint or other
19 databases;
- 20 (B) Civil or administrative records;
- 21 (C) Credit history; and



- 1 (D) Any other source deemed necessary by NMLS;
- 2 (2) Fees to apply for or renew licenses through NMLS;
- 3 (3) The setting or resetting as necessary of license
- 4 renewal and reporting dates;
- 5 (4) Requirements for amending or surrendering a license;
- 6 and
- 7 (5) Any other activity the commissioner deems necessary to
- 8 participate in NMLS."

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

11 "(f) This section shall not apply to information or
 12 material relating to the employment history of, and publicly
 13 adjudicated disciplinary and enforcement actions against,
 14 mortgage loan originators[~~7~~] and mortgage loan originator
 15 companies [~~7~~ and mortgage servicer companies] that are included
 16 in NMLS for access by the public."

17 SECTION 15. Section 454F-17, Hawaii Revised Statutes, is
 18 amended to read as follows:

19 "**§454F-17 Prohibited practices.** It shall be a violation
 20 of this chapter for a licensee or person subject to this chapter
 21 to:



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



- 1 chapter, or assist or aid and abet any person in the
2 conduct of business under this chapter without a valid
3 license as required under this chapter;
- 4 (7) Fail to make disclosures as required by this chapter
5 and any other applicable state or federal law
6 including rules or regulations adopted pursuant to
7 state or federal law;
- 8 (8) Fail to comply with this chapter or any order or rule
9 issued or adopted under the authority of this chapter,
10 or fail to comply with any other state or federal law,
11 including the rules and regulations adopted pursuant
12 to state or federal law applicable to any business
13 authorized or conducted pursuant to this chapter;
- 14 (9) Make, in any manner, any false or deceptive statement
15 or representation, including with regard to the rates,
16 points, or other financing terms or conditions for a
17 residential mortgage loan, or engage in bait and
18 switch advertising;
- 19 (10) Negligently or knowingly make any false statement or
20 provide any misleading information or knowingly and
21 wilfully make any omission of material fact in



1 connection with any information or reports filed with
2 a governmental agency or NMLS, including an
3 application for a license under this chapter, or in
4 connection with any examination or investigation
5 conducted by the commissioner or another government
6 agency;

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

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

19 (13) Fail to truthfully account for moneys belonging to a
20 party to a residential mortgage loan [~~transaction~~];



1 (14) Deliver a misleading or deceptive communication or
2 advertisement, whether written, electronic, or oral,
3 when marketing or soliciting a residential mortgage
4 loan; provided that:

5 (A) A communication or advertisement that uses the
6 name or trademark of a financial institution as
7 defined in section 412:1-109 or its affiliates or
8 subsidiaries, or infers that the communication or
9 advertisement is from, endorsed by, is related
10 to, or is the responsibility of the financial
11 institution is a misleading or deceptive
12 communication; and

13 (B) Advertising that a specific interest rate,
14 points, or financial terms are available when the
15 rates, points, or financial terms are not
16 actually available is a misleading or deceptive
17 communication;

18 (15) Fill in or complete any blank on a final residential
19 mortgage loan application that requests material
20 information including financial information without



- 1 adequate supporting documentation provided by the
2 borrower;
- 3 (16) Fill in or complete any blank on any mortgage or note
4 evidencing or securing the residential mortgage loan
5 which relates to the amount, interest rate, term, or
6 monthly payment of the residential mortgage loan;
- 7 (17) Originate a residential mortgage loan based primarily
8 on the current market value of the borrower's
9 collateral rather than on the borrower's ability to
10 repay the loan according to its terms; provided that
11 the sale of the property is made to a bona fide buyer;
12 and provided further that this paragraph shall not
13 apply to a reverse mortgage as defined under title 12
14 ~~[Code of Federal Regulations]~~ C.F.R. section [226.33]
15 1026.33;
- 16 (18) Advertise terms of a residential mortgage loan in
17 violation of ~~[section 226.16]~~ title 12 C.F.R. section
18 1026.16 or ~~[226.24 of Regulation Z of the Board of~~
19 ~~Governors of the Federal Reserve System,]~~ 1026.24; or
- 20 (19) Encourage a borrower to misrepresent, inflate, or
21 fabricate the source or amount of a borrower's actual



1 income or assets in the application or underwriting
2 process for a residential mortgage loan."

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

5 "§454F-22 Mortgage loan originator, mortgage loan
6 originator company, exempt sponsoring mortgage loan originator
7 company, and nonprofit [~~organizations, and mortgage service~~
8 ~~company~~] organization fees. (a) Except as provided in
9 subsection (b), a mortgage loan originator shall pay the
10 following fees to obtain and maintain a valid mortgage loan
11 originator license:

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

19 (b) A sole proprietorship mortgage loan originator shall
20 pay the following fees to obtain and maintain a valid sole
21 proprietor mortgage loan originator license:



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

8 (c) A mortgage loan originator company shall pay the
9 following fees to maintain a valid mortgage loan originator
10 company license or branch license:

- 11 (1) Fees payable for a principal office of a mortgage loan
- 12 originator company:
 - 13 (A) Initial application fee of \$900;
 - 14 (B) Processing fee of \$35 for each control person;
 - 15 (C) Annual license renewal fee of \$600;
 - 16 (D) Reinstatement fee of \$100;
 - 17 (E) Late fee of \$25 per day; and
 - 18 (F) Criminal background check fee of \$35, or of an
 - 19 amount determined by the commissioner by rule
 - 20 pursuant to chapter 91, for each control person,



1 executive officer, director, general partner, and
2 manager; and

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

- 5 (A) Initial application fee of \$250;
- 6 (B) Annual license renewal fee of \$100;
- 7 (C) Reinstatement fee of \$100; and
- 8 (D) Late fee of \$25 per day.

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

- 12 (1) Initial registration fee of \$200;
- 13 (2) Annual registration renewal fee of \$150; and
- 14 (3) Late fee of \$25 per day.

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

- 18 (1) Initial registration fee of \$200;
- 19 (2) Annual registration renewal fee of \$150; and
- 20 (3) Late fee of \$25 per day.

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;



1 (5) Change of branch manager; and

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

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

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

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

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

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

19 An employee who performs mortgage loan originator activities for
20 a mortgage servicer ~~[company]~~ is exempt from registration and
21 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 18. 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.



1 (c) Upon application for renewal of a license under this
2 chapter, a licensee shall pay, in addition to the licensee's
3 license renewal fee and fees required by NMLS, a mortgage loan
4 recovery fund fee as follows for deposit in the mortgage loan
5 recovery fund:

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

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

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

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

15 SECTION 19. Section 454M-1, Hawaii Revised Statutes, is
16 amended as follows:

17 1. By adding two new definitions to be appropriately
18 inserted and to read:

19 "Dwelling" means a residential structure or mobile home
20 that contains one to four family housing units or individual
21 units of condominiums or cooperatives.



1 "Residential real estate" means any real property located
2 in this State, upon which a dwelling is constructed or intended
3 to be constructed."

4 2. By amending the definitions of "borrower", "loan
5 modification", "person", and "residential mortgage loan" to
6 read:

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

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

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

19 "Residential mortgage loan" or "mortgage loan" means [a
20 ~~mortgage loan, home equity loan, or reverse mortgage~~] any
21 loan[~~or~~] primarily for personal, family, or household use that is



1 secured by a [~~first or subordinate lien on residential real~~
2 ~~property located in Hawaii, including a refinancing of any~~
3 ~~secured loan on residential real property located in Hawaii,~~
4 ~~upon which:~~

5 (1) ~~There is or will be constructed a structure or~~
6 ~~structures designed principally for occupancy by one~~
7 ~~to four families, including individual units of~~
8 ~~condominiums and cooperatives; or~~
9 (2) ~~A manufactured home is located or will be placed on~~
10 ~~the real property, using proceeds of the loan.]~~
11 mortgage, deed of trust, or other equivalent
12 consensual security interest on a dwelling or
13 residential real estate and includes refinancings,
14 reverse mortgages, home equity lines of credit, and
15 other first and additional lien loans that meet the
16 qualifications listed in this definition."

17 SECTION 20. Section 454M-2, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "**§454M-2 License required.** (a) No person except those
20 exempted under this chapter shall engage in the business of



1 mortgage servicing without a license as provided in this
2 chapter.

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

7 ~~[(e) No person licensed as a mortgage servicer shall
8 provide mortgage loan modifications or any other services that
9 would require licensing pursuant to chapter 454F without first
10 complying with the licensure requirements under chapter 454F.] "~~

11 SECTION 21. Section 454M-3, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§454M-3[+] Exemptions. This chapter shall not apply
14 to the following:

15 (1) Any persons chartered or authorized under the laws of
16 any state or federal law to engage in the activity of
17 an insured depository institution as defined in title
18 12 United States Code section 1813(c)(2), including
19 banks or savings associations, and operating
20 subsidiaries of an insured depository institution;



- 1 (2) Trust companies, credit unions, insurance companies,
2 and financial service loan companies licensed by the
3 State;
- 4 (3) The Federal Deposit Insurance Corporation, in
5 connection with assets acquired, assigned, sold, or
6 transferred pursuant to section 13(c) of the Federal
7 Deposit Insurance Act or as receiver or conservator of
8 an insured depository institution;
- 9 (4) The Federal National Mortgage Association; the Federal
10 Home Loan Mortgage Corporation; the Federal Deposit
11 Insurance Corporation; the United States Department of
12 Housing and Urban Development, and the Government
13 National Mortgage Association and the Federal Housing
14 Administration, and cases in which a mortgage insured
15 under the National Housing Act, 12 United States Code
16 section 1701 et seq., is assigned to the United States
17 Department of Housing and Urban Development; the
18 National Credit Union Administration; the Farmers Home
19 Administration or its successor agency under Public
20 Law 103-354; and the Department of Veterans Affairs,
21 in any case in which the assignment, sale, or transfer



1 of the servicing of the mortgage loan is preceded by
2 termination of the contract for servicing the loan for
3 cause, commencement of proceedings for bankruptcy of
4 the servicer, or commencement of proceedings by the
5 Federal Deposit Insurance Corporation for
6 conservatorship or receivership of the servicer or an
7 entity by which the servicer is owned or controlled;
8 [~~and~~]

9 (5) Any person making or acquiring contemporaneously no
10 more than five residential mortgage loans with that
11 person's own funds for that person's own investment [-]
12 and

13 (6) A person or entity solely involved in extensions of
14 credit relating to timeshare plans, as the term is
15 defined in title 11 United States Code section
16 101(53D)."

17 SECTION 22. Section 454M-4, Hawaii Revised Statutes, is
18 amended as follows:

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

20 "(a) The commissioner may approve a license or license
21 renewal application upon receipt of a complete application;



1 provided that an applicant for licensure shall file an
2 application on a form prescribed by NMLS or by the commissioner
3 and shall pay an application fee of \$675. Each license shall
4 expire on December 31 of each calendar year unless the license is
5 renewed. A licensee may apply for license renewal by filing a
6 renewal statement on a form prescribed by NMLS or by the
7 commissioner and paying a renewal fee of [~~\$425,~~] \$600, at least
8 four weeks prior to December 31. The minimum standards for
9 license renewal shall include the following:

- 10 (1) The licensee continues to meet the minimum standards
11 for licensure established pursuant to this section;
12 (2) The licensee has paid all required fees for renewal of
13 the license; and
14 (3) The licensee is registered with the business
15 registration division of the department of commerce
16 and consumer affairs.

17 All fees paid pursuant to this section, including fees paid in
18 connection with an application, shall be nonrefundable. No fee
19 paid pursuant to this section shall be prorated if the license
20 is surrendered, revoked, or suspended prior to the expiration of
21 the period for which it was approved."



1 2. By amending subsection (g) to read:

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

5 (1) The licensee files the change with NMLS and~~[, in the~~
6 ~~case of the principal office or a branch office,]~~
7 provides directly to the commissioner a bond rider or
8 endorsement, or addendum, as applicable, to any bond on
9 file with the commissioner that reflects the new name
10 or address ~~[of the principal office or branch office,~~
11 ~~and]~~;

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

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

15 3. By amending subsection (j) to read:

16 "(j) Before a mortgage servicer's license becomes
17 effective, the applicant or licensee shall file with the
18 commissioner a surety bond written by a surety authorized to
19 write surety bonds in this State, covering the applicant or
20 ~~[licensee's principal office and any branch office from which the~~
21 ~~applicant or licensee acts as a mortgage servicer,]~~ licensee in a



1 penal sum of \$100,000. No mortgage servicer licensee shall act
2 as a mortgage servicer in this State without maintaining the
3 surety bond required by this section.

4 The surety bond shall be:

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

7 (2) Conditioned upon the mortgage servicer licensee
8 faithfully performing any and all written agreements or
9 commitments with or for the benefit of borrowers and
10 mortgagees, truly and faithfully accounting for all
11 funds received from a borrower or mortgagee in the
12 person's capacity as a mortgage servicer, and
13 conducting the mortgage business consistent with the
14 provisions of this chapter to perform any written
15 agreements or commitments."

16 SECTION 23. Section 454M-5, Hawaii Revised Statutes, is
17 amended as follows:

18 1. By amending subsection (j) to read:

19 "(j) Each mortgage servicer licensee shall maintain
20 adequate records of each residential mortgage loan transaction



1 at the office named in the mortgage servicer license[-] for
2 seven years."

3 2. By amending subsection (m) to read:

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

11 SECTION 24. Section 454M-6, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

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

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

18 (A) The Real Estate Settlement Procedures Act,
19 including the mortgage loan servicing transfer,
20 escrow account administration, and borrower



- 1 request for information and error resolution
2 requirements;
- 3 (B) The Truth in Lending Act, title 15 United States
4 Code sections 1601 through 1667f, as amended, and
5 Regulation Z adopted thereunder, title 12 C.F.R.
6 part [~~226,~~] 1026, as amended; or
- 7 (C) Rules and regulations issued or administered by
8 the Consumer Financial Protection Bureau, and
9 interpretations of the rules by the Consumer
10 Financial Protection Bureau through interpretive
11 rules, bulletins, statements of policy, and
12 statements of guidance;
- 13 (2) Agreement with a governmental entity, agency, agent,
14 or regulator, or state attorney general that applies
15 to the mortgage servicer, including:
- 16 (A) A servicer participation agreement or other
17 agreement to participate in the Home Affordable
18 Modification Program or other Making Home
19 Affordable program;
- 20 (B) Home Affordable Modification Program rules,
21 including guidance provided by Making Home



1 Affordable program handbooks, and supplemental
2 directives; or

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

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

10 (4) Provision of this chapter or any rule adopted pursuant
11 to this chapter; or

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

13 SECTION 25. Section 454M-8.5, Hawaii Revised Statutes, is
14 amended by amending subsection (c) to read as follows:

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



1 ~~mortgage loan originator]~~ licensee or person subject to this
2 chapter concerning their business."

3 SECTION 26. Section 454M-10, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "§454M-10 Penalty. Any person who violates any provision
6 of this chapter may be subject to an administrative fine of not
7 more than \$7,000 for each violation; provided that if the
8 aggregate fine amount exceeds \$7,000, \$1,000 of the aggregate
9 fine amount shall be deposited into the mortgage foreclosure
10 dispute resolution special fund established pursuant to section
11 667-86."

12 SECTION 27. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 28. This Act shall take effect on July 1, 2112.



Report Title:

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

Description:

Amends regulatory statutes for mortgage loan originators and mortgage loan servicers by clarifying the applicable scope of each chapter, making terminology more consistent across both chapters, and updating references to and provisions implementing controlling federal law. (SB2850 HD1)

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

