

S.B. NO. 1214

JAN 24 2019

A BILL FOR AN ACT

RELATING TO TRANSITIONAL AUTHORITY IN THE MORTGAGE INDUSTRY.

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

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

4 **"PART __. TRANSITIONAL AUTHORITY**

5 **§454F-51 Purpose.** The purpose of this part is to
6 implement section 106 of the Economic Growth, Regulatory Relief,
7 and Consumer Protection Act, P.L. 115-174.

8 **§454F-52 Employment transition of loan originators.** In
9 anticipation of satisfying all licensure requirements set out in
10 part I, an individual shall be deemed to have temporary
11 authority to act as a mortgage loan originator in this State as
12 provided by and subject to the requirements of this part.

13 **§454F-53 Definitions.** (a) In this part, unless the
14 context or subject matter otherwise requires:

15 "Depository institution" has the same meaning as in title
16 12 United States Code section 5102.

17 "Federal banking agency" has the same meaning as in title
18 12 United States Code section 5102.

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1 "Federal SAFE Act" means the Secure and Fair Enforcement
2 for Mortgage Licensing Act of 2008, title 12 United States Code
3 section 5101 et seq.

4 "Loan originator" has the meaning as in title 12 United
5 States Code section 5102, and in general:

6 (1) Means an individual who:

7 (A) Takes a residential mortgage loan application;
8 and

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

11 (2) Does not include any individual who is not otherwise
12 described in paragraph (1) and who performs purely
13 administrative or clerical tasks on behalf of a person
14 who is described in paragraph (1);

15 (3) Does not include a person or entity that only performs
16 real estate brokerage activities and is licensed or
17 registered in accordance with applicable state law,
18 unless the person or entity is compensated by a
19 lender, a mortgage broker, or other loan originator or
20 by any agent of such lender, mortgage broker, or other
21 loan originator; and

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1 (4) Does not include a person or entity solely involved in
2 extensions of credit relating to timeshare plans, as
3 that term is defined in title 11 United States Code
4 section 101(53D).

5 "Registered loan originator" means any individual who:

6 (1) Meets the definition of loan originator and is an
7 employee of:

8 (A) A depository institution;

9 (B) A subsidiary that is:

10 (i) Owned and controlled by a depository
11 institution; and

12 (ii) Regulated by a federal banking agency; or

13 (C) An institution regulated by the Farm Credit
14 Administration; and

15 (2) Is registered with, and maintains a unique identifier
16 through, NMLS.

17 "State" means any state of the United States, the District
18 of Columbia, any territory of the United States, Puerto Rico,
19 Guam, American Samoa, the Trust Territory of the Pacific
20 Islands, the Virgin Islands, and the Northern Mariana Islands.

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1 "State-licensed mortgage company" means an entity that is
2 licensed or registered under this chapter to engage in
3 residential mortgage loan origination and processing activities.

4 "State-licensed loan originator" means any individual who:

5 (1) Is a loan originator;

6 (2) Is not an employee of:

7 (A) A depository institution;

8 (B) A subsidiary that is:

9 (i) Owned and controlled by a depository
10 institution; and

11 (ii) Regulated by a federal banking agency; or

12 (C) An institution regulated by the Farm Credit
13 Administration; and

14 (3) Is licensed by a state or by the Director of the
15 Bureau of Consumer Financial Protection and registered
16 as a loan originator with, and maintains a unique
17 identifier through, NMLS.

18 "This State" means the State of Hawaii.

19 **§454F-54 Employment transition of loan originators. (a)**

20 Temporary authority to originate loans for loan originators
21 moving from a depository institution to a non-depository
22 institution is available as follows:

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- 1 (1) Upon becoming employed by a state-licensed mortgage
2 company, an individual who is a registered loan
3 originator shall be deemed to have temporary authority
4 to act as a mortgage loan originator in this State for
5 the period described in paragraph (2) if the
6 individual:
- 7 (A) Has not had:
- 8 (i) An application for a loan originator license
9 denied; or
- 10 (ii) A loan originator license revoked or
11 suspended in any governmental jurisdiction;
- 12 (B) Has not been subject to, or served with, a cease
13 and desist order:
- 14 (i) In any governmental jurisdiction; or
- 15 (ii) Under section 5113(c) of the federal SAFE
16 Act;
- 17 (C) Has not been convicted of a misdemeanor or felony
18 that would preclude licensure under the laws of
19 this State;
- 20 (D) Has submitted an application to be a state-
21 licensed loan originator in this State; and

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1 (E) Was registered in NMLS as a loan originator
2 during the one-year period preceding the date on
3 which the information required under section
4 454F-4(d) is submitted.

5 (2) The period described in this paragraph shall begin on
6 the date on which an individual described in paragraph
7 (1) submits the information required under section
8 454F-4(d) and pays the fees required under section
9 454F-22, and shall end on the earliest of the date:

10 (A) On which the individual withdraws the application
11 to be a state-licensed loan originator in this
12 State;

13 (B) On which this State denies, or issues a notice of
14 intent to deny, the application;

15 (C) On which this State grants a mortgage loan
16 originator license; or

17 (D) That is one hundred twenty days after the date on
18 which the individual submits the application, if
19 the application is listed on NMLS as incomplete.

20 (b) Temporary authority to originate loans is available
21 for state-licensed loan originators moving interstate as
22 follows:

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- 1 (1) A state-licensed loan originator shall be deemed to
- 2 have temporary authority to act as a mortgage loan
- 3 originator in this State for the period described in
- 4 paragraph (2) if the state-licensed loan originator:
- 5 (A) Meets the requirements of subparagraphs (A), (B),
- 6 (C), and (D) of subsection (a) (1);
- 7 (B) Is employed by a state-licensed mortgage company
- 8 in this State; and
- 9 (C) Was licensed in a state other than this State
- 10 during the thirty-day period preceding the date
- 11 on which the information required under section
- 12 454F-4(d) was submitted in connection with the
- 13 application submitted to this State.
- 14 (2) The period described in this paragraph shall begin on
- 15 the date on which the state-licensed loan originator
- 16 submits the information required under section
- 17 454F-4(d) in connection with the application submitted
- 18 to the commissioner and pays the fees required under
- 19 section 454F-22, and end on the earliest of the date:
- 20 (A) On which the state-licensed loan originator
- 21 withdraws the application to be a state-licensed
- 22 loan originator in this State;

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1 (B) On which this State denies, or issues a notice of
2 intent to deny, the application;

3 (C) On which this State grants a mortgage loan
4 originator license; or

5 (D) That is one hundred twenty days after the date on
6 which the state-licensed loan originator submits
7 the application, if the application is listed on
8 NMLS as incomplete.

9 (c) With respect to temporary authority authorized by this
10 section:

11 (1) Any person employing an individual who is deemed to
12 have temporary authority to act as a loan originator
13 in this State under this part shall be subject to the
14 requirements of this chapter and to applicable State
15 law to the same extent as if that individual was a
16 state-licensed loan originator licensed by this State.

17 (2) Any individual who is deemed to have temporary
18 authority to act as a loan originator in this State
19 under this part and who engages in residential
20 mortgage loan origination activities shall be subject
21 to the requirements of this chapter and to applicable
22 State law to the same extent as if that individual was

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1 a state-licensed loan originator licensed by this
2 State.

3 (d) An application submitted pursuant to this part shall
4 not be subject to section 454F-4.9, subsections (a) through (c),
5 pertaining to abandoned applications."

6 SECTION 2. This Act, upon its approval, shall take effect
7 on November 24, 2019.

8

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INTRODUCED BY: *Wm N. M.*

10

BY REQUEST

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Report Title:

Mortgage Loan Originators; Mortgage Loan Origination;
Transitional Authority; Temporary Authority; Temporary License;
SAFE Act

Description:

Implements section 106 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174, by providing 120-day temporary authority to originate loans in this State for loan originators moving from a depository institution to a non-depository institution and state-licensed loan originators moving interstate.

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 TRANSITIONAL AUTHORITY IN THE MORTGAGE INDUSTRY.

PURPOSE: To implement section 106 of the Economic Growth, Regulatory Relief, and Consumer Protection Act, P.L. 115-174 (section 106), which requires states to provide one-hundred-twenty-day temporary authority to originate loans for: (1) loan originators (LOs) moving from a depository institution to a non-depository institution; and (2) state-licensed loan originators moving interstate (transitional authority).

MEANS: Add a new part to chapter 454F, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Integrating section 106 into chapter 454F, HRS, will minimize uncertainty about the implementation of section 106 for LOs and their new employers. Section 106 takes effect on November 24, 2019, which is also the effective date of this bill.

Impact on the public: LOs will benefit from the job continuity afforded by transitional authority as they change jobs within the profession. Employers will also benefit from the ability of their new LO hires to originate residential mortgage loans without waiting to receive a state license. In addition, a greater number of LOs may move from state to state without the interruption of getting approved for a state license.

LOs who operate under transitional authority with fewer qualifications could disadvantage the public: (1) if they violate state laws due to their unfamiliarity with those laws; and (2) by competing with Hawaii-licensed mortgage loan originators. The Department of Commerce and Consumer Affairs' Division

of Financial Institutions will provide information and education about the transitional authority and highlight responsibilities for companies that hire LOs with transitional authority.

Impact on the department and other agencies:
Mortgage regulators nationwide will work toward implementing the new transitional authority status in the Nationwide Multistate Licensing System before the effective date of section 106.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: November 24, 2019.