
A BILL FOR AN ACT

RELATING TO SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING
ACT.

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

10 "Mortgage loan originator":

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

~~+(5)]~~ (3) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage loan originator company, or



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

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

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

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

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

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

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

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

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



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

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

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

9 (4) The mortgage loan originator company is registered
10 with the business registration division of the
11 department of commerce and consumer affairs.

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

14 (1) The mortgage servicer company continues to meet the
15 minimum standards for licensure established pursuant
16 to section 454F-5; ~~[and]~~

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

19 (3) The mortgage servicer company is registered with the
20 business registration division of the department of
21 commerce and consumer affairs."



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

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

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

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



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

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

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

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

21 (2) Specify the reasons for the closing.



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

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

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

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

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

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



1 NMLS to consumers as a location at which the licensee holds
2 itself out as a mortgage loan originator company. Each such
3 location shall be open for business to the public during posted
4 business hours. The posted business hours shall be during
5 regular business hours and displayed in a conspicuous place at
6 the location to inform the consumer when the location will be
7 open.

8 (h) The commissioner or the commissioner's authorized
9 representatives shall be able to conduct an examination or
10 investigation during regular business hours. If the
11 commissioner or the commissioner's authorized representatives
12 are denied access to any office, record, or file for any reason,
13 such denial may be considered a violation of this chapter."

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

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

- 18 (1) Deny, suspend, revoke, condition, or decline to renew
19 a license because of a violation of this chapter,
20 rules, an order, or a directive entered under this
21 chapter;



- 1 (2) Deny, suspend, revoke, condition, or decline to renew
2 a license if an applicant or licensee fails at any
3 time to meet the requirements of section 454F-4,
4 454F-6, or ~~[section]~~ 454F-8, violates section 454F-17,
5 or withholds information or makes a material
6 misstatement in an application for a license or
7 renewal of a license;
- 8 (3) Order restitution against persons subject to this
9 chapter for violations of this chapter;
- 10 (4) Impose fines on persons subject to this chapter; and
- 11 (5) Issue orders or directives under this chapter as
12 follows:
- 13 (A) Order or direct persons subject to this chapter
14 to cease and desist from conducting business,
15 including immediate temporary orders to cease and
16 desist;
- 17 (B) Order or direct persons subject to this chapter
18 to cease any harmful activities or violations of
19 this chapter, including immediate temporary
20 orders to cease and desist;
- 21 (C) Enter immediate temporary orders to cease doing
22 business under a license issued pursuant to the



1 authority granted under this chapter if the
2 commissioner determines that the license was
3 erroneously granted or the licensee or any person
4 subject to this chapter is currently in violation
5 of this chapter; or

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

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

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

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

18 "**§454F-16 Mortgage call reports.** Each licensee[~~7~~] and
19 exempt sponsoring mortgage loan originator company, as may be
20 required by title 12 United States Code sections 5101 to 5116,
21 shall submit quarterly to NMLS reports of condition, using the
22 form entitled "~~[REPORT OF]~~ FINANCIAL CONDITION"[~~7~~] or



1 "RESIDENTIAL MORTGAGE LOAN ACTIVITY", which shall be in the form
2 and contain the information as NMLS may require."

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

5 **"§454F-19 Unique identifier shown.** The unique identifier
6 of any person originating a residential mortgage loan, except a
7 person who is exempt from this chapter, shall be clearly shown
8 on all residential mortgage loan application forms,
9 solicitations, ~~[or]~~ and advertisements, including business cards
10 or websites, and any other documents as established by rule or
11 order of the commissioner."

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

14 1. By amending subsection (b) to read:

15 "(b) A sole ~~[proprietor]~~ proprietorship mortgage loan
16 originator shall pay the following fees to obtain and maintain a
17 valid sole ~~[proprietor]~~ proprietorship mortgage loan originator
18 license:

- 19 (1) Initial application fee of \$35;
20 (2) Annual license renewal fee of \$35;
21 (3) Reinstatement fee of \$100;
22 (4) Late fee of \$25 per day; and



(5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91."

2. By amending subsection (f) to read:

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

(1) Initial application fee of \$600;

(2) Annual license renewal fee of \$600;

(3) Reinstatement fee of \$100;

(4) Late fee of \$25 per day; and

(5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and managing member."

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

"[+]§454F-24[+] Mortgage servicer companies; mortgage loan originators. An employee who performs mortgage loan originator activities for a mortgage servicer company is exempt from



1 registration and licensure as a mortgage loan originator;
2 provided that:

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

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

11 "(a) An employee who performs mortgage loan originator
12 activities for a nonprofit organization is exempt from
13 registration and licensure as a mortgage loan originator;
14 provided that:

- 15 (1) The employee's actions are part of the employee's
16 duties as an employee of the nonprofit organization;
17 (2) The employee only provides mortgage loan originator
18 services with respect to residential mortgage loans
19 with terms favorable to the borrower; and
20 (3) The nonprofit organization registers with [{}NMLS[{}].
21 (b) The commissioner shall periodically examine the books
22 and activities of nonprofit organizations as defined in section



1 454F-1 and shall revoke an organization's registration as a
2 nonprofit organization with [+]NMLS[+] if the nonprofit
3 organization fails to meet the requirements to be a nonprofit
4 organization."

5 SECTION 12. Section 454F-26, Hawaii Revised Statutes, is
6 repealed.

7 ~~["~~\$454F-26~~ Sole proprietorships; fees. Every mortgage~~
8 ~~loan originator company that consists of a single individual not~~
9 ~~exempt under section 454F-2 who engages in the business of a~~
10 ~~mortgage loan originator as a sole proprietorship shall be~~
11 ~~reimbursed by the division for the fees paid for the state~~
12 ~~mortgage loan originator's initial application and annual~~
13 ~~license renewal fees."]~~

14 SECTION 13. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

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



Report Title:

Secure and Fair Enforcement for Mortgage Licensing Act; Mortgage Loan Origination; Mortgage Loan Originator Companies

Description:

Adds or amends definitions for clarity. Deletes exemptions for individuals facilitating mortgage loans for family members and family property. Clarifies requirements for branch managers. Requires a mortgage loan originator company to be open for business during posted business hours. Requires the commissioner of financial institutions or the commissioner's representative to conduct examinations or investigations of a mortgage loan originator company during regular business hours. Excludes certain information included in NMLS from confidentiality provisions of the law. Makes various housekeeping amendments. (SD1)

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