

ACT 84

S.B. NO. 2603

A Bill for an Act Relating to the Secure and Fair Enforcement for Mortgage Licensing Act.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to allow the State to continue to work toward meeting its obligations under the federal Secure and Fair

Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Mortgage Licensing Act). The S.A.F.E. Mortgage Licensing Act requires states to have a clear system of regulation that complies with the federal law in place to regulate the residential mortgage industry or face federal takeover of the intrastate residential real estate industry. The legislature finds that it is in the best interest of the State that licensing and regulation of the domestic mortgage industry remain with the State and in compliance with federal law. The legislature began the process of compliance with the federal law by creating chapter 454F, Hawaii Revised Statutes, through the passage of Act 32 in the First Special Session of 2009 (Act 32). The legislature finds that Act 32 was a necessary step in meeting the mandates of the S.A.F.E. Mortgage Licensing Act, but that the current measure is also necessary to refine the regulatory system created by Act 32.

The legislature further finds that the fees and appropriations from the compliance resolution fund contained in this Act are adequate to fully fund the regulatory system contained in chapter 454F, Hawaii Revised Statutes. The legislature also finds that the mortgage recovery fund will protect the state's consumers by making it easier to recover losses caused by individuals or companies that violate the law governing fair mortgage lending practices.

Finally, the legislature finds that this Act and Act 32 contain appropriate provisions to effectuate a smooth transfer of the regulatory regime governing mortgage professionals from the system created by chapter 454, Hawaii Revised Statutes, to the new system created by chapter 454F, Hawaii Revised Statutes. The legislature particularly notes that this Act both authorizes the commissioner of financial institutions to hire temporary employees to overcome the initial administrative hurdle of processing a large number of licensing applications and statutorily creates permanent positions in the division of financial institutions of the department of commerce and consumer affairs to carry out the continuing requirements of this Act.

SECTION 2. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to part V of article 9 to be appropriately designated and to read as follows:

“§412:9- Registration of nondepository financial services loan companies with Nationwide Mortgage Licensing System. (a) A nondepository financial services loan company licensed under this chapter is not a mortgage loan originator company as defined in section 454F-1.

(b) A nondepository financial services loan company shall register with the Nationwide Mortgage Licensing System if any employee of the nondepository financial services loan company acts as a mortgage loan originator as defined in section 454F-1 or if the nondepository financial services loan company uses the services of an exclusive independent contractor mortgage loan originator, or loan processor or underwriter, as defined in chapter 454F.

(c) This section does not exempt an employee of a nondepository financial services loan company who originates mortgage loans, or an independent contractor providing mortgage loan originating, processing, or underwriting services to a nondepository financial services loan company, from licensure under chapter 454F.”

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

“§454F-A Registration with Nationwide Mortgage Licensing System required. (a) All mortgage loan originators, mortgage loan originator companies, and any other person in this state that originate a residential mortgage loan, unless exempt under section 454F-2, shall register with the Nationwide Mortgage Licensing System.

(b) Exempt registered mortgage loan originators and exempt mortgage loan originator companies, unless exempt under section 454F-2, shall register and maintain a unique identifier through the Nationwide Mortgage Licensing System, but shall not be required to be licensed under this chapter.

§454F-B Automatic secondary review of license application. The commissioner shall establish, by rule pursuant to chapter 91, a procedure for the secondary review of each application that was determined on initial review to fail to meet the criteria for licensure.

§454F-C Mortgage loan recovery fund; use of fund; fees. (a) The commissioner shall establish and maintain a fund that shall be known as the mortgage loan recovery fund from which any person aggrieved by an act, representation, transaction, or conduct of a licensee involving fraud, misrepresentation, or deceit may recover by order of the circuit court or district court of the county where the violation occurred, an amount of not more than \$25,000 per transaction, including court costs and fees as set by law and reasonable attorney fees as determined by the court, for damages sustained by the fraud, misrepresentation, or deceit of a licensee.

(b) In addition to application fees and any fees required by the Nationwide Mortgage Licensing System, a licensee shall pay to the division a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:

- (1) The sum of \$300 for each principal office location of a mortgage loan originator company;
- (2) The sum of \$250 for each branch office location of a mortgage loan originator company; and
- (3) The sum of \$200 for each mortgage loan originator.

(c) Upon application for renewal of a license under this chapter, a licensee shall pay, in addition to the licensee's license renewal fee and fees required by the Nationwide Mortgage Licensing System, a mortgage loan recovery fund fee as follows for deposit in the mortgage loan recovery fund:

- (1) The sum of \$200 for each principal office location of a mortgage loan originator company;
- (2) The sum of \$100 for each branch office location of a mortgage loan originator company; and
- (3) The sum of \$100 for each mortgage loan originator.

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

(d) When the mortgage loan recovery fund attains a funding level of \$750,000, the commissioner may, by rule adopted pursuant to chapter 91, adjust the fees generated by renewals or may determine that payments made by renewing licensees shall cease. If the funding level falls below \$250,000 after the first five years of the establishment of the fund, the commissioner may adjust the fees to a reasonable level for the purpose of attaining a funding level of \$750,000.

(e) The commissioner or the commissioner's designee, as the manager of the mortgage loan recovery fund, shall be authorized to expend moneys in the mortgage loan recovery fund to:

- (1) Retain private legal counsel to represent the commissioner or the division in any action that involves or may result in payment from the mortgage loan recovery fund;
- (2) Retain a certified public accountant for accounting and auditing of the mortgage loan recovery fund;
- (3) Employ necessary personnel, not subject to chapter 76, to assist the commissioner in exercising the commissioner's powers and duties with respect to the mortgage loan recovery fund; and
- (4) Retain a consultant to recover and collect any payments from the mortgage loan recovery fund plus interest from the judgment debtor.

§454F-D Statute of limitation; recovery from fund. (a) No action for a judgment that subsequently results in an order for collection from the mortgage loan recovery fund shall be commenced later than six years from the accrual of the cause of action. When any aggrieved person commences an action for a judgment that may result in collection from the mortgage loan recovery fund, the aggrieved person shall notify the commissioner in writing at the time of the commencement of the action and shall submit to the commissioner any documents required by the commissioner pursuant to rules issued in accordance with chapter 91.

(b) When any aggrieved person receives a valid judgment upon the grounds of fraud, misrepresentation, or deceit that occurred before the effective date of section 454F-C against any licensee from any circuit or district court where the violation occurred, the aggrieved person shall proceed against the bond covering the license that was in force prior to the enactment of section 454F-C and establishment of the mortgage loan recovery fund.

(c) The court shall proceed upon an application to recover from the mortgage loan recovery fund in a summary manner and, at hearing, the aggrieved person shall be required to show:

- (1) The person is not a spouse of the judgment debtor or the personal representative of a spouse of the judgment debtor;
- (2) The person has complied with all the requirements of this section;
- (3) The person has obtained a judgment or settlement pursuant to section 454F-C(a) that states the amount of the judgment and the amount owed on the judgment debt as of the date of the application;
- (4) The person has made all reasonable searches and inquiries to ascertain whether the judgment debtor is possessed of real or personal property or other assets liable to be sold or applied in satisfaction of the judgment; and
 - (A) The search has uncovered no personal or real property or other assets liable to be sold or applied; or
 - (B) The search has uncovered personal or real property or other assets liable to be sold or applied, the person has taken all necessary action and completed all necessary proceedings for the realization thereof, and the amount realized was insufficient to satisfy the judgment; provided that the person shall state the amount realized and the balance remaining due on the judgment after application of the amount realized; and
- (5) That where the licensee is a judgment debtor in a bankruptcy proceeding, the aggrieved person has obtained an order from the bankruptcy court declaring the judgment against the licensee to be non-dischargeable.

(d) Upon hearing, if the court is satisfied of the truth of all matters required by subsection (c) and that the aggrieved person has fully pursued and exhausted all remedies available to the person for recovering the amount awarded by the judgment of the court, the court shall issue an order directing the commissioner to pay from the mortgage loan recovery fund whatever sum the court finds to be payable upon the claim in accordance with the limitations contained in this section.

(e) Notwithstanding any other provision, the liability of the mortgage loan recovery fund shall not exceed the sum of \$100,000 against any one licensee.

§454F-E Management of fund. (a) The sums received by the division pursuant to section 454F-C for deposit into the mortgage loan recovery fund shall be held by the commissioner or the commissioner's designee to carry out the purpose of the mortgage loan recovery fund. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system.

(b) The commissioner or the commissioner's designee, as the manager of the mortgage loan recovery fund, shall be authorized to expend moneys from the fund to retain private legal counsel to represent the commissioner in any action involving the mortgage loan recovery fund.

§454F-F Standing. The commissioner shall have standing to intervene in and defend any action to recover from the mortgage loan recovery fund, including by entering an appearance, filing an answer, appearing at court hearings, and taking any recourse through appropriate methods of review. The commissioner or the commissioner's legal representative shall be served with all pleadings in any action pursuant to this section.

§454F-G Subrogation of rights. When, pursuant to court order, the commissioner has paid any sum to a judgment creditor from the mortgage loan recovery fund, the commissioner shall be subrogated to all of the rights of the judgment creditor. The judgment creditor shall assign all of the judgment creditor's rights, title, and interest in the judgment to the commissioner. Any interest collected by the commissioner pursuant to this section shall be deposited into the mortgage loan recovery fund.

§454F-H Waiver of rights. The failure of an aggrieved person to comply with sections 454F-C and 454F-D shall constitute a waiver of the rights contained in those sections.

§454F-I Disciplinary action against licensee. No provision of this chapter relating to the mortgage loan recovery fund shall limit the authority of the commissioner to take disciplinary action against any licensee for a violation of this chapter or of the rules and orders of the commissioner adopted pursuant to this chapter. Repayment of obligations to the mortgage loan recovery fund by a licensee shall not nullify or modify the effect of any other disciplinary proceeding brought pursuant to this chapter.

§454F-J Authorized places of business; designation of managers; branch offices. (a) Every mortgage loan originator company licensed under this chapter shall have and maintain a principal place of business in the state and shall designate a manager.

(b) A mortgage loan originator company shall not maintain any branch offices in the state in addition to its principal place of business without the prior written approval of the commissioner. An application to establish a branch office shall be submitted with a nonrefundable application fee as required by section 454F-N. A mortgage loan originator company that established a branch office pursuant to this subsection shall designate a manager located at each branch office to oversee that branch office.

(c) A mortgage loan originator company shall not relocate any office in this state without the prior written approval of the commissioner. An application to relocate an office shall set forth the reasons for the relocation, the street address of the proposed relocated office, and other information that may be required by the commissioner. An application to relocate an office pursuant to this subsection shall be submitted with a nonrefundable fee as required by section 454F-N.

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

- (1) State the intended date of closing; and
- (2) Specify the reasons for the closing.

§454F-K Reinstatement of expired licenses. (a) A license issued pursuant to this chapter that expires due to failure to satisfy the minimum standards for renewal may be reinstated if the licensee meets the following requirements:

- (1) The licensee applies for reinstatement between January 1 and February 28 of the year immediately following the year in which the license expired;
- (2) All continuing education courses required for license renewal for the year in which the license expired shall be completed between January 1 and February 28 of the year immediately following the year in which the license expired; provided that continuing education courses that satisfy the previous year's requirement shall not also be credited toward satisfying the current year's continuing education requirements; and
- (3) The licensee shall pay all applicable licensing, reinstatement, and late fees assessed by the commissioner.

(b) A licensee that fails to meet the requirements for renewal of an expired license established by this section may apply for a new license and shall meet the requirements for new licenses in effect at the time of application.

§454F-L Presumption of control. An individual is presumed to control a mortgage loan originator company if that individual is a director, general partner, managing director, or executive officer of that mortgage loan originator company.

§454F-M Payment of fees. All fees collected pursuant to section 454F-N, administrative fines, and other charges collected pursuant to this chapter, except fees designated for deposit into the mortgage loan recovery fund shall be deposited into the compliance resolution fund established pursuant to section 26-9(o) and shall be payable through the Nationwide Mortgage Licensing System, to the extent allowed by the Nationwide Mortgage Licensing System. Fees not eligible for payment through the Nationwide Mortgage Licensing System shall be deposited into a separate account within the compliance resolution fund for use by the division.

§454F-N Mortgage loan originator and mortgage loan originator company fees. (a) A mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$500;
- (2) Annual license renewal fee of \$300;
- (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.

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

- (1) Fees payable for a principal office of a mortgage loan originator company:
 - (A) Initial application fee of \$900;
 - (B) Annual license renewal fee of \$600;
 - (C) Reinstatement fee of \$100;
 - (D) Late fee of \$25 per day; and
 - (E) 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 manager; and
- (2) Fees payable for each branch office of a mortgage loan originator company:
 - (A) Initial application fee of \$250;
 - (B) Annual license renewal fee of \$100;
 - (C) Reinstatement fee of \$100; and
 - (D) Late fee of \$25 per day.

(c) In addition to fees charged by the Nationwide Mortgage Licensing System, a licensee shall pay to the commissioner a fee of \$50 for each of the following amendments to information provided to the Nationwide Mortgage Licensing System that require the review of the commissioner:

- (1) Change of physical location, including address change for branch or principal place of business;
- (2) Addition or deletion of a "d/b/a" assignment;
- (3) Change of manager; or
- (4) Change of legal name.

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

(d) The fees established by this section are nonrefundable and are in addition to any fees established and charged by the Nationwide Mortgage Licensing System, an approved educational course provider, an approved educational testing provider, a law enforcement agency for fingerprints and background checks, or a credit reporting agency used by the Nationwide Mortgage Licensing System.

(e) The commissioner may establish, by rule pursuant to chapter 91, any other fees or charges necessary for the administration of this chapter.

§454F-O Voluntary cessation of operation; surrender of license. (a) Subject to the approval of the commissioner, a licensee may voluntarily cease activity for which a license to operate has been issued under this chapter by delivering to the commissioner a written notice of surrender, which shall include but not be limited to:

- (1) A plan of cessation of business;
- (2) Provisions for the transfer or assumption of assets;

- (3) Provisions for pending applications or transactions;
 - (4) Provisions for payment or assumption of liabilities;
 - (5) Provisions for the disposition of individual mortgage loan originator licenses, and
 - (6) Provisions for transfer or assumption of all trust, agency, and other fiduciary relationships and accounts.
- (b) The commissioner shall approve the surrender if:
- (1) The commissioner is satisfied with the plan as set forth by the licensee; and
 - (2) No other reason exists to deny the request for surrender;

provided that the commissioner may impose any restrictions and conditions as the commissioner deems appropriate.

(c) The surrender shall not affect rights and duties that have matured, penalties that were incurred, and proceedings that were begun before the effective date of the surrender of a license under this section.

§454F-P Change in control of a licensee; fees. (a) A licensee shall submit to the commissioner an application requesting approval of a proposed change of control of the licensee, accompanied by a nonrefundable application fee of \$500, payable to the division.

(b) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to control the licensee or person in control of the licensee in a lawful and proper manner, and that the interests of the public will not be jeopardized by the change of control.”

SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief justice’s designee, or to a legislative office by the speaker of the house of representatives and the president of the senate jointly, and the attorney general declines to provide such representation on the grounds of conflict of interest, the attorney general shall retain an attorney for the court, judicial, or legislative office, subject to approval by the court, judicial, or legislative office;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;
- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;

- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485A;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy;
- (19) By the office of elections;
- (20) By the campaign spending commission;
- (21) By the Hawaii tourism authority, as provided in section 201B-2.5; [of]
- (22) By the division of financial institutions for any action involving the mortgage loan recovery fund; or
- [22] (23) By a department, in the event the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section."

SECTION 5. Section 237-24.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) As used in this section:

"Activities relating to the general servicing of ~~[fiduciary/custodial]~~ fiduciary or custodial accounts" means those activities performed by trust companies which are directly or indirectly performed within the ~~[fiduciary/custodial]~~ fiduciary or custodial relationship between the trust company or trust department of a financial institution and its client and which are not offered to any person outside of the ~~[fiduciary/custodial]~~ fiduciary or custodial relationship.

"Annual percentage rate" and "finance charge" have the same meaning as defined in the federal Truth in Lending Act (15 ~~[U.S.C. sections]~~ United States Code Sections 1605(a) to (c) and 1606).

"Deposit" means:

- (1) Money or its equivalent received or held by a financial institution in the usual course of business and for which it has given or is obligated to give credit to:
 - (A) A commercial (including public deposits), checking, savings, time, or thrift account;
 - (B) A check or draft drawn against a deposit account and certified by the financial institution;
 - (C) A letter of credit; or
 - (D) A traveler's check, on which the financial institution is primarily liable;
- (2) Trust funds received or held by a financial institution, whether held in the trust department or held or deposited in any other department of the financial institution;
- (3) Money received or held by a financial institution, or the credit given for money or its equivalent received or held by a financial institu-

tion in the usual course of business for a special or specific purpose, regardless of the legal relationship thereby established, including, without being limited to, escrow funds, funds held as security for an obligation due the financial institution or others (including funds held as dealers' reserves) or for securities loaned by the financial institution, funds deposited by a debtor to meet maturing obligations, funds deposited as advance payment on subscriptions to United States government securities, funds held for distribution or purchase of securities, funds held to meet the financial institution's acceptances or letters of credit, and withheld taxes;

- (4) Outstanding drafts, cashier's checks, money orders, or other officer's checks issued in the usual course of business for any purpose; or
- (5) Money or its equivalent held as a credit balance by a financial institution on behalf of its customer if the financial institution is engaged in soliciting and holding the balances in the regular course of its business.

"Financial institution" means banks, building and loan associations, development companies, financial corporations, financial services loan companies, small business investment companies, financial holding companies, mortgage loan originator companies[;] as defined in chapter 454F, and trust companies all as defined in chapter 241.

"Leasing of personal property" occurs if:

- (1) The lease is to serve as the functional equivalent of an extension of credit to the lessee of the property;
- (2) The property to be leased is acquired specifically for the leasing transaction under consideration, or was acquired specifically for an earlier leasing transaction;
- (3) The lease is on a nonoperating basis[; i.e.,] where the financial institution may not, directly or indirectly:
 - (A) Provide for the maintenance, repair, replacement, or servicing of the leased property during the lease term;
 - (B) Purchase parts and accessories in bulk or for an individual property after the lessee has taken delivery of the property; or
 - (C) Purchase insurance for the lessee;
- (4) At the inception of the lease the effect of the transaction will yield a return that will compensate the lessor financial institution for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the term of the lease, from:
 - (A) Rentals;
 - (B) Estimated tax benefits [(~~including~~ capital goods excise tax credit, net economic gain from tax deferral from accelerated depreciation, and other tax benefits with a substantially similar effect)]; and
 - (C) The estimated residual value of the property at the expiration of the initial term of the lease;
- (5) The maximum lease term during which the lessor financial institution [~~must~~] shall recover the lessor's full investment in the property, plus the estimated total cost of financing the property, shall be forty years; and
- (6) At the expiration of the lease, [(~~including~~ any renewals or extensions with the same lessee)], all interest in the property shall be either liquidated or leased again on a nonoperating basis as soon as practicable [~~but~~] in no event later than two years from the expira-

tion of the lease~~), but~~; provided that in no case shall the lessor retain any interest in the property beyond fifty years after the lessor's acquisition of the property."

SECTION 6. Section 241-1, Hawaii Revised Statutes, is amended by amending the definition of "mortgage loan company" to read as follows:

"Mortgage loan company" means [any company licensed under chapter 454-] a mortgage loan originator company licensed under chapter 454F."

SECTION 7. Section 412:3-502, Hawaii Revised Statutes, is amended to read as follows:

"§412:3-502 Foreign financial institution. No foreign financial institution shall receive deposits, lend money, or pay checks, negotiate orders of withdrawal or share drafts from any principal office, branch, agency, automatic teller machine, or other location in this ~~[State,] state,~~ unless expressly authorized by this chapter, other laws of this State, or federal law; provided that nothing in this section shall prohibit any foreign financial institution from participating in the disbursement of cash through an automatic teller machine network or from operating from any location in this ~~[State] state~~ as a ~~[mortgage broker licensed under chapter 454, loan originator licensed]~~ licensee under chapter 454F, or as a real estate collection servicing agent."

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

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

"Borrower" means a person who has applied for or obtained a residential mortgage loan from or through a licensed mortgage loan originator or mortgage loan originator company or from a person required to be licensed as a mortgage loan originator or mortgage loan originator company under this chapter.

"Branch office" means any location, separate from the principal place of business of the mortgage loan originator company that is identified by any means to the public or customers as a location at which the licensee holds itself out as a mortgage loan originator company.

"Control" means the power, either directly or indirectly, to direct management or policies of a company, whether through ownership of securities, by contract, or otherwise.

"Control person" means an individual who directly or indirectly exercises control over a licensee or applicant.

"Division" means the division of financial institutions of the department of commerce and consumer affairs.

"Employee" means an individual who is:

- (1) Hired to provide services for a licensee on a regular basis in exchange for compensation and who does not provide these services as part of the individual's independent business;
- (2) Subject to tax withholding, the Federal Income Contributions Act, and other lawful deductions by the licensee as a condition of employment; and
- (3) Subject to the right of the licensee to direct and control the actions of the individual.

"Exempt registered mortgage loan originator company" means any person, including an insured depository institution, who is required to be licensed by any other state or federal law but is not required to be licensed under this

chapter, and has the obligation to register with the Nationwide Mortgage Licensing System because one or more of the person's employees engage in the business of a mortgage loan originator.

"Independent contractor" means any person who has a contractual arrangement to perform mortgage loan originating, underwriting, or loan processing services to a licensee, but is not an employee of a licensee.

"License" means a license issued under this chapter.

"Licensee" means a mortgage loan originator, a mortgage loan originator company, or a person who is required to be licensed under this chapter. Licensee does not include an exempt registered mortgage loan originator or exempt registered mortgage loan originator company as defined by this section.

"Mortgage loan originator company" means:

- (1) An individual not exempt under section 454F-2 who engages in the business of a mortgage loan originator as a sole proprietorship; or
- (2) A person not exempt under section 454F-2 who employs or uses the exclusive services of one or more mortgage loan originators licensed or required to be licensed under this chapter.

"Taking a residential mortgage loan application" means receipt of a request or of a response to a solicitation of an offer from a borrower, either directly or indirectly, for the purpose of deciding whether or not to extend an offer of a loan to the borrower. Taking a residential mortgage loan application does not include mere physical handling or transmission of a form."

2. By amending the definitions of "advertisement" or "advertising", "applicant", "insured depository institution", "loan processor or underwriter", "mortgage loan originator", "Nationwide Mortgage Licensing System", "registered mortgage loan originator", and "residential mortgage loan" to read:

"Advertisement" or "advertising" means:

- (1) Issuing any card, sign, or device to any person;
- (2) Causing, permitting, or allowing the placement of any sign or marking on or in any building, vehicle, or structure;
- (3) Placing an advertisement in any newspaper, magazine, or on the Internet;
- (4) Listing or advertising in any directory under a classification or heading that includes the words "mortgage loan originator", "mortgage loan originator company", or the like;
- (5) Broadcasting commercials by airwave or [~~internet~~] Internet transmission; or
- (6) Transmitting any written communication, including:
 - (A) A letter or a postcard that encourages a person to borrow from or through a mortgage loan originator~~;~~ or a mortgage loan originator company; or
 - (B) A written communication that encourages a person to refinance the person's existing residential mortgage loan and mentions that a new residential mortgage loan will reduce the monthly payment the borrower will pay on the new residential mortgage loan or reduce the interest rate on the borrower's existing residential mortgage loan.

"Applicant" means [~~an individual~~] a person applying for the issuance of a license or a renewal of a license under this chapter.

"Insured depository institution" means the same as in 12 United States Code Section 1813(c)(2); provided that it also includes any credit union [whose deposits are insured by the National Credit Union Association].

"Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the

supervision and instruction of a ~~[mortgage loan originator or a]~~ person ~~[who is]~~ licensed or exempt from licensing [as a mortgage loan originator] under this chapter.

“Mortgage loan originator” ~~[means]:~~

- (1) Means an individual who for compensation or gain or in the expectation of compensation or gain:
 - ~~[(1)]~~ (A) Takes a residential mortgage loan application; or
 - ~~[(2)]~~ (B) Offers or negotiates terms of a residential mortgage loan~~[-];~~ and
- (2)¹ Includes an independent contractor as defined in this section.

“Nationwide Mortgage Licensing System” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of ~~[licensed]~~ mortgage loan originators~~[-]~~, mortgage loan originator companies, exempt registered mortgage loan originators, and exempt registered mortgage loan originator companies as defined by this chapter.

~~["Registered"]~~ “Exempt registered mortgage loan originator” means any individual who:

- (1) Meets the definition of mortgage loan originator and is an employee of:
 - (A) An insured depository institution;
 - (B) A subsidiary that is:
 - (i) Owned and controlled by an insured depository institution; and
 - (ii) Regulated by a federal banking agency; or
 - (C) An institution regulated by the Farm Credit Administration; and
- (2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System ~~[and Registry.]~~ but is not required to be licensed under this chapter.

“Residential mortgage loan” or “residential mortgage transaction” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in Section 103(v) of the Truth in Lending Act, 15 United States Code ~~[Section 1601 et seq.]~~ Section 1602 or residential real estate.”

SECTION 9. Section 454F-2, Hawaii Revised Statutes, is amended to read as follows:

~~“[§454F-2] Exemptions.~~ This chapter shall not apply to the following:

- (1) ~~[A]~~ An exempt registered mortgage loan originator, when acting for an insured depository institution, a subsidiary of an insured depository institution regulated by a federal banking agency, 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) 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 ~~[broker,]~~ loan originator company, or other mortgage loan originator or by an agent of a lender, mortgage ~~[broker,]~~ loan originator company, or other mortgage loan originator;
- (5) ~~An individual engaging solely in loan processor or underwriter activities; provided that an individual, including an independent contractor, who performs the services of a loan processor or underwriter shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, and any loan processor or underwriter, including an independent contractor, who advertises that the individual can or will perform any of the activities of a mortgage loan originator or engages in the activities of a mortgage loan originator shall not be exempt under this chapter and shall obtain and maintain a license under this chapter and a valid unique identifier issued by the Nationwide Mortgage Licensing System;~~
- (6) (5) 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 ~~[broker,]~~ loan originator company, or other mortgage loan originator or by an agent of the lender, mortgage ~~[broker,]~~ loan originator company, or other mortgage loan originator; ~~or~~
- (7) (6) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in Section 101(53D) of Title 11, United States Code[-];
- (7) An exempt registered mortgage loan originator company as defined by this chapter; or
- (8) An insured depository institution.”

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

“~~[[§454F-3]]~~ **Requirement of licensure.** (a) Effective ~~[August 1, 2010,]~~ January 1, 2011, or such later date approved by the United States Department of Housing and Urban Development pursuant to the authority granted under Public Law 110-289, Section 1508(e), ~~[an individual,]~~ 12 United States Code Section 5107(e), a person, unless specifically exempted from this chapter, shall not engage in the business of a mortgage loan originator or mortgage loan originator company with respect to any dwelling located in this ~~[State]~~ state without first obtaining and maintaining annually, a license under this chapter. Each licensed mortgage loan originator or mortgage loan originator company shall register with and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System, and shall submit to the Nationwide Mortgage Licensing System any reports that shall be in a form and contain information as the Nationwide Mortgage Licensing System may require.

A mortgage broker or mortgage solicitor who holds a license under chapter 454 that is valid as of December 31, 2010 and who creates a record and obtains a unique identifying number in the Nationwide Mortgage Licensing System by November 30, 2010 shall be determined to be in compliance with the licensing provisions of this chapter until the commissioner makes a final determination on the issuance or denial of the individual's license.

(b) An independent contractor shall not engage in the activities of a loan processor or underwriter without a license pursuant to section 454F-4. Each

independent contractor licensed as a mortgage loan originator shall obtain and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System. An independent contractor who is not an exclusive agent of a mortgage loan originator company, in addition to obtaining a license as a mortgage loan originator, shall obtain a license as a mortgage loan originator company.

(c) A loan processor or underwriter who does not represent to the public, through advertising or other means of communicating or providing information, including through business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, who does not advertise that the individual can or will perform any of the activities of a mortgage loan originator, and who does not engage in the activities of a mortgage loan originator shall not be required to be licensed under this chapter.

(d) Upon obtaining a incensing² determination under this chapter, an applicant's license issued under chapter 454 shall automatically terminate.

(e) If this section or any provision of this section conflicts at any time with any federal law, then the federal law shall prevail and this section or the relevant provisions of this section shall become ineffective and invalid. The ineffectiveness or invalidity of this section or any of its provisions shall not affect any other provisions or applications of this chapter which shall be given effect without the invalid provision or application, and to this end, the provisions of this section are severable."

SECTION 11. Section 454F-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§454F-4]]~~ License and registration; application; issuance. (a) Applicants for a license shall apply in a form as prescribed by the Nationwide Mortgage Licensing System or by the commissioner.

(b) To fulfill the purposes of this chapter, the commissioner shall establish relationships or contracts with the Nationwide Mortgage Licensing System or other entities designated by the Nationwide Mortgage Licensing System to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.

(c) For the purpose and the extent necessary to participate in the Nationwide Mortgage Licensing System, the commissioner may waive or modify, in whole or in part, by rule or order, any or all of the requirements of this chapter and [tø] establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System.

(d) In connection with an application for [~~licensing as a mortgage loan originator,~~] a license under this chapter, the applicant, at a minimum, shall furnish to the commissioner and to the Nationwide Mortgage Licensing System information concerning the applicant's identity, including:

- (1) Fingerprints of the applicant and, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive the fingerprints for a state, national, and international criminal history background check; and
- (2) Personal history and experience of the applicant and, in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members in a form prescribed by the Nationwide Mortgage Li-

censing System including the submission of authorization for the Nationwide Mortgage Licensing System and the commissioner to obtain:

- (A) An independent credit report obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act, 15 United States Code 1681 et seq.; and
 - (B) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
- (e) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting information from and distributing information to the Department of Justice or any governmental agency.
- (f) The commissioner may use the Nationwide Mortgage Licensing System as an agent for requesting and distributing information to and from any source directed by the commissioner.

(g) An applicant for a license as a mortgage loan originator company that is a person other than an individual shall be registered with the business registration division of the department of commerce and consumer affairs to do business in this state before a license pursuant to this chapter shall be granted."

SECTION 12. Section 454F-5, Hawaii Revised Statutes, is amended to read as follows:

"[§454F-5] Issuance of license. (a) The commissioner shall not issue a ~~[mortgage loan originator]~~ license pursuant to this chapter unless the commissioner makes at a minimum the following findings:

- (1) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has never had a mortgage loan originator or a mortgage loan originator company license revoked in any jurisdiction; provided that a subsequent formal vacation of a revocation shall not be deemed a revocation;
- (2) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, or pled guilty or nolo contendere, or been granted a deferred acceptance of a guilty plea under chapter 853 to a felony in a domestic, foreign, or military court:
 - (A) During the seven-year period preceding the date of the application for licensing and registration; or
 - (B) At any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

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

- (3) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has demonstrated financial responsibility, character, and general fitness to command the confidence of the community and to warrant a determination that the ~~[mortgage loan originator]~~ applicant shall operate honestly, fairly, and efficiently pursuant to this chapter. For purposes of this paragraph, a person is not financially responsible when the person has shown a disregard in the management of the person's financial

condition. A determination that ~~[an individual]~~ a person has not shown financial responsibility may be based on:

- (A) Current outstanding judgments, except judgments solely as a result of medical expenses;
 - (B) Current outstanding tax liens or other government liens and filings;
 - (C) Foreclosures within the past three years; and
 - (D) A pattern of seriously delinquent accounts within the past three years;
- (4) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;
- [(4)] (5) The applicant, or in the case of an applicant that is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has completed the pre-licensing education requirement described in section 454F-6;
- [(5)] (6) The applicant, or in the case of an applicant that is not an individual, each individual mortgage loan originator who is employed by the mortgage loan originator company or who provides exclusive services to the applicant as a mortgage loan originator, has passed a written test that meets the test requirements in section 454F-7; and
- [(6)] (7) The applicant has met the ~~[surety bond]~~ mortgage loan recovery fund requirement as required in section ~~[454F-13.]~~ 454F-C.

(b) The applicant, or in the case of an applicant that is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managers, shall submit authorization to the commissioner for the commissioner to conduct background checks to determine or verify the information in subsection (a) in each state where the person has conducted mortgage loan origination activities. Authorization pursuant to this subsection shall include consent to provide additional fingerprints, if necessary, to law enforcement or regulatory bodies in other states."

SECTION 13. Section 454F-6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) ~~[A person]~~ An applicant for licensure as a mortgage loan originator shall complete at least twenty hours of pre-licensing education approved in accordance with subsection (b) that includes:

 - (1) Three hours of federal law and regulations;
 - (2) Three hours of ethics, that shall include instruction on fraud, consumer protection, and fair lending issues; and
 - (3) Two hours of training related to lending standards for the nontraditional mortgage product marketplace."
 2. By amending subsection (e) to read:

"(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensure System ~~[in subsection (a)]~~ for any state shall be accepted as credit towards completion of pre-licensing education requirements in this ~~[State.]~~ state."

SECTION 14. Section 454F-7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) ~~[In order to]~~ To meet the passing of the written test requirement in section 454F-5, an applicant for licensure as a mortgage loan originator shall pass, in accordance with the standards established under this section, a qualified written test developed by the Nationwide Mortgage Licensing System and administered by a test provider approved by the Nationwide Mortgage Licensing System based upon reasonable standards.”

2. By amending subsection (d) to read:

“(d) An individual shall have passed a qualified written test if the individual achieves a test score of seventy-five per cent of the correct answers to questions or better. An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test. After failing three consecutive tests, an individual shall wait at least six months before taking the test again. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer not taking into account any time during which the individual is [a] an exempt registered mortgage loan originator, shall retake the test.”

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

“~~[[§454F-8]]~~ **Standards for license renewal.** (a) The minimum standards for license renewal for mortgage loan originators shall include the following:

- (1) The mortgage loan originator continues to meet the minimum standards for licensure under section 454F-5;
- (2) The mortgage loan originator has satisfied the annual continuing education requirements in section 454F-9; and
- (3) The mortgage loan originator has paid all required fees for renewal of the license.

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

- (1) The mortgage loan originator company continues to meet the minimum standards for licensure established pursuant to section 454F-5;
- (2) The mortgage loan originator company's qualified manager has satisfied the minimum standards for license renewal; and
- (3) The mortgage loan originator company has paid all required fees for renewal of the license.

[(b)] (c) The license of a mortgage loan originator [who] or mortgage loan originator company that fails to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with section 454F-K and the standards established by the Nationwide Mortgage Licensing System.”

SECTION 16. Section 454F-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (d) and (e) to read:

“(d) Continuing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System ~~[and Registry]~~.

(e) A licensed mortgage loan originator:

- (1) May only receive credit for a continuing education course in the year in which the course is taken, except for continuing education credits received pursuant to this chapter; and
- (2) May not take the same approved course in the same or successive years to meet the annual requirements for continuing education[-]; provided that the term "successive years" shall mean the two years following the year in which a mortgage loan originator takes an approved course."

2. By amending subsection (i) to read:

"(i) [A person] The license of a licensee meeting the requirements of section 454F-8(a)(1) and (3) [may make up any deficiency in continuing education as established by rule adopted by the commissioner] shall expire if the licensee fails to meet the minimum requirements for continuing education. Reinstatement of the expired license shall be allowed as provided for in section 454F-K."

SECTION 17. Section 454F-10, Hawaii Revised Statutes, is amended to read as follows:

"[§454F-10] Authority to require license. In addition to any other duties imposed upon the commissioner, the commissioner shall require mortgage loan originators and mortgage loan originator companies to be licensed and registered through the Nationwide Mortgage Licensing System. The commissioner is authorized to participate in the Nationwide Mortgage Licensing System. The commissioner may establish by rule pursuant to chapter 91, requirements for mortgage loan originators[-] and mortgage loan originator companies, including:

- (1) Background checks of:
 - (A) Criminal history through fingerprint or other databases;
 - (B) Civil or administrative records;
 - (C) Credit history; and
 - (D) Any other source deemed necessary by the Nationwide Mortgage Licensing System [~~and Registry~~];
- (2) Fees to apply for or renew licenses through the Nationwide Mortgage Licensing System;
- (3) The setting or resetting as necessary of license renewal and reporting dates;
- (4) Requirements for amending or surrendering a license; and
- (5) Any other activity the commissioner deems necessary to participate in the Nationwide Mortgage Licensing System."

SECTION 18. Section 454F-11, Hawaii Revised Statutes, is amended to read as follows:

"[§454F-11] Nationwide Mortgage Licensing System; registry information; challenge process. The commissioner shall establish a process by rule pursuant to chapter 91 whereby [~~mortgage loan originators~~] a licensee may challenge information entered into the Nationwide Mortgage Licensing System by the commissioner."

SECTION 19. Section 454F-12, Hawaii Revised Statutes, is amended to read as follows:

“[§454F-12] Enforcement authorities; violations; penalties. (a) [~~In order to~~] To ensure the effective supervision and enforcement of this chapter, the commissioner may, pursuant to chapter 91:

- (1) Deny, suspend, revoke, condition, or decline to renew a license because of a violation of this chapter, rules, an order, or a directive entered under this chapter;
- (2) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or [~~licensed mortgage loan originator~~] licensee fails at any time to meet the requirements of section 454F-6 or section 454F-8, violates section 454F-17, or withholds information or makes a material misstatement in an application for a license or renewal of a license;
- (3) Order restitution against persons subject to this chapter for violations of this chapter;
- (4) Impose fines on persons subject to this chapter; and
- (5) Issue orders or directives under this chapter as follows:
 - (A) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist;
 - (B) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist;
 - (C) Enter immediate temporary orders to cease doing business under a license [~~or interim license~~] issued pursuant to the authority granted under this chapter if the commissioner determines that the license was erroneously granted or the licensee is currently in violation of this chapter; or
 - (D) Order or direct any other affirmative action as the commissioner deems necessary.

(b) The commissioner may impose [~~a civil penalty~~] an administrative fine on a [~~mortgage loan originator~~] licensee or person subject to this chapter if the commissioner finds on the record after notice and opportunity for hearing that the [~~mortgage loan originator~~] licensee or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any rule prescribed by the commissioner under this chapter or order issued under the authority of this chapter.

(c) The maximum [~~penalty~~] fine for each act or omission described in subsection (b) shall be \$25,000.

(d) Each violation or failure to comply with any directive or order of the commissioner shall be a separate and distinct violation.

(e) Notwithstanding section 480-13.5, any violation of this chapter that is directed toward, targets, or injures an elder, may be subject to an additional civil penalty not in excess of \$10,000 for each violation in addition to any other fines or penalties assessed for the violation.”

SECTION 20. Section 454F-15, Hawaii Revised Statutes, is amended to read as follows:

“[§454F-15] Investigation and examination authority. (a) In addition to any other authority under this chapter, the commissioner shall have the authority to conduct investigations and examinations. The commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

- (1) Criminal, civil, and administrative history information, including nonconviction data under chapter 853;
- (2) Personal history and experience information including independent credit reports obtained from a consumer reporting agency described in Section 603(p) of the Fair Credit Reporting Act; and
- (3) Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation, regardless of the location, possession, control, or custody of the documents, information, or evidence.

(b) For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any ~~[licensed mortgage loan originator, individual,]~~ licensee or person subject to this chapter, as often as necessary ~~[in order]~~ to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of, and examine under oath all persons whose testimony may be required about loans or the business or subject matter of any examination or investigation, and may direct, subpoena, or order the person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

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

(d) Each ~~[licensed mortgage loan originator, individual,]~~ licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:

- (1) Accounting compilations;
- (2) Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
- (3) Other information deemed necessary to carry out the purposes of this section.

(e) In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the ~~[licensed mortgage loan originator]~~ licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no ~~[individual or]~~ person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the ~~[licensed mortgage loan originator]~~ licensee or person under examination or investigation have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the ~~[licensed mortgage loan originator]~~ licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

(f) ~~[The]~~ To carry out the purposes of this chapter, the commissioner may:

- (1) Retain attorneys, accountants, or other professionals and specialists, who may be exempt from chapter 76, as examiners, auditors, or

investigators to conduct or assist in the conduct of examinations or investigations;

- (2) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
- (3) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the [~~licensed mortgage loan originator, individual,~~] licensee or person subject to this chapter;
- (4) Accept and rely on examination or investigation reports made by other government officials, within or without this [State:] state; and
- (5) Accept audit reports made by an independent certified public accountant for the [~~licensed mortgage loan originator, individual,~~] licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

(g) The authority of this section shall remain in effect, whether [~~such licensed mortgage loan originator, individual,~~] a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this [State:] state, or claims to act without such authority.

(h) No [~~licensed mortgage loan originator, individual,~~] licensee or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(i) The commissioner may charge an examination or investigation fee, payable to the division, based upon the cost per hour per examiner for all [~~mortgage loan originators~~] licensees and persons subject to this chapter examined or investigated by the commissioner or the commissioner's staff. The hourly fee shall be \$40 or an amount as the commissioner shall establish by rule pursuant to chapter 91. In addition to the examination or investigation fee, the commissioner may charge any person that is examined or investigated by the commissioner or the commissioner's staff pursuant to this section additional amounts for travel, per diem, mileage, and other reasonable expenses incurred in connection with the examination or investigation, payable to the division.

(j) Any person having reason to believe that this chapter or the rules adopted pursuant thereto have been violated, or that a license issued under this chapter should be suspended or revoked, may file a written complaint with the commissioner setting forth the details of the alleged violation or grounds for suspension or revocation."

SECTION 21. Section 454F-16, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~454F-16] Mortgage call reports. Each [~~licensed mortgage originator~~] licensee, as may be required by 12 United States Code Sections 5101 to 5116, shall submit to the Nationwide Mortgage Licensing System reports of condition, using the form entitled "REPORT OF CONDITION", which shall be in [~~such~~] the form and contain [~~such~~] the information as the Nationwide Mortgage Licensing System may require."

SECTION 22. Section 454F-17, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~454F-17 Prohibited practices. It shall be a violation of this chapter for a ~~[mortgage loan originator]~~ licensee or person subject to this chapter to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into any contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through “best efforts” to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
- (7) Fail to make disclosures as required by this chapter and any other applicable state or federal law including rules or regulations thereunder;
- (8) Fail to comply with this chapter or ~~[rules]~~ any order or rule issued or adopted under the authority of this chapter, or fail to comply with any other state or federal law, including the rules and regulations adopted thereunder, applicable to any business authorized or conducted pursuant to this chapter;
- (9) Make, in any manner, any false or deceptive statement or representation, including with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising;
- (10) Negligently make any false statement or provide any misleading information or knowingly and wilfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System, including an application for a license under this chapter, or in connection with any examination or investigation conducted by the commissioner or another government agency;
- (11) Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property for the purpose of influencing the independent judgment of the appraiser with respect to the value of a property;
- (12) Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;
- (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer;
- (14) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction; or

- (15) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan. A communication or advertisement that uses the name or trademark of a financial institution as defined in section 412:1-109 or its affiliates or subsidiaries, or infers that the communication or advertisement is from, endorsed by, is related to, or is the responsibility of the financial institution is a misleading or deceptive communication. Advertising that a specific interest rate, points, or financial terms are available when the rates, points, or financial terms are not actually available is a misleading or deceptive communication.”

SECTION 23. Section 454F-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In addition to any other powers provided by law, the commissioner shall have the authority to:

- (1) Administer and enforce the provisions and requirements of this chapter;
- (2) Adopt, amend, or repeal rules and issue declaratory rulings or informal nonbinding interpretations;
- (3) Develop requirements for licensure through rules, including establishing the content of the written tests required under section 454F-7;
- (4) Investigate and conduct hearings regarding any violation of this chapter or any rule or order of, or agreement with, the commissioner;
- (5) Create fact-finding committees that may make recommendations to the commissioner for the commissioner’s deliberations;
- (6) Require an applicant or any of its control persons, officers, directors, employees, partners, members, managers, and agents to disclose their relevant criminal history and request a criminal history record check in accordance with chapter 846;
- (7) Contract with or employ qualified persons, including investigators, examiners, or auditors who may be exempt from chapter 76 and who shall assist the commissioner in exercising the commissioner’s powers and duties;
- (8) Require that all fees, fines, and charges collected by the commissioner under this chapter, except for fees designated for deposit into the mortgage loan recovery fund pursuant to section 454F-C, be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (9) ~~[Subpoena]~~ Process and investigate complaints, subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including telephonic communications, and do any and all things necessary or incidental to the exercise of the commissioner’s power and duties, including the authority to conduct contested case proceedings under chapter 91; and
- (10) Require a ~~[mortgage loan originator]~~ licensee to comply with any rule, guidance, guideline, statement, supervisory policy or any similar proclamation issued or adopted by the Federal Deposit Insurance Corporation to the same extent and in the same manner as a bank chartered by the State or in the alternative, any policy position of the Conference of State Bank Supervisors.”

SECTION 24. Section 454F-19, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 25. Section 477E-2, Hawaii Revised Statutes, is amended by amending the definition of “creditor” to read as follows:

““Creditor” means any bank; savings and loan association; trust company; financial services loan company; credit union; ~~[mortgage banker, broker, or sealer;]~~ mortgage loan originator; mortgage loan originator company; pawnbroker; mutual benefit society or fraternal benefit society; debt adjuster; the issuer of a credit card as defined in section 708-800; any person who initiates, extends, renews, or continues loans of money or credit; any person who regularly arranges for the initiation, extension, renewal, or continuation of a loan of money or credit; or any assignee of an original creditor who participates in the decision to grant, extend, renew, or to continue a loan of money or credit.”

SECTION 26. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Criminal history record checks may be conducted by:
- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
 - (2) The department of health on prospective employees, persons seeking to serve as providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services as provided by section 321-171.5;
 - (3) The department of health on all applicants for licensure for, operators for, ~~[and]~~ prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the ~~[above related]~~ above facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321-15.2;
 - (4) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by section 302A-601.5;
 - (5) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
 - (6) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - (7) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;

- (8) The department of human services on prospective adoptive parents as established under section 346-19.7;
- (9) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-154;
- (10) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-152.5;
- (11) The department of human services on operators and employees of home and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-335;
- (12) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
- (13) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D-4.3;
- (14) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- (15) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
- (16) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- (17) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided pursuant to section 302C-1;
- (18) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- (19) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, vulnerable adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78-2.7;
- (20) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346-97;
- (21) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346-97;

- (22) The department of human services on foster grandparent program, retired and senior volunteer program, senior companion program, and respite companion program participants as provided by section 346-97;
- (23) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act [(Title], 42 United States Code Section 1396n(c)[)], or under any other applicable section or sections of the Social Security Act for the purposes of providing home and community-based services, as provided by section 346-97;
- (24) The department of commerce and consumer affairs on proposed directors and executive officers of a bank, savings bank, savings and loan association, trust company, and depository financial services loan company as provided by section 412:3-201;
- (25) The department of commerce and consumer affairs on proposed directors and executive officers of a nondepository financial services loan company as provided by section 412:3-301;
- (26) The department of commerce and consumer affairs on the original chartering applicants and proposed executive officers of a credit union as provided by section 412:10-103;
- (27) The department of commerce and consumer affairs on:
 - (A) Each principal of every non-corporate applicant for a money transmitter license; and
 - (B) The executive officers, key shareholders, and managers in charge of a money transmitter's activities of every corporate applicant for a money transmitter license,
 as provided by section 489D-9;
- (28) The department of commerce and consumer affairs on applicants for licensure and persons licensed under title 24;
- (29) The Hawaii health systems corporation on:
 - (A) Employees;
 - (B) Applicants seeking employment;
 - (C) Current or prospective members of the corporation board or regional system board; or
 - (D) Current or prospective volunteers, providers, or contractors, in any of the corporation's health facilities as provided by section 323F-5.5;
- [(30)] The department of commerce and consumer affairs on [an]:
 - (A) An applicant for a mortgage loan [originator's] originator license [as provided by chapter 454F]; and
 - (B) Each control person, executive officer, director, general partner, and manager of an applicant for a mortgage loan originator company license,
 as provided by chapter 454F; and
- [(31)] Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law."

SECTION 27. Section 454F-13, Hawaii Revised Statutes, is repealed.

SECTION 28. Section 454F-21, Hawaii Revised Statutes, is repealed.

SECTION 29. Chapter 454, Hawaii Revised Statutes, is repealed.

SECTION 30. Act 32, Special Session Laws of Hawaii 2009, is amended by amending section 8 to read as follows:

“SECTION 8. Effective [~~August 1, 2010;~~ January 1, 2011:

- (1) No new license shall be issued and no license renewal shall be effected under chapter 454, Hawaii Revised Statutes; and
- (2) An individual who is subject to this Act shall be required to be licensed under chapter 454F¹, Hawaii Revised Statutes, or¹ by such later date approved by the United States Department of Housing and Urban Development, pursuant to the authority granted under Public Law 110-289, section 1508(e). [~~As of the date that an individual is required to be licensed under chapter —, Hawaii Revised Statutes, the remaining pro-rata balance of the fees paid by the individual under chapter 454, Hawaii Revised Statutes, shall be applied to the individual's fees due under chapter —, Hawaii Revised Statutes, until exhausted.]”~~

SECTION 31. Act 32, Special Session Laws of Hawaii 2009, is amended by amending section 11 to read as follows:

“SECTION 11. There is appropriated out of the compliance resolution fund established under section 26-9(o), Hawaii Revised Statutes, the sum of \$159,400 or so much thereof as may be necessary for fiscal year 2009-2010 for all expenses, including the hiring in the division of financial institutions of one permanent working supervisor exempt from chapter 76, Hawaii Revised Statutes; three permanent examiners exempt from chapter 76, Hawaii Revised Statutes; three temporary examiners exempt from chapter 76, Hawaii Revised Statutes; and two permanent office assistants, to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.”

SECTION 32. A person licensed under chapter 454F, Hawaii Revised Statutes, shall not be required to be licensed under chapter 454, Hawaii Revised Statutes, and shall not be subject to the provisions of that chapter upon the effective date of the person's licensure under chapter 454F, Hawaii Revised Statutes; provided that this section shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before the effective date of the person's licensure under chapter 454F, Hawaii Revised Statutes.

SECTION 33. There is appropriated out of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$894,077 or so much thereof as may be necessary for fiscal year 2010-2011 for all expenses for establishing and maintaining the licensing regime created by chapter 454F, Hawaii Revised Statutes, and the hiring of and continued funding for positions in the division of financial institutions authorized under Act 32, Special Session Laws of Hawaii 2009, for which moneys were appropriated under section 11, Act 32, Special Session Laws of Hawaii 2009, including one permanent working supervisor exempt from chapter 76, Hawaii Revised Statutes; three permanent examiners exempt from chapter 76, Hawaii Revised Statutes; three temporary examiners exempt from chapter 76, Hawaii Revised Statutes; and two permanent office assistants, one of whom may be paid out of the mortgage loan recovery fund established by section 454F-C, Hawaii Revised Statutes.

The sum appropriated shall be expended by the division of financial institutions of the department of commerce and consumer affairs for the purposes of this Act.

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SECTION 34. To timely implement the licensure requirements of chapter 454F, Hawaii Revised Statutes, the director of commerce and consumer affairs, pursuant to the authority granted by section 78-27, Hawaii Revised Statutes, may execute agreements with the director of human resources development and the director of taxation to participate in a program of temporary exchange of employees that allows employees of the department of human resources development and the department of taxation to assist the division of financial institutions of the department of commerce and consumer affairs in processing applications for licensure under chapter 454F, Hawaii Revised Statutes. The director of human resources development and the director of taxation shall exercise their respective authority under section 78-27, Hawaii Revised Statutes, to participate fully and in good faith in agreements entered into pursuant to this section.

SECTION 35. This Act, including the repeal of chapter 454, Hawaii Revised Statutes, effectuated by section 29, does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 36. In codifying the new sections added by section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 37. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 38. This Act shall take effect on July 1, 2010; provided that sections 6, 7, 25, and 29 shall take effect on January 1, 2011; provided further that sections 30 and 31 shall take effect upon approval.

(Approved May 7, 2010.)

Notes

1. Should be underscored.
2. So in original.
3. Period should not be underscored.
4. Edited pursuant to HRS §23G-16.5.