
A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATION.

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

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

4 "§454F- Mortgage servicer companies; loan originators.

5 An employee who performs mortgage loan originator activities for
6 a mortgage servicer company is exempt from registration and
7 licensure as a mortgage loan originator; provided that:

8 (1) The employee's actions are part of the employee's
9 duties as an employee of the mortgage servicer
10 company; and

11 (2) The employee only provides mortgage loan originator
12 services with respect to a residential mortgage loan
13 modification.

14 §454F- Nonprofit organizations; loan originators. (a)

15 An employee who performs mortgage loan originator activities for
16 a nonprofit organization is exempt from registration and
17 licensure as a mortgage loan originator; provided that:



- 1 (1) The employee's actions are part of the employee's
2 duties as an employee of the nonprofit organization;
- 3 (2) The employee only provides mortgage loan originator
4 services with respect to residential mortgage loans
5 with terms favorable to the borrower; and
- 6 (3) The nonprofit organization registers with the
7 Nationwide Mortgage Licensing System and Registry.
- 8 (b) The commissioner shall periodically examine the books
9 and activities of nonprofit organizations and shall revoke an
10 organization's registration as a nonprofit organization with the
11 Nationwide Mortgage Licensing System and Registry if the
12 nonprofit organization fails to meet the requirements to be a
13 nonprofit organization.
- 14 (c) In determining whether a residential mortgage loan has
15 terms favorable to the borrower, the commissioner shall examine:
- 16 (1) The interest rate that the home loan would carry;
17 (2) The charges that are imposed on the borrower for
18 origination, application, closing, and other costs;
19 (3) Whether the mortgage includes any predatory
20 characteristics;
21 (4) The borrower's ability to repay the loan; and
22 (5) The term of the mortgage.



1 §454F- Sole proprietorships; fees. Every mortgage loan
2 originator company that consists of a single individual not
3 exempt under section 454F-2 who engages in the business of a
4 mortgage loan originator as a sole proprietorship shall be
5 reimbursed by the division for the fees paid for the state
6 mortgage loan originator initial application and annual license
7 renewal fees."

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

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

12 "Housing finance agency" means any authority:

13 (1) That helps meet the affordable housing needs of the
14 residents of the State;

15 (2) That is supervised directly or indirectly by the State
16 and includes nonprofit organizations;

17 (3) That is subject to audit and review by the State; and

18 (4) Whose activities make it eligible to be a member of
19 the National Council of State Housing Agencies.

20 "Mortgage servicer company" means a mortgage servicer
21 company licensed under chapter 454M.

22 "Nonprofit organization" means an organization that:



- 1 (1) Has the status of a tax-exempt organization under
2 Section 501(c)(3) of the Internal Revenue Code of
3 1986, as amended;
- 4 (2) Promotes affordable housing or provides homeownership
5 education or similar services;
- 6 (3) Conducts its activities in a manner that serves public
7 or charitable purposes, rather than commercial
8 purposes;
- 9 (4) Receives funding and revenue and charges fees in a
10 manner that does not incentivize it or its employees
11 to act other than in the best interests of its
12 clients;
- 13 (5) Compensates its employees in a manner that does not
14 incentivize employees to act other than in the best
15 interests of its clients; and
- 16 (6) Provides, or identifies for the borrower, residential
17 mortgage loans with terms favorable to the borrower
18 and comparable to mortgage loans and housing
19 assistance provided under government housing
20 assistance programs.
- 21 "Residential mortgage loan modification" means:



1 (1) Modification of existing residential mortgage loans
2 which generally includes a change in interest,
3 principal, or term of loan; or

4 (2) The processing of the approval of loan assumptions.

5 "Residential mortgage loan modification" does not include
6 origination of mortgage loans."

7 2. By amending the definition of "sponsor" to read:

8 "\"Sponsor\" means to [~~create~~]:

9 (1) Create a relationship through the Nationwide Mortgage
10 Licensing System [~~for the purpose of appropriately~~
11 supervising a mortgage loan originator's activities.];
12 and

13 (2) Appropriately supervise a mortgage loan originator's
14 activities."

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

17 "(a) All mortgage loan originators, mortgage loan
18 originator companies, exempt sponsoring mortgage loan originator
19 companies, nonprofit organizations, mortgage servicer companies,
20 and [~~any~~] every other person in this State that originates a
21 residential mortgage loan, unless exempt under section 454F-2,
22 shall register with the Nationwide Mortgage Licensing System."



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

3 "[+]§454F-1.6[+] **Presumption of control.** An individual is
4 presumed to control a mortgage loan originator company if that
5 individual is a director, general partner, managing [~~director,~~
6 member, or executive officer of that mortgage loan originator
7 company."

8 SECTION 5. Section 454F-1.7, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[+]§454F-1.7[+] **Duties of qualified individual and branch**
11 **manager.** (a) A qualified individual shall have the duty to
12 manage and supervise the mortgage loan origination activities of
13 a licensed mortgage loan originator company's principal office
14 and the licensed mortgage loan originators located at or working
15 out of [~~that location.~~] the principal office and all company
16 branch offices. A qualified individual shall hold a license as
17 a mortgage loan originator issued pursuant to this chapter.

18 (b) A branch manager shall have the duty to directly
19 manage and supervise a licensed mortgage loan originator
20 company's branch office and the licensed mortgage loan
21 originators located at or working out of that location. A
22 branch manager shall be physically present in the branch office



1 and shall hold a license as a mortgage loan originator issued
2 pursuant to this chapter.

3 (c) A qualified individual for a mortgage loan originator
4 company [~~and a branch manager for a branch office~~] shall be
5 responsible for:

- 6 (1) Supervising the maintenance and accounting of client
7 trust accounts and disbursements from those accounts;
- 8 (2) Supervising the maintenance of all records, contracts,
9 and documents of the mortgage loan originator company;
- 10 (3) Supervising all mortgage loan originator agreements
11 and mortgage loan documents and the handling of these
12 documents by the licensed mortgage loan originators
13 who are employed by or are independent contractors of
14 the mortgage loan originator company;
- 15 (4) Supervising all licensed mortgage loan originators who
16 are employed by or are independent contractors of the
17 mortgage loan originator company;
- 18 (5) Developing and enforcing policies and procedures
19 relating to the handling of residential mortgage loan
20 transactions and the professional conduct of the
21 licensed mortgage loan originators and other staff;



- 1 (6) Developing and monitoring compliance with a policy on
2 continuing education requirements for all licensed
3 mortgage loan originators who are employed by or are
4 independent contractors of the mortgage loan
5 originator company pursuant to the requirements of
6 this chapter and the rules of the commissioner;
- 7 (7) Ensuring that the licenses of all mortgage loan
8 originators who are employed by or are independent
9 contractors of the mortgage loan originator company,
10 and the license of the mortgage loan originator
11 company are current and active, and that all required
12 fees are timely paid to the mortgage loan recovery
13 fund;
- 14 (8) Establishing and conducting a training program for all
15 licensed mortgage loan originators who are employed by
16 or are independent contractors of the mortgage loan
17 originator company;
- 18 (9) Ensuring that all licensed mortgage loan originators
19 who are employed by or are independent contractors of
20 the mortgage loan originator company are provided
21 adequate information and training on the latest



1 amendments to licensing laws and rules and any other
2 applicable laws and rules;

3 (10) Notifying the commissioner of the termination of the
4 employment or independent contractor relationship of
5 licensed mortgage loan originators who were employed
6 by or were independent contractors of the mortgage
7 loan originator company upon the termination of
8 employment or the independent contractor relationship;
9 and

10 (11) Ensuring that the records, loan documents, and
11 agreements including mortgage loan originator
12 agreements are retained for seven years on paper or in
13 electronic format by the mortgage loan originator
14 company.

15 (d) A branch manager for a branch office shall be
16 responsible for supervising:

17 (1) The maintenance of all records, contracts, and
18 documents of the mortgage loan originator company
19 branch office;

20 (2) All mortgage loan originator agreements and mortgage
21 loan documents and the handling of these documents by
22 the licensed mortgage loan originators or independent



1 contractors located at or working out of the mortgage
2 loan originator company branch office; and
3 (3) All licensed mortgage loan originators who are
4 employed by, or are independent contractors of, the
5 mortgage loan originator company and who are located
6 at or working out of the mortgage loan originator
7 company branch office."

8 SECTION 6. Section 454F-1.8, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "~~+~~\$454F-1.8~~+~~ Sponsorship by mortgage loan
11 ~~[origination]~~ originator company ~~[ex]~~, exempt sponsoring
12 mortgage loan originator company~~[-]~~, or nonprofit organizations.

13 All mortgage loan originators shall be sponsored by a mortgage
14 loan originator company ~~[ex]~~, by an exempt sponsoring mortgage
15 loan originator company~~[-]~~, or a nonprofit organization. At no
16 time shall a mortgage loan originator be sponsored by more than
17 one Hawaii licensed mortgage loan originator company, exempt
18 sponsoring mortgage loan originator company, or nonprofit
19 organization."

20 SECTION 7. Section 454F-2, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§454F-2 Exemptions. This chapter shall not apply to the
2 following:

- 3 (1) An exempt registered mortgage loan originator[~~7~~] when
4 acting for an insured depository institution[~~7~~ a
5 ~~subsidiary of an insured depository institution~~
6 ~~regulated by a federal banking agency,~~] or an
7 institution regulated by the Farm Credit
8 Administration;
- 9 (2) Any individual who offers or negotiates terms of a
10 residential mortgage loan with, or on behalf of, an
11 immediate family member of the individual;
- 12 (3) Any individual who offers or negotiates terms of a
13 residential mortgage loan secured by a dwelling that
14 served as the individual's residence;
- 15 (4) A licensed attorney who negotiates the terms of a
16 residential mortgage loan on behalf of a client as an
17 ancillary matter to the attorney's representation of
18 the client unless the attorney is compensated by a
19 lender, a mortgage loan originator company, or other
20 mortgage loan originator or by an agent of a lender,
21 mortgage loan originator company, or other mortgage
22 loan originator;



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

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

12 (7) An exempt sponsoring mortgage loan originator company
13 as defined by this chapter except as otherwise
14 provided by this chapter; [~~or~~]

15 (8) An insured depository institution[~~-~~];

16 (9) An institution regulated by the Farm Credit
17 Administration; or

18 (10) Individuals who act as loan originators as employees
19 of government agencies or of housing finance
20 agencies."

21 SECTION 8. Section 454F-4.9, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) An application for licensure pursuant to this chapter
2 shall be considered abandoned if an applicant fails to provide
3 evidence of continued efforts to complete the licensing
4 application process for [~~six consecutive months.~~] thirty days.
5 The thirty-day period shall begin on the last day of contact
6 with the division by the applicant. The commissioner may extend
7 this period for good cause. No refund of filing fees shall be
8 provided to an applicant for an abandoned application. The
9 commissioner shall not be required to act on any abandoned
10 application and is not required to retain abandoned applications
11 or supporting documents. The commissioner may withdraw
12 abandoned applications from the Nationwide Mortgage Licensing
13 System."

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

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

- 18 (1) The mortgage loan originator company continues to meet
19 the minimum standards for licensure established
20 pursuant to section 454F-5;
- 21 (2) The mortgage loan originator company's [~~branch manager~~
22 and] qualified individual and every branch manager



1 have satisfied the minimum standards for license
2 renewal; and

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

5 SECTION 10. Section 454F-22, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§454F-22 Mortgage loan originator, mortgage loan**
8 **originator company, and exempt sponsoring mortgage loan**
9 **originator company fees.** (a) A mortgage loan originator shall
10 pay the following fees to obtain and maintain a valid mortgage
11 loan originator license:

- 12 (1) Initial application fee of [~~\$500~~] \$600;
- 13 (2) Annual license renewal fee of [~~\$300~~] \$350;
- 14 (3) Reinstatement fee of \$100;
- 15 (4) Late fee of \$25 per day; and
- 16 (5) Criminal background check fee of \$35, or of an amount
17 determined by the commissioner by rule pursuant to
18 chapter 91.

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



- 1 (1) Fees payable for a principal office of a mortgage loan
2 originator company:
- 3 (A) Initial application fee of \$900;
4 (B) Annual license renewal fee of \$600;
5 (C) Reinstatement fee of \$100;
6 (D) Late fee of \$25 per day; and
7 (E) Criminal background check fee of \$35, or of an
8 amount determined by the commissioner by rule
9 pursuant to chapter 91, for each control person,
10 executive officer, director, general partner, and
11 manager; and
- 12 (2) Fees payable for each branch office of a mortgage loan
13 originator company:
- 14 (A) Initial application fee of \$250;
15 (B) Annual license renewal fee of \$100;
16 (C) Reinstatement fee of \$100; and
17 (D) Late fee of \$25 per day.
- 18 (c) An exempt sponsoring mortgage loan originator company
19 shall pay the following [~~fess~~] fees to maintain a valid
20 registration in the Nationwide Mortgage Licensing System and
21 Registry:
- 22 (1) Initial registration fee of \$200;



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

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

3 (d) A nonprofit organization shall pay the following fees
4 to maintain a valid registration as a nonprofit organization in
5 the Nationwide Mortgage Licensing System and Registry:

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

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

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

9 ~~[-(d)]~~ (e) In addition to fees charged by the Nationwide
10 Mortgage Licensing System, a licensee shall pay to the
11 commissioner a fee of ~~[\$50]~~ \$100 for each of the following
12 amendments to information provided to the Nationwide Mortgage
13 Licensing System that require the review of the commissioner:

14 (1) Change of physical ~~[location, including address~~
15 ~~change]~~ or mailing address for branch office or
16 principal place of business;

17 (2) Addition or deletion of a "d/b/a" assignment;

18 (3) Change of mortgage loan originator's sponsor;

19 (4) Change of qualified individual;

20 ~~[-(3)]~~ (5) Change of branch manager; [e] and

21 ~~[-(4)]~~ (6) Change of mortgage loan originator company's
22 legal name.



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

3 ~~(e)~~ (f) The fees established by this section are
4 nonrefundable and are in addition to any fees established and
5 charged by the Nationwide Mortgage Licensing System, an approved
6 educational course provider, an approved educational testing
7 provider, a law enforcement agency for fingerprints and
8 background checks, or a credit reporting agency used by the
9 Nationwide Mortgage Licensing System.

10 ~~(f)~~ (g) The commissioner may establish, by rule pursuant
11 to chapter 91, any other fees or charges necessary for the
12 administration of this chapter."

13 SECTION 11. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 12. This Act shall take effect upon its approval.



Report Title:

Mortgage Loan Originators; Mortgage Loan Originator Companies;
Fees

Description:

Amends the Secure and Fair Enforcement for Mortgage Licensing Act to reflect recent changes to federal law and to adjust fees in consideration of the new regulatory requirements. (SD1)

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