

**CHAPTER 454F**  
**SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT**

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**Part I GENERAL PROVISION**

**§454F-1 Definitions.** In this chapter, unless the context or subject matter otherwise requires:

"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 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 a person applying for the issuance of a license or a renewal of a license under this chapter.

"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 manager" means an individual who is designated and employed by a mortgage loan originator company to be responsible for the activities in the conduct of business of the

licensed mortgage loan originator company's branch office, in conducting the business of that mortgage loan originator company's branch office.

"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.

"Clerical or support duties" include the following activities subsequent to the receipt of an application:

- (1) The receipt, collection, distribution, and analysis of information for the processing or underwriting of a residential mortgage loan; and
- (2) Communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include offering or negotiating loan rates or terms or counseling borrowers about residential mortgage loan rates or terms.

"Commissioner" means the commissioner of financial institutions.

"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" 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 but is not required to be licensed under this chapter.

"Exempt sponsoring mortgage loan originator company" means any person exempt from or not included in the licensing requirements of this chapter who registers with the Nationwide Mortgage Licensing System for purposes of sponsoring a mortgage loan originator.

"Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, stepsibling, and equivalent adoptive relationships.

"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.

"Individual" means a natural person.

"Insured depository institution" means the same as in 12 United States Code section 1813(c)(2); provided that it also includes any credit union.

"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 sponsoring mortgage loan originator company as defined by this section.

"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 person licensed or exempt from licensing under this chapter.

"Mortgage loan originator":

- (1) Means an individual who for compensation or gain or in the expectation of compensation or gain:
  - (A) Takes a residential mortgage loan application; or
  - (B) Offers or negotiates terms of a residential mortgage loan; and
- (2) Includes an independent contractor as defined in 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 contracts for the services of one or more mortgage loan originators licensed or required to be licensed under this chapter.

"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 mortgage loan originators, mortgage loan originator companies, exempt registered mortgage loan originators, and exempt registered mortgage loan originator companies as defined by this chapter.

"Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate residential mortgage loan where the interest rate is fixed for the thirty-year term.

"Person" means an individual, sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or other association of individuals, however organized.

"Qualified individual" means an individual who is responsible for the oversight of mortgage loan originators that are employed by or contracted to perform work for a mortgage loan originator company.

"Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

- (1) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (3) Negotiating on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction;
- (4) Engaging in any activity for which a person is required to be registered or licensed as a real estate agent or real estate broker by the State; and
- (5) Offering to engage in any activity, or act in any capacity, described in paragraphs (1), (2), (3), or (4).

"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 1602 or residential real estate.

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

"Sponsor" means to create a relationship through the Nationwide Mortgage Licensing System for the purpose of appropriately supervising a mortgage loan originator's activities.

"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.

"Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System.

**§454F-1.5 Registration with Nationwide Mortgage Licensing System required.** (a) All mortgage loan originators, mortgage loan originator companies, exempt sponsoring mortgage loan originator companies, and any other person in this State that originates a residential mortgage loan, unless exempt under section 454F-2, shall register with the Nationwide Mortgage Licensing System.

(b) Exempt registered mortgage loan originators, 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-1.6] 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-2 Exemptions.** This chapter shall not apply to the following:

- (1) 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 loan originator company, or other mortgage loan originator or by an agent of a lender, mortgage loan originator company, or other mortgage loan originator;
- (5) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage loan originator company, or other mortgage loan originator or by an agent of the lender, mortgage loan originator company, or other mortgage loan originator;
- (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 sponsoring mortgage loan originator company as defined by this chapter except as otherwise provided by this chapter; or
- (8) An insured depository institution.

**§454F-3 Requirement of licensure.** (a) Effective 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), 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 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 [licensing] 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.

**§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 establish new requirements as reasonably necessary to participate in the Nationwide Mortgage Licensing System.

(d) In connection with an application for a license under this chapter, the applicant, at a minimum, shall furnish to the Nationwide Mortgage Licensing System information concerning the applicant's identity, including:

- (1) Fingerprints of the applicant and, if an applicant 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, if an applicant 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 Licensing 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;

provided that the commissioner may use any information obtained pursuant to this subsection or through the Nationwide Mortgage Licensing System to determine an applicant's demonstrated financial responsibility, character, and general fitness for licensure.

(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.

**§454F-4.5 Automatic secondary review of license application.** (a) For each application that was determined on initial review to fail to meet the criteria for licensure, the commissioner shall provide a secondary level of review of the application which shall include the:

- (1) Overall character and fitness of the applicant, taking into account all relevant circumstances and weighing all mitigating factors appropriately; and
  - (2) Assurance that non-discretionary licensing criteria have been applied correctly.
- (b) The commissioner may request that an applicant provide any additional or supplemental information that the commissioner deems necessary for a secondary review of an application.

**§454F-5 Issuance of license.** (a) The commissioner shall not issue a license pursuant to this chapter unless the commissioner makes at a minimum the following findings:

- (1) The applicant, if an applicant 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, if an applicant 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 federal law or 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, if an applicant 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 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 a person has shown a disregard in the management of the person's financial condition 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, if an applicant is not an individual, each of the applicant's control persons, executive officers, directors, general partners, and managing members, has not been convicted of, plead guilty or nolo contendere to, or been granted a deferred acceptance of a guilty plea under federal law or chapter 853 to any misdemeanor involving an act of fraud, dishonesty, breach of trust, or money laundering;

(5) The applicant, if an applicant 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;

(6) The applicant, if an applicant 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

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

(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.

**§454F-6 Pre-licensing and re-licensing; education of mortgage loan originators.**

(a) 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.

(b) Pre-licensing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System based upon reasonable standards. Review and approval of a pre-licensing education course shall include review and approval of the course provider.

(c) Nothing in this section shall prohibit the use of any pre-licensing education course approved by the Nationwide Mortgage Licensing System that is provided by the employer of the applicant, an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Pre-licensing education may be offered either in a classroom, online, or by any other means approved by the Nationwide Mortgage Licensing System.

(e) The pre-licensing education requirements approved by the Nationwide Mortgage Licensing System for any state shall be accepted as credit towards completion of pre-licensing education requirements in this State.

(f) A person previously licensed under this chapter and applying to be licensed under this chapter shall prove to the satisfaction of the commissioner that the person has completed all of the continuing education requirements for the year in which the license was last held.

**§454F-7 Testing of mortgage loan originators.** (a) 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.

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

- (1) Ethics;
- (2) Federal law and regulations pertaining to mortgage origination;
- (3) State law and rules pertaining to mortgage origination; and

- (4) Federal and state law, rules and regulations, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.

(c) Nothing in this section shall prohibit a test provider approved by the Nationwide Mortgage Licensing System from providing a test at the location of the employer of the applicant, the location of any subsidiary or affiliate of the employer of the applicant, or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

(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 an exempt registered mortgage loan originator, shall retake the test.

**§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 branch manager and qualified individual have satisfied the minimum standards for license renewal; and
- (3) The mortgage loan originator company has paid all required fees for renewal of the license.

(c) The license of a mortgage loan originator 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-8.5 and the standards established by the Nationwide Mortgage Licensing System.

**[§454F-8.5] 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-9 Continuing education; mortgage loan originators.** (a) Each year, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection (b) that shall include at least:

- (1) Three hours of federal law and regulations;
- (2) Two 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.

(b) For purposes of subsection (a), continuing education courses shall be reviewed and approved by the Nationwide Mortgage Licensing System based upon reasonable standards. Review and approval of a continuing education course shall include review and approval of the course provider.

(c) Nothing in this section shall prohibit the use of any education course that is approved by the Nationwide Mortgage Licensing System and provided by the employer of the mortgage loan originator, an entity that is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of the employer or entity.

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

(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.

(f) A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive continuing education credit for the course taught at the rate of two hours credit for every one hour taught.

(g) Continuing education courses as described in subsection (a) and approved by the Nationwide Mortgage Licensing System for any state, that are successfully completed by a licensed mortgage loan originator, shall be accepted as credit towards completion of continuing education requirements in this State.

(h) A licensed mortgage loan originator who subsequently becomes unlicensed shall complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

(i) The license of a licensee meeting the requirements of section 454F-8(a)(1) and (3) 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-8.5.

**§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;
- (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.

**§454F-10.5 Authorized places of business; designation of qualified individuals and branch managers; branch offices; out-of-state headquarters; relocation.** (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 qualified individual who is licensed as a mortgage loan originator pursuant to this chapter to oversee mortgage loan originators employed or contracted by the company. If the qualified individual is physically located at a branch office, the qualified individual may also be designated as the branch 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-22. A mortgage loan originator company that establishes one or more branch offices pursuant to this subsection shall designate a branch manager for each branch office located at the branch office to oversee that branch office. Every branch manager shall be licensed as a mortgage loan originator pursuant to this chapter.

(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-22.

(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.

(e) A mortgage loan originator company that maintains its headquarters outside of the State shall:

- (1) Designate an office in this State as its principal place of business in this State;
- (2) Apply for and obtain approval from the commissioner to designate its principal place of business in this State as a branch office pursuant to this section; and
- (3) Designate a qualified individual who shall hold a license as a mortgage loan originator pursuant to this chapter; provided that the qualified individual may be the same person designated as the branch manager.

**[§454F-10.6] 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-10.7] 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 who will obtain control are licensed pursuant to this chapter; have 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.

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

**§454F-12 Enforcement authorities; violations; penalties.** (a) 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 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 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 an administrative fine on a licensee or person subject to this chapter if the commissioner finds on the record after notice and opportunity for hearing that the 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 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.

#### **§454F-13 REPEALED.**

**[§454F-14] Confidentiality.** (a) Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal or state law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material shall continue to apply to the information or material after the information or material has been disclosed to the Nationwide Mortgage Licensing System. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal or state law.

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

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

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

(2) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System applicable to the information or

material; provided that the person to whom the information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

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

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

(f) This section shall not apply to information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that are included in the Nationwide Mortgage Licensing System for access by the public.

**§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 licensee or person subject to this chapter, as often as necessary 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 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 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 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 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 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 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 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) 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 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; and
    - (5) Accept audit reports made by an independent certified public accountant for the 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 a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this State, or claims to act without such authority.
  - (h) No 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 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.

**§454F-16 Mortgage call reports.** Each 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 the form and contain the information as the Nationwide Mortgage Licensing System may require.

**§454F-17 Prohibited practices.** It shall be a violation of this chapter for a 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 related to mortgage loan origination activities 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 adopted pursuant to state or federal law;
- (8) Fail to comply with this chapter or 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 pursuant to state or federal law 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 or knowingly 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) 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;
- (13) Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction;
- (14) Deliver a misleading or deceptive communication or advertisement, whether written, electronic, or oral, when marketing or soliciting a residential mortgage loan; provided that:
  - (A) 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;
  - (B) 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;
- (15) Fill in or complete any blank on a final residential mortgage loan application that requests material information including financial information without adequate supporting documentation provided by the borrower;
- (16) Fill in or complete any blank on any mortgage or note evidencing or securing the residential mortgage loan which relates to the amount, interest rate, term, or monthly payment of the residential mortgage loan;
- (17) Originate a residential mortgage loan based primarily on the current market value of the borrower's collateral rather than on the borrower's ability to repay the loan according to its terms; provided that the sale of the property is made to a bona fide buyer; and provided further that this paragraph shall not apply to a reverse mortgage as defined under Title 12 Code of Federal Regulations Section 226.33;
- (18) Advertise terms of a residential mortgage loan in violation of section 226.16 or 226.24 of Regulation Z of the Board of Governors of the Federal Reserve System; or

- (19) Encourage a borrower to misrepresent, inflate, or fabricate the source or amount of a borrower's actual income or assets in the application or underwriting process for a residential mortgage loan.

**§454F-18 Powers of commissioner.** (a) The commissioner may adopt rules pursuant to chapter 91 as the commissioner deems necessary for the administration of this chapter.

(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-41, be deposited into the compliance resolution fund established pursuant to section 26-9(o);
- (9) 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 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.

**§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.

**[§454F-20] Report to Nationwide Mortgage Licensing System.** Notwithstanding any other law to the contrary, the commissioner is required to regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System subject to the confidentiality provisions contained in section 454F-14.

**§454F-21 REPEALED.**

**§454F-22 Mortgage loan originator, mortgage loan originator company, and exempt sponsoring 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) An exempt sponsoring mortgage loan originator company shall pay the following fees to maintain a valid registration in the Nationwide Mortgage Licensing System:

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

(d) 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 office 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.

(e) 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.

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

**[§454F-23] Payment of fees.** All fees collected pursuant to section 454F-22, 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.

### Note

The following five new sections have been added to HRS Chapter 454F, effective July 6, 2011, pursuant to Act 194, Session Laws of Hawaii (2011). Their section numbers have not yet been assigned by the Revisor of Statutes. It is most likely that they will be included in Part I of Chapter 454F.

**§454F- Exempt sponsoring mortgage loan originator company; registration.** Any person exempt from the licensing provisions of this chapter may register with the Nationwide Mortgage Licensing System for the purpose of sponsoring a mortgage loan originator required to be licensed by this chapter.

**§454F- Sponsorship by mortgage loan origination company or exempt sponsoring mortgage loan originator company.** All mortgage loan originators shall be sponsored by a mortgage loan originator company or by an exempt sponsoring mortgage loan originator company.

**§454F- Decision denying application subject to administrative hearing.** (a) Within fifteen days following receipt of a decision denying an application, an applicant may petition the commissioner for an administrative hearing that shall be held in accordance with chapter 91 and the rules of the department of commerce and consumer affairs. If a petition for an administrative hearing is not filed within the time specified, the commissioner's decision denying the application shall become a final decision and order denying the application.

(b) Upon the receipt of a petition for an administrative hearing, the commissioner shall assign the petition to a hearings officer for further proceedings pursuant to the rules of the department of commerce and consumer affairs. The commissioner shall issue a written final decision and order, following the hearings officer's transmittal to the commissioner of the entire record together with the recommended decision, any timely filed exceptions, and any timely filed statements in support of the recommended decision.

**§454F- Abandoned applications.** (a) An application for licensure pursuant to this chapter shall be considered abandoned if an applicant fails to provide evidence of continued efforts to complete the licensing process for six consecutive months. No refund of filing fees shall be provided to an applicant for an abandoned application. The commissioner shall not be required to act on any abandoned application and is not required to retain abandoned applications or supporting documents. The commissioner may withdraw abandoned applications from the Nationwide Mortgage Licensing System.

(b) For purposes of this section, failure to provide evidence of continued efforts to complete the licensing process includes:

- (1) Failure to submit required documents and other information requested by the commissioner within six months from the last date the documents or other information were requested; or
- (2) Failure to provide the commissioner with any written communication indicating that the applicant is attempting to complete the licensing process for a period of six months.

(c) If an application is deemed abandoned by the commissioner, the applicant may reapply for licensure after payment of applicable fees and compliance with the licensing requirements in effect at the time of reapplication.

(d) An applicant may withdraw an application that has been submitted under this chapter at any time; provided that no refund shall be issued. The commissioner shall treat a withdrawn application as an abandoned application according to this section.

**§454F- Duties of qualified individual and branch manager.** (a) A qualified individual shall have the duty to manage and supervise the mortgage loan origination activities of a licensed mortgage loan originator company's principal office and the licensed mortgage loan originators located at or working out of that location. A qualified individual shall hold a license as a mortgage loan originator issued pursuant to this chapter.

(b) A branch manager shall have the duty to directly manage and supervise a licensed mortgage loan originator company's branch office and the licensed mortgage loan originators located at or working out of that location. A branch manager shall be physically present in the branch office and shall hold a license as mortgage loan originator issued pursuant to this chapter.

(c) A qualified individual for a mortgage loan originator company and a branch manager for a branch office shall be responsible for:

- (1) Supervising the maintenance and accounting of client trust accounts and disbursements from those accounts;
- (2) Supervising the maintenance of all records, contracts, and documents of the mortgage loan originator company;
- (3) Supervising all mortgage loan originator agreements and mortgage loan documents and the handling of these documents by the licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (4) Supervising all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (5) Developing and enforcing policies and procedures relating to the handling of residential mortgage loan transactions and the professional conduct of the licensed mortgage loan originators and other staff;
- (6) Developing and monitoring compliance with a policy on continuing education requirements for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company pursuant to the requirements of this chapter and the rules of the commissioner;
- (7) Ensuring that the licenses of all mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company, and the license of the mortgage loan originator company are current and active, and that all required fees are timely paid to the mortgage loan recovery fund;
- (8) Establishing and conducting a training program for all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company;
- (9) Ensuring that all licensed mortgage loan originators who are employed by or are independent contractors of the mortgage loan originator company are provided adequate information and training on the latest amendments to licensing laws and rules and any other applicable laws and rules;
- (10) Notifying the commissioner of the termination of the employment or independent contractor relationship of licensed mortgage loan originators who were employed by or were independent contractors of the mortgage loan

- originator company upon the termination of employment or the independent contractor relationship; and
- (11) Ensuring that the records, loan documents, and agreements including mortgage loan originator agreements are retained for seven years on paper or in electronic format by the mortgage loan originator company.

## **[PART II. MORTGAGE LOAN RECOVERY FUND]**

**[\$454F-41] 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-42] 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-41 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-41 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 pursuant to section 454F-41(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-43] Management of fund.** (a) The sums received by the division pursuant to section 454F-41 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-44] 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-45] 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-46] Waiver of rights.** The failure of an aggrieved person to comply with sections 454F-41 and 454F-42 shall constitute a waiver of the rights contained in those sections.

**[§454F-47] 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.