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2010 MAY 27 AM 10:25

WJW

Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

MAY 26 2010

The Honorable Judith T. Won Pat, Ed.D.
Speaker
Mina' Trenta Na Liheslaturan Guåhan
155 Hessler Street
Hagåtña, Guam 96910

Dear Speaker Won Pat:

Transmitted herewith is Substitute Bill No. 351-30 (COR) "AN ACT TO *ADD* A NEW ARTICLE 3 TO CHAPTER 36 OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT", which I signed into law on May 25, 2010 as Public Law 30-151.

Sinseru yan Magåhet,

MICHAEL W. CRUZ, M.D.
I Maga'låhen Guahan para pa'go
Acting Governor of Guahan

Attachment: copy of Bill

30-10-0480

Office of the Speaker
Judith T. Won Pat, Ed. D.

Date 5/26/2010
Time 5:11 PM
Received by WJW

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

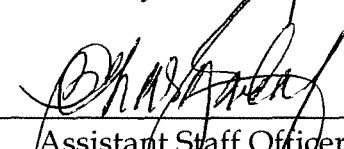
This is to certify that Substitute Bill No. 351-30 (COR), "AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 36 OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT", was on the 3rd day of May, 2010, duly and regularly passed.


Tina Rose Muña Barnes
Acting Speaker


Attested:


Rory J. Respicio
Acting Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 13th day of May, 2010, at 11:30 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


MIKE W. CRUZ, MD
GOVERNOR OF GUAM ACTING

MAY 25 2010

Date: _____

Public Law No. P.L. 30-151

I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

Bill No. 351-30 (COR)

As substituted by the Committee on Appropriations,
Taxation, Banking, Insurance, Retirement and Land, and amended.

Introduced by:

v. c. pangelinan
B. J.F. Cruz
T. C. Ada
V. Anthony Ada
F. B. Aguon, Jr.
F. F. Blas, Jr.
E. J.B. Calvo
J. V. Espaldon
Judith P. Guthertz, DPA
T. R. Muña Barnes
Adolpho B. Palacios, Sr.
R. J. Respicio
Telo Taitague
Ray Tenorio
Judith T. Won Pat, Ed.D.

**AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 36
OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE
TO THE ESTABLISHMENT OF A SECURE AND FAIR
ENFORCEMENT FOR MORTGAGE LICENSING ACT.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**
2 **Section 1.** There is hereby *added* a new Article 3 to Chapter 36 of Title 18
3 of the Guam Code Annotated to read:
4 **“Article 3**
5 **Guam Secure and Fair Enforcement for Mortgage Licensing Act**
6 **of 2010**

- 1 **§36301. Title.**
- 2 **§36302. Legislative Findings and Intent.**
- 3 **§36303. Definitions.**
- 4 **§36304. License and Registration Required.**
- 5 **§36305. Guam License and Registration Application and**
6 **Issuance.**
- 7 **§36306. Issuance of License.**
- 8 **§36307. Pre-Licensing and Re-Licensing Education of Loan**
9 **Originators.**
- 10 **§36308. Testing of Loan Originators.**
- 11 **§36309. Standards for License Renewal.**
- 12 **§36310. Continuing Education for Mortgage Loan**
13 **Originators.**
- 14 **§36311. Authority to Require License.**
- 15 **§36312. Nationwide Mortgage Licensing System and Registry**
16 **Information Challenge Process.**
- 17 **§36313. Enforcement Authorities, Violations and Penalties.**
- 18 **§36314. Surety Bond Required.**
- 19 **§36315. Minimum Net Worth Required.**
- 20 **§36316. Confidentiality.**
- 21 **§36317. Investigation and Examination Authority.**
- 22 **§36318. Prohibited Acts and Practices.**
- 23 **§36319. Mortgage Call Reports.**
- 24 **§36320. Report to Nationwide Mortgage Licensing System and**
25 **Registry.**
- 26 **§36321. Privately Insured Credit.**
- 27 **§36322. Unique Identifier Shown.**

1 **§36323. Effective Date.**

2 **§36324. Severability.**

3 **§36301. Title.** This Act may be cited as the “Guam Secure and
4 Fair Enforcement for Mortgage Licensing Act of 2010, or Guam S.A.F.E.
5 Mortgage Licensing Act of 2010.”

6 **§36302. Legislative Findings and Intent.**

7 *I Liheslaturan Guåhan* finds that the activities of mortgage loan
8 originators and the origination or offering of financing for residential real
9 property have a direct, valuable and immediate impact upon Guam’s
10 consumers, Guam’s economy, the neighborhoods and communities of
11 Guam, and the housing and real estate industry.

12 *I Liheslaturan Guåhan* finds that accessibility to mortgage credit is
13 vital to Guam’s residents.

14 *I Liheslatura* also finds that it is essential for the protection of the
15 residents of Guam and the stability of Guam’s economy that reasonable
16 standards for licensing and regulation of the business practices of mortgage
17 loan originators be imposed.

18 *I Liheslatura* further finds that the obligations of mortgage loan
19 originators to consumers in connection with originating or making
20 residential mortgage loans are such as to warrant the regulation of the
21 mortgage lending process. The purpose of this Act is to protect consumers
22 seeking mortgage loans and to ensure that the mortgage lending industry is
23 operating without unfair, deceptive, and fraudulent practices on the part of
24 mortgage loan originators.

25 Therefore, *I Liheslaturan Guåhan* establishes within this Act:

26 (a) System of Supervision and Enforcement. An effective system
27 of supervision and enforcement of the mortgage lending industry, including:

1 (1) The authority to issue licenses to conduct business under
2 this Act, including the authority to write rules or regulations or adopt
3 procedures necessary to the licensing of persons covered under this
4 Act.

5 (2) The authority to deny, suspend, condition or revoke
6 licenses issued under this Act.

7 (3) The authority to examine, investigate and conduct
8 enforcement actions as necessary to carry out the intended purposes of
9 this Act, including the authority to subpoena witnesses and
10 documents, enter orders, including cease and desist orders, order
11 restitution and monetary penalties and order the removal and ban of
12 individuals from office or employment.

13 (b) Broad Administrative Authority. That the Commissioner *shall*
14 have the broad administrative authority to administer, interpret and enforce
15 this Act, and promulgate rules or regulations implementing this Act, in order
16 to carry out the intentions of *I Liheslatura*.

17 **§36303. Definitions.**

18 For purposes of this Act, the following definitions *shall* apply:

19 (a) *Commissioner* means Guam's Banking and Insurance
20 Commissioner.

21 (b) *Depository Institution* has the same meaning as in
22 Section 3 of the Federal Deposit Insurance Act. It means any bank or
23 savings association, including any credit union.

24 (c) *Federal Banking Agencies* means the Board of Governors
25 of the Federal Reserve System, the Comptroller of the Currency, the
26 Director of the Office of Thrift Supervision, the National Credit Union
27 Administration, and the Federal Deposit Insurance Corporation.

1 (d) *Immediate Family Member* means a spouse, child,
2 sibling, parent, grandparent, or grandchild. This includes stepparents,
3 stepchildren, stepsiblings, and adoptive relationships.

4 (e) *Individual* means a natural person.

5 (f) *Loan Processor or Underwriter* means an individual who
6 performs clerical or support duties as an employee at the direction of
7 and subject to the supervision and instruction of a person licensed, or
8 exempt from licensing.

9 (g) *Clerical or Support Duties*. For purposes of this
10 Subsection, the term “Clerical or Support Duties” may include
11 subsequent to the receipt of an application:

12 (1) the receipt, collection, distribution, and analysis of
13 information common for the processing or underwriting of a
14 residential mortgage loan; *and*

15 (2) communicating with a consumer to obtain the
16 information necessary for the processing or underwriting of a
17 loan, to the extent that such communication does *not* include
18 offering or negotiating loan rates or terms, or counseling
19 consumers about residential mortgage loan rates or terms.

20 (h) *Representations to the public*. An individual engaging
21 solely in loan processor or underwriter activities, *shall not* represent to
22 the public, through advertising or other means of communicating or
23 providing information, including the use of business cards, stationery,
24 brochures, signs, rate lists, or other promotional items, that such
25 individual can or will perform any of the activities of a mortgage loan
26 originator.

1 (i) *Mortgage Loan Originator* means an individual who for
2 compensation or gain or in the expectation of compensation or gain:

3 (1) takes a residential mortgage loan application; *or*

4 (2) offers or negotiates terms of a residential mortgage
5 loan;

6 (A) does not include an individual engaged
7 solely as a loan processor or underwriter;

8 (B) does not include a person or entity that only
9 performs real estate brokerage activities and is licensed or
10 registered in accordance with Guam law, unless the
11 person or entity is compensated by a lender, a mortgage
12 broker, or other mortgage loan originator or by any agent
13 of such lender, mortgage broker, or other mortgage loan
14 originator; and

15 (C) does not include a person or entity solely
16 involved in extensions of credit relating to timeshare
17 plans, as that term is defined in Section 101(53D) of Title
18 11, United States Code.

19 (j) *Real Estate Brokerage Activity* means any activity that involves
20 offering or providing real estate brokerage services to the public, including:

21 (1) acting as a real estate agent or real estate broker for a
22 buyer, seller, lessor, or lessee of real property;

23 (2) bringing together parties interested in the sale, purchase,
24 lease, rental, or exchange of real property;

25 (3) negotiating, on behalf of any party, any portion of a
26 contract relating to the sale, purchase, lease, rental, or exchange of

1 real property (other than in connection with providing financing with
2 respect to any such transaction);

3 (4) engaging in any activity for which a person engaged in
4 the activity is required to be registered or licensed as a real estate
5 agent or real estate broker under any applicable law; and

6 (5) offering to engage in any activity, or act in any capacity,
7 described in Subsections (1), (2), (3), or (4) of this Subsection (j).

8 (k) *Nationwide Mortgage Licensing System and Registry* means a
9 mortgage licensing system developed and maintained by the Conference of
10 State Bank Supervisors and the American Association of Residential
11 Mortgage Regulators for the licensing and registration of licensed mortgage
12 loan originators.

13 (l) *Nontraditional Mortgage Product* means any mortgage product
14 other than a thirty (30) year fixed rate mortgage.

15 (m) *Person* means a natural person, corporation, company, limited
16 liability company, partnership, or association.

17 (n) *Registered Mortgage Loan Originator* means any individual
18 who:

19 (1) meets the definition of mortgage loan originator and is an
20 employee of:

21 (A) a depository institution;

22 (B) a subsidiary that is:

23 (i) owned and controlled by a depository institution;
24 and

25 (ii) regulated by a Federal banking agency; *or*

26 (iii) an institution regulated by the Farm Credit
27 Administration; and

1 (iv) is registered with, and maintains a unique identifier
2 through, the Nationwide Mortgage Licensing System and
3 Registry.

4 (o) *Residential Mortgage Loan* means any loan primarily for
5 personal, family, or household use that is secured by a mortgage, deed of
6 trust, or other equivalent consensual security interest on a dwelling (as
7 defined in Section 103(v) of the Truth in Lending Act) or residential real
8 estate upon which is constructed or intended to be constructed a dwelling (as
9 so defined).

10 (p) *Residential Real Estate* means any real property located in
11 Guam, upon which is constructed or intended to be constructed a dwelling.

12 (q) *Unique Identifier* means a number or other identifier assigned
13 by protocols established by the Nationwide Mortgage Licensing System and
14 Registry.

15 **§36304. License and Registration Required.**

16 (a) General. An individual, unless specifically exempted from this
17 Act under Subsection (c) of this Section, *shall not* engage in the business of
18 a mortgage loan originator with respect to any dwelling located in Guam
19 without first obtaining and maintaining annually a license under this Act.
20 Each licensed mortgage loan originator must register with and maintain a
21 valid unique identifier issued by the Nationwide Mortgage Licensing System
22 and Registry.

23 (b) Effective Date. In order to facilitate an orderly transition to
24 licensing and to minimize disruption in the mortgage marketplace, the
25 effective date for Subsection (a) of this Section shall be July 31, 2010, or
26 such later date approved by the Secretary of the U.S. Department of Housing

1 and Urban Development, pursuant to the authority granted under Public Law
2 110-289, Section 1508(a).

3 (c) Exemption from this Act. The following are exempt from this
4 Act:

5 (1) Registered Mortgage Loan Originators, when acting for
6 an entity described in §36303 (n);

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

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

13 (4) A licensed attorney who negotiates the terms of a
14 residential mortgage loan on behalf of a client as an ancillary matter to
15 the attorney's representation of the client, *unless* the attorney is
16 compensated by a lender, a mortgage broker, or other mortgage loan
17 originator or by any agent of such lender, mortgage broker, or other
18 mortgage loan originator.

19 (d) Independent Contractor Loan Processors or Underwriters. A
20 loan processor or underwriter who is an independent contractor may *not*
21 engage in the activities of a loan processor or underwriter *unless* such
22 independent contractor loan processor or underwriter obtains and maintains
23 a license under §36304(a). Each independent contractor loan processor or
24 underwriter licensed as a mortgage loan originator must have and maintain a
25 valid unique identifier issued by the Nationwide Mortgage Licensing System
26 and Registry.

1 (e) Commissioner Authority to Establish Licensing Rules,
2 Regulations or Interim Procedures and Accept Early Applications. For the
3 purposes of implementing an orderly and efficient licensing process, the
4 Commissioner may establish licensing rules or regulations and interim
5 procedures for licensing and acceptance of applications, pursuant to the
6 Administrative Adjudication Law. For previously registered or licensed
7 individuals, the Commissioner may establish expedited review and licensing
8 procedures, pursuant to the Administrative Adjudication Law.

9 **§36305. Guam License and Registration Application and Issuance.**

10 (a) Application Form. Applicants for a license *shall* apply in a
11 form as prescribed by the Commissioner. Each such form *shall* contain
12 content as set forth by rule, regulation, instruction or procedure of the
13 Commissioner and may be changed or updated as necessary by the
14 Commissioner in order to carry out the purposes of this Act.

15 (b) Commissioner May Establish Relationships or Contracts. In
16 order to fulfill the purposes of this Act, the Commissioner is authorized to
17 establish relationships or contracts with the Nationwide Mortgage Licensing
18 System and Registry, or other entities designated by the Nationwide
19 Mortgage Licensing System and Registry, to collect and maintain records
20 and process transaction fees or other fees related to licensees or other
21 persons subject to this Act.

22 (c) Waive or Modify Requirements. For the purpose of
23 participating in the Nationwide Mortgage Licensing System & Registry, the
24 Commissioner is authorized to waive or modify, in whole or in part, by rule,
25 regulation or order, any or all of the requirements of this Chapter, and to
26 establish new requirements as reasonably necessary to participate in the
27 Nationwide Mortgage Licensing System & Registry.

1 (d) Background Checks. In connection with an application for
2 licensing as a mortgage loan originator, the applicant *shall*, at a minimum,
3 furnish to the Nationwide Mortgage Licensing System and Registry
4 information concerning the applicant's identity, including:

5 (1) fingerprints for submission to the Federal Bureau of
6 Investigation, and any governmental agency or entity authorized to
7 receive such information for a state, national and international
8 criminal history background check; and

9 (2) personal history and experience in a form prescribed by
10 the Nationwide Mortgage Licensing System and Registry, including
11 the submission of authorization for the Nationwide Mortgage
12 Licensing System and Registry and the Commissioner to obtain the
13 following:

14 (A) an independent credit report obtained from a
15 consumer reporting agency described in Section 603(p) of the
16 Fair Credit Reporting Act; *and*

17 (B) information related to any administrative, civil or
18 criminal findings by any governmental jurisdiction.

19 (e) Agent for Purposes of Requesting and Distributing Criminal
20 Information. For the purposes of this Section and in order to reduce the
21 points of contact which the Federal Bureau of Investigation may have to
22 maintain for purposes of Subsection (d)(1) and (2)(B) of this Section, the
23 Commissioner may use the Nationwide Mortgage Licensing System and
24 Registry as a channeling agent for requesting information from and
25 distributing information to the Department of Justice or any governmental
26 agency.

1 (f) Agent for Purposes of Requesting and Distributing Non-
2 Criminal Information. For the purposes of this Section and in order to reduce
3 the points of contact which the Commissioner may have to maintain for
4 purposes of Subsection (d)(2)(A) and (B) of this Section, the Commissioner
5 may use the Nationwide Mortgage Licensing System and Registry as a
6 channeling agent for requesting and distributing information to and from any
7 source so directed by the Commissioner.

8 **§36306. Issuance of License.**

9 The Commissioner *shall not* issue a mortgage loan originator license
10 *unless* the Commissioner makes, at a minimum, the following findings:

11 (a) No License Revocation. The applicant has never had a
12 mortgage loan originator license revoked in any governmental
13 jurisdiction, *except* that a subsequent formal vacation of such
14 revocation *shall not* be deemed a revocation.

15 (b) No Felony Conviction. The applicant has *not* been
16 convicted of, or pled guilty or *nocontendere* to, a felony in a domestic,
17 foreign, or military court:

18 (1) during the seven (7)-year period preceding the date
19 of the application for licensing and registration; or

20 (2) at any time preceding such date of application, if
21 such felony involved an act of fraud, dishonesty, or a breach of
22 trust, or money laundering; and

23 (3) provided that any pardon of a conviction *shall not*
24 be a conviction for purposes of this Subsection.

25 (c) Character and Fitness. The applicant has demonstrated
26 financial responsibility, character, and general fitness such as to
27 command the confidence of the community and to warrant a

1 determination that the mortgage loan originator will operate honestly,
2 fairly, and efficiently within the purposes of this Act.

3 (1) For purposes of this Subsection, a person has
4 shown that he or she is *not* financially responsible when he or
5 she has shown a disregard in the management of his or her own
6 financial condition. A determination that an individual has *not*
7 shown financial responsibility may include, but *not* be limited
8 to:

9 (A) current outstanding judgments, except judgments
10 solely as a result of medical expenses;

11 (B) current outstanding tax liens or other government
12 liens and filings;

13 (C) foreclosures within the past three (3) years;

14 (D) a pattern of seriously delinquent accounts within
15 the past three (3) years.

16 (d) Pre-Licensing Education. The applicant has completed the pre-
17 licensing education requirement described in §36307 of this Act.

18 (e) Written Test. The applicant has passed a written test that meets
19 the test requirement described in §36308 of this Act.

20 (f) Surety Bond *or* Minimum Net Worth Requirement. The
21 applicant has met the surety bond requirement of §36314 *or* the minimum
22 net worth requirement of §36315 on this Act.

23 **§36307. Pre-Licensing and Re-Licensing Education of Loan**
24 **Originators.**

25 (a) Minimum Educational Requirements. In order to meet the pre-
26 licensing education requirement referred to in §36306 (d) of this Act, a

1 person *shall* complete *at least* twenty (20) hours of education approved in
2 accordance with Subsection (b) of this Section, which *shall* include *at least*:

3 (1) three (3) hours of Federal law and regulations;

4 (2) three (3) hours of ethics, which *shall* include instruction on
5 fraud, consumer protection, and fair lending issues; and

6 (3) two (2) hours of training related to lending standards for the
7 nontraditional mortgage product marketplace.

8 (b) Approved Educational Courses. For the purposes of Subsection
9 (a) of this Section, pre-licensing education courses *shall* be reviewed, and
10 approved by the Nationwide Mortgage Licensing System and Registry based
11 upon reasonable standards. Review and approval of a pre-licensing
12 education course *shall* include review and approval of the course provider.

13 (c) Approval of Employer and Affiliate Educational Courses.
14 Nothing in this Section shall preclude any pre-licensing education course, as
15 approved by the Nationwide Mortgage Licensing System and Registry that
16 is provided by the employer of the applicant or an entity which is affiliated
17 with the applicant by an agency contract, or any subsidiary or affiliate of
18 such employer or entity.

19 (d) Venue of Education. Pre-licensing education may be offered
20 either in a classroom, online or by any other means approved by the
21 Nationwide Mortgage Licensing System and Registry.

22 (e) Reciprocity of Education. The pre-licensing education
23 requirements approved by the Nationwide Mortgage Licensing System and
24 Registry in Subsections (a)(1), (2) and (3) of this Section for any State *shall*
25 be accepted as credit towards completion of pre-licensing education
26 requirements in Guam.

1 (f) Re-Licensing Education Requirements. A person previously
2 licensed under this Act, subsequent to the Effective Date of this Act and
3 applying to be licensed again, must prove that they have completed all of the
4 continuing education requirements for the year in which the license was last
5 held.

6 **§36308. Testing of Loan Originators.**

7 (a) Testing of Loan Originators, General. In order to meet the
8 written test requirement referred to in §36306 (e) of this Act, an individual
9 *shall* pass, in accordance with the standards established under this
10 Subsection, a qualified written test developed by the Nationwide Mortgage
11 Licensing System and Registry and administered by a test provider approved
12 by the Nationwide Mortgage Licensing System and Registry based upon
13 reasonable standards.

14 (b) Qualified Test. A written test *shall not* be treated as a qualified
15 written test for purposes of Subsection (a) of this Section, *unless* the test
16 adequately measures the applicant's knowledge and comprehension in
17 appropriate subject areas, including:

18 (1) Ethics;

19 (2) Federal law and regulation pertaining to mortgage
20 origination;

21 (3) Guam law and regulation pertaining to mortgage
22 origination;

23 (4) Federal and Guam law and regulation, including
24 instruction on fraud, consumer protection, the nontraditional mortgage
25 marketplace, and fair lending issues.

26 (c) Testing Location. Nothing in this Section shall prohibit a test
27 provider approved by the Nationwide Mortgage Licensing System and

1 Registry from providing a test at the location of the employer of the
2 applicant or the location of any subsidiary or affiliate of the employer of the
3 applicant, or the location of any entity with which the applicant holds an
4 exclusive arrangement to conduct the business of a mortgage loan originator.

5 (d) Minimum Competence:

6 (1) Passing Score. An individual *shall not* be considered to
7 have passed a qualified written test *unless* the individual achieves a
8 test score of *not less than* seventy-five percent (75%) correct answers
9 to questions.

10 (2) Initial Retests. An individual may retake a test three (3)
11 consecutive times with each consecutive taking occurring *at least*
12 thirty (30) days after the preceding test.

13 (3) Subsequent Retests. After failing three (3) consecutive
14 tests, an individual *shall* wait *at least* six (6) months before taking the
15 test again.

16 (4) Retest After Lapse of License. A licensed mortgage loan
17 originator who fails to maintain a valid license for a period of five (5)
18 years *or* longer *shall* retake the test, not taking into account any time
19 during which such individual is a registered mortgage loan originator.

20 **§36309. Standards for License Renewal.**

21 (a) General. The minimum standards for license renewal for
22 mortgage loan originators *shall* include the following:

23 (1) The mortgage loan originator continues to meet the minimum
24 standards for license issuance under §36305 (a) through (f) of this
25 Act.

26 (2) The mortgage loan originator has satisfied the annual
27 continuing education requirements described in §36310 of this Act.

1 (3) The mortgage loan originator has paid all required fees for
2 renewal of the license.

3 (b) Failure to Satisfy Minimum Standards for License Renewal.
4 The license of a mortgage loan originator failing to satisfy the minimum
5 standards for license renewal *shall* expire. The Commissioner may adopt
6 procedures for the reinstatement of expired licenses consistent with the
7 standards established by the Nationwide Mortgage Licensing System and
8 Registry.

9 **§36310. Continuing Education for Mortgage Loan Originators.**

10 (a) General. In order to meet the annual continuing education
11 requirements referred to in §36309 (a)(2), a licensed mortgage loan
12 originator *shall* complete *at least* eight (8) hours of education approved in
13 accordance with Subsection (b) of this Section, which *shall* include *at least*:

14 (1) three (3) hours of Federal law and regulations;

15 (2) two (2) hours of ethics, which *shall* include instruction
16 on fraud, consumer protection, and fair lending issues; and

17 (3) two (2) hours of training related to lending standards for
18 the nontraditional mortgage product marketplace.

19 (b) Approved Educational Courses. For the purposes of Subsection
20 (a) of this Section, continuing education courses *shall* be reviewed, and
21 approved by the Nationwide Mortgage Licensing System and Registry based
22 upon reasonable standards. Review and approval of a continuing education
23 course *shall* include review and approval of the course provider.

24 (c) Approval of Employer and Affiliate Educational Courses.
25 Nothing in this Section shall preclude any education course, as approved by
26 the Nationwide Mortgage Licensing System and Registry, that is provided
27 by the employer of the mortgage loan originator, *or* an entity which is

1 affiliated with the mortgage loan originator by an agency contract, or any
2 subsidiary or affiliate of such employer or entity.

3 (d) Venue of Education. Continuing education may be offered
4 either in a classroom, online or by any other means approved by the
5 Nationwide Mortgage Licensing System and Registry.

6 (e) Calculation of Continuing Education Credits. A licensed
7 mortgage loan originator:

8 (1) *except* for §36309 (b) and Subsection (i) of this Section,
9 may *only* receive credit for a continuing education course in the year
10 in which the course is taken; and

11 (2) may *not* take the same approved course in the same or
12 successive years to meet the annual requirements for continuing
13 education.

14 (f) Instructor Credit. A licensed mortgage loan originator who is
15 an approved instructor of an approved continuing education course may
16 receive credit for the licensed mortgage loan originator's own annual
17 continuing education requirement at the rate of two (2) hours credit for every
18 one (1) hour taught.

19 (g) Reciprocity of Education. A person having successfully
20 completed the education requirements approved by the Nationwide
21 Mortgage Licensing System and Registry in Subsections (a)(1), (2) and (3)
22 of this Section for any State *shall* be accepted as credit towards completion
23 of continuing education requirements in Guam.

24 (h) Lapse in License. A licensed mortgage loan originator who
25 subsequently becomes unlicensed must complete the continuing education
26 requirements for the last year in which the license was held *prior* to issuance
27 of a new or renewed license.

1 (i) Make up of Continuing Education. A person meeting the
2 requirements of §36309 (a)(1) and (3) of this Act may make up any
3 deficiency in continuing education as established by rule or regulation of the
4 Commissioner.

5 **§36311. Authority to Require License.**

6 In addition to any other duties imposed upon the Commissioner by
7 law, the Commissioner *shall* require mortgage loan originators to be licensed
8 and registered through the Nationwide Mortgage Licensing System and
9 Registry. In order to carry out this requirement, the Commissioner is
10 authorized to participate in the Nationwide Mortgage Licensing System and
11 Registry. For this purpose, the Commissioner may establish Rules and
12 Regulations as necessary, pursuant to the Administrative Adjudication Law,
13 including, but *not* limited to:

14 (a) Background Checks. Background checks for:

15 (1) criminal history through fingerprint or other databases;

16 (2) civil or administrative records;

17 (3) Credit history; *or*

18 (4) any other information as deemed necessary by the
19 Nationwide Mortgage Licensing System and Registry.

20 (b) Fees. The payment of fees to apply for or renew licenses
21 through the Nationwide Mortgage Licensing System and Registry;

22 (c) Setting Dates. The setting or resetting as necessary of renewal
23 or reporting dates; *and*

24 (d) Other requirements for amending or surrendering a license or
25 any other such activities as the Commissioner deems necessary for
26 participation in the Nationwide Mortgage Licensing System and Registry.

1 **§36312. Nationwide Mortgage Licensing System and Registry**
2 **Information Challenge Process.**

3 The Commissioner *shall* establish a process whereby mortgage loan
4 originators may challenge information entered into the Nationwide
5 Mortgage Licensing System and Registry by the Commissioner.

6 **§36313. Enforcement Authorities, Violations and Penalties.**

7 (a) In order to ensure the effective supervision and enforcement of
8 this Act, the Commissioner may, pursuant to the Administrative
9 Adjudication Law:

10 (1) Deny, suspend, revoke, condition or decline to renew a
11 license for a violation of this Act, rules or regulations issued under
12 this Act, or order or directive entered under this Act.

13 (2) Deny, suspend, revoke, condition or decline to renew a
14 license if an applicant or licensee fails at any time to meet the
15 requirements of §36306 or §36309 of this Act, or withholds
16 information or makes a material misstatement in an application for a
17 license or renewal of a license.

18 (3) Order restitution against persons subject to this Act for
19 violations of this Act.

20 (4) Impose fines on persons subject to this Act pursuant to
21 Subsections (b), (c) and (d) of this Section.

22 (5) Issue orders or directives under this Act as follows:

23 (A) Order or direct persons subject to this Act to cease
24 and desist from conducting business, including immediate
25 temporary orders to cease and desist.

1 (B) Order or direct persons subject to this Act to cease
2 any harmful activities or violations of this Act, including
3 immediate temporary orders to cease and desist.

4 (C) Enter immediate temporary orders to cease
5 business under a license or interim license issued pursuant to
6 the authority granted under §36304 (e) of this Act if the
7 Commissioner determines that such license was erroneously
8 granted or the licensee is currently in violation of this Act;

9 (D) Order or direct such other affirmative action as the
10 Commissioner deems necessary.

11 (b) The Commissioner may impose a civil penalty on a mortgage
12 loan originator or person subject to this Act, if the Commissioner finds, on
13 the record after notice and opportunity for hearing, that such mortgage loan
14 originator or person subject to this Act has violated or failed to comply with
15 any requirement of this Act or any regulation prescribed by the
16 Commissioner under this Act or order issued under authority of this Act.

17 (c) The maximum amount of penalty for each act or omission
18 described in Subsection (b) of this Section *shall* be Twenty-five Thousand
19 Dollars (\$25,000).

20 (d) Each violation or failure to comply with any directive or order
21 of the Commissioner is a separate and distinct violation or failure.

22 **§36314. Surety Bond Required.**

23 (a) Coverage, Form and Regulations. Each mortgage loan
24 originator *shall* be covered by a surety bond in accordance with this Section.
25 In the event that the mortgage loan originator is an employee or exclusive
26 agent of a person subject to this Act, the surety bond of such person subject

1 to this Act can be used in lieu of the mortgage loan originator's surety bond
2 requirement.

3 (1) The surety bond *shall* provide coverage for each
4 mortgage loan originator in an amount as prescribed in Subsection (b)
5 of this Section.

6 (2) The surety bond *shall* be in a form as prescribed by the
7 Commissioner.

8 (3) The Commissioner may promulgate rules or regulations
9 with respect to the requirements for such surety bonds as are
10 necessary to accomplish the purposes of this Act.

11 (b) Penal Sum of Surety Bond. The penal sum of the surety bond
12 *shall* be maintained in an amount that reflects the dollar amount of loans
13 originated, as determined by the Commissioner.

14 (c) Action on Bond. When an action is commenced on a licensee's
15 bond, the Commissioner may require the filing of a new bond.

16 (d) New Bond. Immediately upon recovery upon any action on the
17 bond, the licensee *shall* file a new bond.

18 **§36315. Minimum Net Worth Required.**

19 (a) A minimum net worth *shall* be continuously maintained for
20 mortgage loan originators in accordance with this Section. In the event that
21 the mortgage loan originator is an employee or exclusive agent of a person
22 subject to this Act, the net worth of such person subject to this Act can be
23 used in lieu of the mortgage loan originator's minimum net worth
24 requirement.

25 (1) Minimum net worth *shall* be maintained in an amount that
26 reflects the dollar amount of loans originated, as determined by the
27 Commissioner.

1 (2) The Commissioner may promulgate rules or regulations, in
2 accordance with the Administrative Adjudication Law, with respect to
3 the requirements for minimum net worth as are necessary to
4 accomplish the purposes of this Act.

5 **§36316. Confidentiality.**

6 In order to promote more effective regulation and reduce regulatory
7 burden through supervisory information sharing:

8 (a) Protections. *Except* as otherwise provided in Public Law
9 110-289, Section 1512, the requirements under any Federal law or
10 Guam law regarding the privacy or confidentiality of any information
11 or material provided to the Nationwide Mortgage Licensing System
12 and Registry, and any privilege arising under Federal or State law
13 (including the rules of any Federal or State court) with respect to such
14 information or material, *shall* continue to apply to such information or
15 material after the information or material has been disclosed to the
16 Nationwide Mortgage Licensing System and Registry. Such
17 information and material may be shared with all State and Federal
18 regulatory officials with mortgage industry oversight authority
19 without the loss of privilege or the loss of confidentiality protections
20 provided by Federal law or Guam law.

21 (b) Agreements and Sharing Arrangements. For these
22 purposes, the Commissioner is authorized to enter into agreements or
23 sharing arrangements with other governmental agencies, the
24 Conference of State Bank Supervisors, the American Association of
25 Residential Mortgage Regulators, or other associations representing
26 governmental agencies as established by rule, regulation or order of
27 the Commissioner.

1 (c) Non-applicability of Certain Requirements. Information
2 or material that is subject to a privilege or confidentiality under
3 Subsection (a) of this Section *shall not* be subject to:

4 (1) disclosure under any Federal or State law
5 governing the disclosure to the public of information held by an
6 officer or an agency of the Federal Government or the respective
7 State; or

8 (2) subpoena or discovery, or admission into evidence,
9 in any private civil action or administrative process, unless with
10 respect to any privilege held by the Nationwide Mortgage
11 Licensing System and Registry with respect to such information
12 or material, the person to whom such information or material
13 pertains waives, in whole or in part, in the discretion of such
14 person, that privilege.

15 (d) Public Access to Information. This Section *shall not* apply with
16 respect to the information or material relating to the employment history of,
17 and publicly adjudicated disciplinary and enforcement actions against,
18 mortgage loan originators that is included in the Nationwide Mortgage
19 Licensing System and Registry for access by the public.

20 **§36317. Investigation and Examination Authority.**

21 In addition to any authority allowed under this Act, the
22 Commissioner *shall* have the authority to conduct investigations and
23 examinations as follows:

24 (a) Authority to Access Information. For purposes of initial
25 licensing, license renewal, license suspension, license conditioning, license
26 revocation or termination, or general or specific inquiry or investigation to
27 determine compliance with this Act, the Commissioner *shall* have the

1 authority to access, receive and use any books, accounts, records, files,
2 documents, information or evidence, including, but *not* limited to:

3 (1) criminal, civil and administrative history information,
4 including nonconviction data as specified in Title 9, Guam Code
5 Annotated, the Criminal and Correctional Code;

6 (2) personal history and experience information, including
7 independent credit reports obtained from a consumer reporting agency
8 described in Section 603(p) of the Fair Credit Reporting Act; and

9 (3) any other documents, information or evidence the
10 Commissioner deems relevant to the inquiry or investigation,
11 regardless of the location, possession, control or custody of such
12 documents, information or evidence.

13 (b) Investigation, Examination, and Subpoena Authority. For the
14 purposes of investigating violations or complaints arising under this Act, or
15 for the purposes of examination, the Commissioner may review, investigate,
16 or examine any licensee, individual or person subject to this Act, as often as
17 necessary in order to carry out the purposes of this Act. The Commissioner
18 may direct, subpoena, or order the attendance of and examine under oath all
19 persons whose testimony may be required about the loans or the business or
20 subject matter of any such examination or investigation, and may direct,
21 subpoena, or order such person to produce books, accounts, records, files,
22 and any other documents the Commissioner deems relevant to the inquiry.

23 (c) Availability of Books and Records. Each licensee, individual or
24 person subject to this Act *shall* make available to the Commissioner upon
25 request the books and records relating to the operations of such licensee,
26 individual or person subject to this Act. The Commissioner *shall* have
27 access to such books and records, and interview the officers, principals,

1 mortgage loan originators, employees, independent contractors, agents, and
2 customers of the licensee, individual or person subject to this Act
3 concerning their business.

4 (d) Reports and Other Information as Directed. Each licensee,
5 individual or person subject to this Act *shall* make or compile reports or
6 prepare other information as directed by the Commissioner in order to carry
7 out the purposes of this Section, including, but *not* limited to:

8 (1) accounting compilations;

9 (2) information lists and data concerning loan transactions in
10 a format prescribed by the Commissioner; *or*

11 (3) such other information deemed necessary to carry out the
12 purposes of this Section.

13 (e) Control Access to Records. In making any examination or
14 investigation authorized by this Act, the Commissioner may control access
15 to any documents and records of the licensee or person under examination or
16 investigation. The Commissioner may take possession of the documents and
17 records or place a person in exclusive charge of the documents and records
18 in the place where they are usually kept. During the period of control, *no*
19 individual or person shall remove or attempt to remove any of the
20 documents and records except pursuant to a court order or with the consent
21 of the Commissioner. Unless the Commissioner has reasonable grounds to
22 believe the documents or records of the licensee have been, or are at risk of
23 being altered or destroyed for purposes of concealing a violation of this Act,
24 the licensee or owner of the documents and records *shall* have access to the
25 documents or records as necessary to conduct its ordinary business affairs.

26 (f) Additional Authority. In order to carry out the purposes of this
27 Section, the Commissioner may:

1 (1) retain attorneys, accountants, or other professionals and
2 specialists as examiners, auditors, or investigators to conduct or assist
3 in the conduct of examinations or investigations;

4 (2) enter into agreements or relationships with other
5 government officials or regulatory associations in order to improve
6 efficiencies and reduce regulatory burden by sharing resources,
7 standardized or uniform methods or procedures, and documents,
8 records, information or evidence obtained under this Section;

9 (3) use, hire, contract or employ public or privately available
10 analytical systems, methods or software to examine or investigate the
11 licensee, individual or person subject to this Act;

12 (4) accept and rely on examination or investigation reports
13 made by other government officials within or without Guam; *or*

14 (5) accept audit reports made by an independent certified
15 public accountant for the licensee, individual or person subject to this
16 Act in the course of that part of the examination covering the same
17 general subject matter as the audit and may incorporate the audit
18 report in the report of the examination, report of investigation or other
19 writing of the Commissioner.

20 (g) Effect of Authority. The authority of this Section *shall* remain
21 in effect, whether such a licensee, individual or person subject to this Act
22 acts or claims to act under any licensing or registration law of Guam, or
23 claims to act without such authority.

24 (h) Withhold Records. *No* licensee, individual or person subject to
25 investigation or examination under this Section may knowingly withhold,
26 abstract, remove, mutilate, destroy, or secrete any books, records, computer
27 records, or other information.

1 **§36318. Prohibited Acts and Practices.**

2 It is a violation of this Act for a person or individual subject to this
3 Act to:

4 (a) directly or indirectly employ any scheme, device, or
5 artifice to defraud or mislead borrowers or lenders or to defraud any
6 person;

7 (b) engage in any unfair or deceptive practice toward any
8 person;

9 (c) obtain property by fraud or misrepresentation;

10 (d) solicit or enter into a contract with a borrower that
11 provides in substance that the person or individual subject to this Act
12 may earn a fee or commission through “best efforts” to obtain a loan
13 even though no loan is actually obtained for the borrower;

14 (e) solicit, advertise, or enter into a contract for specific
15 interest rates, points, or other financing terms unless the terms are
16 actually available at the time of soliciting, advertising, or contracting;

17 (f) conduct any business covered by this Act without
18 holding a valid license as required under this Act, or assist, or aid and
19 abet any person in the conduct of business under this Act without a
20 valid license as required under this Act ;

21 (g) fail to make disclosures as required by this Act and any
22 other applicable Guam or Federal law including regulations
23 thereunder;

24 (h) fail to comply with this Act or rules or regulations
25 promulgated under this Act, or fail to comply with any other State or
26 Federal law, including the rules and regulations thereunder, applicable
27 to any business authorized or conducted under this Act;

1 (i) make, in any manner, any false or deceptive statement or
2 representation including, with regard to the rates, points, or other
3 financing terms or conditions for a residential mortgage loan, or
4 engage in bait and switch advertising;

5 (j) negligently make any false statement or knowingly and
6 willfully make any omission of material fact in connection with any
7 information or reports filed with a governmental agency or the
8 Nationwide Mortgage Licensing System and Registry, or in
9 connection with any investigation conducted by the Commissioner or
10 another governmental agency;

11 (k) make any payment, threat or promise, directly or
12 indirectly, to any person for the purposes of influencing the
13 independent judgment of the person in connection with a residential
14 mortgage loan, or make any payment threat or promise, directly or
15 indirectly, to any appraiser of a property, for the purposes of
16 influencing the independent judgment of the appraiser with respect to
17 the value of the property;

18 (l) collect, charge, attempt to collect or charge or use or
19 propose any agreement purporting to collect or charge any fee
20 prohibited by this Act;

21 (m) cause or require a borrower to obtain property insurance
22 coverage in an amount that exceeds the replacement cost of the
23 improvements as established by the property insurer; and

24 (n) fail to truthfully account for monies belonging to a party
25 to a residential mortgage loan transaction.

1 **§36319. Mortgage Call Reports.**

2 Each mortgage licensee *shall* submit to the Nationwide Mortgage
3 Licensing System and Registry reports of condition, which *shall* be in such
4 form and *shall* contain such information as the Nationwide Mortgage
5 Licensing System and Registry may require.

6 **§36320. Report to Nationwide Mortgage Licensing System and**
7 **Registry.**

8 The Commissioner is required to report regularly violations of this
9 Act, as well as enforcement actions and other relevant information, to the
10 Nationwide Mortgage Licensing System and Registry, subject to the
11 provisions contained in §36316 of this Act.

12 **§36321. Privately Insured Credit.**

13 Non-federally insured credit unions which employ loan originators, as
14 defined in PL 110-289, Title V, the S.A.F.E. Act, *shall* register such
15 employees with the Nationwide Mortgage Licensing System and Registry by
16 furnishing the information concerning the employees' identity set forth in
17 Section 1507(a)(2) of PL 110-289, Title V.

18 **§36322. Unique Identifier Shown.**

19 The unique identifier of any person originating a residential mortgage
20 loan *shall* be clearly shown on all residential mortgage loan application
21 forms, solicitations or advertisements, including business cards or websites,
22 and any other documents as established by rule, regulation or order of the
23 Commissioner.

24 **§36323. Effective Date.**

25 The effective date of this Act shall be July 31, 2010.

1 **§36324. Severability.**

2 *If* any provision of this Act or its application to any person or
3 circumstance is held invalid, the remainder of the Act or the application of
4 the provision to other persons or circumstances is *not* affected.”

I MINA' TRENTA NA LIHESLATURAN GUAHAN

2010 (SECOND) Regular Session

Date: 5/3/2010

VOTING SHEET

SBill No. 351-30(COR)

Resolution No. _____

Question: _____

<u>NAME</u>	<u>YEAS</u>	<u>NAYS</u>	<u>NOT VOTING/ ABSTAINED</u>	<u>OUT DURING ROLL CALL</u>	<u>ABSENT</u>
ADA, Thomas C.	✓				
ADA, V. Anthony	✓				
AGUON, Frank B., Jr.					EA
BLAS, Frank F., Jr.	✓				
CALVO, Edward J.B.	✓				
CRUZ, Benjamin J. F.					EA
ESPALDON, James V.	✓				
GUTHERTZ, Judith Paulette	✓				
MUNA-BARNES, Tina Rose					EA
PALACIOS, Adolpho Borja, Sr.	✓				
PANGELINAN, vicente (ben) cabrera	✓				
RESPICIO, Rory J.	✓				
TAITAGUE, Telo	✓				
TENORIO, Ray					EA
WON PAT, Judith T.	✓				

TOTAL

11

4

CERTIFIED TRUE AND CORRECT:



 Clerk of the Legislature

* 3 Passes = No vote
 EA = Excused Absence



Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

April 12, 2010

The Honorable Judith T. Won Pat, Ed.D.
Speaker

I Mina'trenta na Liheslaturan Guåhan
155 Hesler Place
Hagåtña, Guam 96910

Chairman
Committee on Appropriations,
Taxation, Banking, Insurance,
Retirement, and Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

VIA: The Honorable Rory J. Respicio
Chairperson, Committee on Rules

RE: Committee Report on Bill No. 351-30 (COR) As Substituted

Dear Speaker Won Pat:

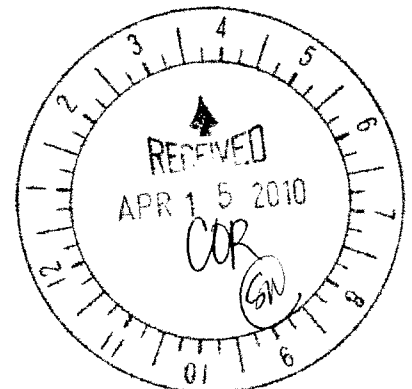
Transmitted herewith is the Committee Report on Bill No. 351-30 (COR):
"An Act to Add a New Article 3 of Chapter 36 to Title 18 Guam Code
Annotated Relative to the Establishment of a Secure and Fair Enforcement
for Mortgage Licensing Act" which was referred to and substituted by the
Committee on Appropriations, Taxation, Banking, Insurance, Retirement,
and Land.

Committee votes are as follows:

- 2 TO PASS
 NOT TO PASS
 3 TO REPORT OUT ONLY
 TO ABSTAIN
 TO PLACE IN INACTIVE FILE

Si Yu'us Ma'ase,

Senator vicente c. pangelinan
Chairman



2010 APR 20 PM 4:13

COMMITTEE REPORT
ON

Bill No. 351-30 (COR) As Substituted
“An Act to Add a New Article 3 of Chapter 36
to Title 18 Guam Code Annotated Relative to
the Establishment of a Secure and Fair
Enforcement for Mortgage Licensing Act.”



Mina'Trenta Na Liheslaturan Guåhan

Senator vicente (ben) c. pangelinan (D)

April 12, 2010

MEMORANDUM

To: All Members
Committee on Appropriations, Taxation, Banking, Insurance,
Retirement, and Land

From: Senator vicente "ben" c. pangelinan
Committee Chairperson

Subject: Committee Report on Bill No. 351-30 (COR) As Substituted

Transmitted herewith for your consideration is the Committee Report on Bill No. 351-30 (COR) As Substituted: "An Act to Add a New Article 3 of Chapter 36 to Title 18 Guam Code Annotated Relative to the Establishment of a Secure and Fair Enforcement for Mortgage Licensing Act" sponsored by Senator vicente "ben" c. pangelinan.

This report includes the following:

- Committee Voting Sheet
- Committee Report Narrative
- Copy of Substituted Bill No. 351-30 (COR)
- Copy of Bill No. 351-30 (COR)
- Public Hearing Sign-in Sheet
- Copies of Submitted Testimony & Supporting Documents
- Copy of COR Referral of Bill No. 351-30 (COR)
- Notices of Public Hearing
- Copy of the Public Hearing Agenda
- Fiscal Note

Please take the appropriate action on the attached voting sheet. Your attention to this matter is greatly appreciated. Should you have any questions or concerns, please do not hesitate to contact my office.

Si Yu'us Ma'ase,

Senator vicente c. pangelinan
Chairman

Chairman
Committee on Appropriations,
Taxation, Banking, Insurance,
Retirement, and Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

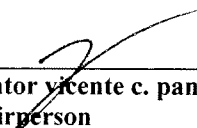
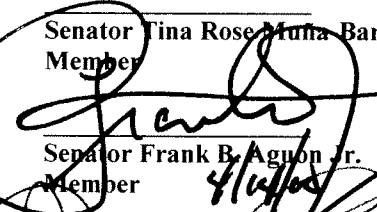
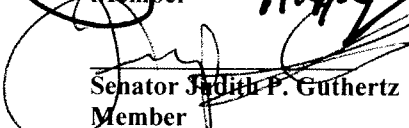
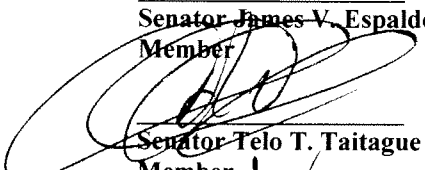
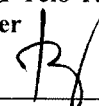
Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

I MINA' TRENTA NA LIHESLATURAN GUÁHAN

Committee Voting Sheet

**Committee on Appropriations, Taxation, Banking, Insurance, Retirement,
and Land**

Bill No. 351-30 (COR): "An Act to Add a New Article 3 of Chapter 36
to Title 18 Guam Code Annotated Relative to the Establishment of a
Secure and Fair Enforcement for Mortgage Licensing Act"
As substituted

Committee Members	To Pass	Not To Pass	Report Out	Abstain	Inactive Files
 Senator Vicente C. Pangelinan Chairperson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Speaker Judith T. Won Pat, Ed.D Vice Chairperson	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vice Speaker Benjamin J.F Cruz Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Tina Rose Muna Barnes Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Frank B. Aguiar Jr. Member	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Judith P. Guthertz Member	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator James V. Espaldon Member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Telo T. Taitague Member	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Senator Frank Blas, Jr. Member	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



Mina' Trenta Na Liheslaturan Guahan

Senator vicente (ben) c. pangelinan (D)

Committee Report

Bill No. 351-30 (COR): "An Act to Add a New Article 3 of Chapter 36 to Title 18 Guam Code Annotated Relative to the Establishment of a Secure and Fair Enforcement for Mortgage Licensing Act"

Chairman
Committee on Appropriations,
Taxation, Banking, Insurance,
Retirement, and Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

I. OVERVIEW

The Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land convened a public hearing on April 7, 2010 at 9:00 am in *I Liheslatura's* Public Hearing Room.

Public Notice Requirements

Notices were disseminated via hand-delivery and e-mail to all senators and all main media broadcasting outlets on March 31 (5-Day Notice), and again on April 5 (48 Hour Notice).

(a) Committee Members and Senators Present

Senator vicente "ben" pangelinan, Chairman
Speaker Judith Won Pat, Vice-Chair
Senator Tina Rose Muña-Barnes, member
Senator Telo Taitague, member
Senator James Espaldon, member
Senator Adolpho B. Palacios, Sr.
Senator Tony Ada

(b) Appearing before the Committee

Philip Mafnas
John Camacho, Revenue & Taxation
John Carlos, Revenue & Taxation

(c) Written Testimonies Submitted

John Carlos, Revenue & Taxation
John Camacho, Revenue & Taxation
Lou Leon Guerrero, Bank of Guam
Ed Untalan, Guam Bankers Association

II. COMMITTEE PROCEEDINGS

(a) Bill Sponsor Summary

Senator ben pangelinan: The next item on the agenda is Bill 351-30 (COR). This is a bill that would enact a new article of the government of Guam Code regulations relative to the licensing of individuals who work with originating mortgages and would set up requirements for licensing and registration of these individuals who represent companies who will make mortgages to the community at large on Guam. We have signed up Mr. Phil Mafnas, Mr. John Camacho and Mr. John Carlos. We will go ahead and begin receiving the panel's testimony and then we'll open it up for questions after.

(b) Testimony

1. Philip Mafnas

Philip Mafnas: Good morning Chairman Pangelinan, Speaker Won Pat, Senator Muna-Barnes, Senator Palacios, Senator Taitague and Senator Ada. My name is Philip Mafnas and I work with a company called Residential Pacific Mortgage based out of Walnut Creek, California. The company is owned by my older brother Robert Hurk, my half brother, excuse me and we express interest in brining the mortgage company back home. We discovered that we are a local family; we're very interested in helping our local people with obtaining the dream of owning their own home. We have been in business for 24 years in California and we are also registered in Texas, and with pending licenses in several other states. We have over 500 loan agents who are presently members of the Nation-wide Mortgage System Registry. I am leaving next week Tuesday in order to obtain the licensing and go through the proper schooling in order to obtain these licenses so I may practice in the state of California. I've delayed my trip only to come here and we feel that it is important that we testify that we do support the bill as well. In our effort to get licensed on Guam, we have recognized that, going back to the Nation-wide mortgage license system registry, that Guam was not included with it. And when we saw this opportunity that this bill is being introduced, we were very intrigued thinking that this could be a good sign and we are taking proper steps in order to bring us home. Our company only deals in residential mortgages. We do not deal with personal loans, car loans, or anything like that at this point. So the past 24 years all we've concentrated on was loans. We were able to make the loans to give you shorter time to process the loan; our advance technology that we've established enables us to do that. We specialize in every single type of loan there is to bring to the table and we have been associated with several different banks that we sell our paper to. So, we definitely broker loans off to others but we wanted to come and represent that we are in favor of Bill 351. We look forward to taking the test, we take it in every state that we go to, my brother is the broker of the company and we want to mention that each office, we have over 40 offices in the state of California, each have their own broker. So we are very very definitely aware of what we need to do. The whole compliance teams that come out and make sure we are doing – following the process. We are working with Rev and Tax and they have accepted us willingly

and offered to help establish an alternative way to finance. That's why we wanted to be here today. I can submit a written testimony, sorry it wasn't prepared before but before I leave I will make sure it comes in.

Panel Comments and Questions

Chairman pangelinan: Thank you very much Mr. Mafnas.

2. John Camacho - Banking and Insurance Commissioner, Revenue & Taxation

John Camacho: Good morning senators, Chairman ben pangelinan, Speaker Judi Won Pat, Tina Muna-Barnes, Senator Palacios, Telo Taitague Senator and Senator Ada. Thank you for giving this opportunity on behalf of the office of Banking Insurance commission office, to testify on behalf of Bill No. 351-30. We are in favor of Bill No. 351-30 for the following reasons – I would like to read some of the reasons down from my written testimony and after that maybe we can answer some questions.

(Read written testimony; see attached)

(Ended after page 2, number 5.)

(Insert oral testimony)

I must give credit to the legislature for acting expeditiously on this proposed bill. The housing and urban development timeline is July 10, 2010 to comply with the SAFE Act. It is the understanding that if the SAFE Act is acted within the time frame, Guam can therefore ask for an assistance and specified period to put into place the requirement for licensing and registration of mortgage loan originators with the Nation-wide mortgage licensing system and registry. It is quite possible that financial institutions on Guam that originates residential mortgage loans would not be able to sell the loans in the secondary market until the housing and urban development puts Guam in the SAFE Act. With this, we do support bill 351 and John Carlos has a testimony to present.

Panel Comments and Questions

None

3. John Carlos - Regulator Administrator, Revenue & Taxation

John Carlos: Good morning Mr. Chairman Pangelinan, Senator Tina Muna-Barnes, Senator Palacios, Senator Ada, good morning.

(Read written testimony; see attached)

(Insert oral testimony in lieu of paragraph 4 and 5)

In conjunction with this bill, I would like to take this opportunity to ask for at least two (2) additional positions. You know there are additions to our existing positions. Mainly, number

one we have more programs to run, this would be one of those new programs and secondly, the recently passed Health Affordable Act mandates that we have a consumer health advocate immediately upon the passage of the bill. I think within six (6) months of the bill. So, for these reasons Mr. Chairman, those are the reasons why I am asking for two (2) additional positions. In order to place us in some sort of position to prepare for the administration of these programs, I would like also to ask for the opportunity to ask the legislature to restore the fund for our banking and insurance fund. In one of the budget bills there was an inadvertent aggregation of all special accounts the banking and insurance fund was included in those and was included in the general fund. Without proper training, our regulatory examiners would be having a hard time to comply. To help the consumers and to help the banking and insurance industry, I am fully in support of this bill. We are ready to answer some questions.

Panel Comments and Questions

Chairman pangelinan: Thank you Mr. Carlos. Just for the record, I just wanted to state that the bill being heard today is Bill 351-30 as amended by the author. We had introduced the original bill while working with Rev & Tax and at the same time Senator BJ Cruz was also working on a version of the bill with his staff. When we talked, we noted that there were some inconsistencies with citations and technical issues with the bill. So Senator BJ Cruz and I decided to collaborate on the bill. We made those changes and so if you're seeing two different versions, the version you should all be referring to and the bill being heard is the one amended by the author. Depending on the testimonies being given today additional changes, if required, will be made of course during our mark up meeting.

I don't have any questions, I think it is something that needs to be done, and I support it of course. Phil, thank you for delaying your trip to present your testimony here. Part of the issues coming forward with regards to the need to protect the consumer and as a result of that, consumer first and foremost, the industry itself and the effect of what happens when practices are allowed in the industry that's not in the best interest of the consumer it affects the industry, it affects the consumer, it affects the county and it affects our island. I think these are some of the efforts. People don't like regulation but in order to ensure that everyone plays by the same rules and the consumers that are making the purchase are dealing with somebody who is dealing with somebody, so you say that's competent that's ethical, that knows the rules that are required by the terms of this licensing department. I want to thank you gentlemen for your testimony and any questions to the panel?

If not, then we would like to thank you ladies and gentlemen and that concludes our hearing on Bill No. 351. And that also exhausts the matter on the agenda. At this time, 11:20, I would like to call this meeting and adjourn it, having conducted and exhausted the agenda. The hearing is adjourned. Thank you and Si yu'us ma'ase ladies and gentlemen.

III. FINDINGS & RECOMMENDATIONS

The Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land, hereby reports out Bill No. 351-30 (COR), As Substituted by the Committee with the recommendation TO REPOT OUT ONLY.

MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (Second) Regular Session

Bill No. 351-30 (COR)

2010 JUN 22 PM 12:26
MCM

Introduced by:

v.c. pangelinan
BJ Cruz

AN ACT TO ADD A NEW ARTICLE 3 OF CHAPTER 36 TO TITLE 18, GUAM CODE ANNOTATED AND TO ADD A NEW ITEM (5) TO §10104(a) OF CHAPTER 10, TITLE 5 GUAM CODE ANNOTATED; RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** There is hereby *added* a new Article 3 of Chapter 36 to
3 Title 18 of the Guam Code Annotated to read:

4 **“Chapter 36.**

5 **Guam Secure and Fair Enforcement for Mortgage Licensing Act**
6 **of 2010.**

7 § 36301. Title.

8 § 36302. Legislative Findings and Intent.

9 § 36303. Definitions.

10 § 36304. License and Registration Required.

11 § 36305. Guam License and Registration Application and Issuance.

12 § 36306. Issuance of License.

13 § 36307. Pre-Licensing and Re-Licensing Education of Loan

- 1 § 36304. License and Registration Required.
- 2 § 36305. Guam License and Registration Application and
- 3 Issuance.
- 4 § 36306. Issuance of License.
- 5 § 36307. Pre-Licensing and Re-Licensing Education of Loan
- 6 Originators.
- 7 § 36308. Testing of Loan Originators.
- 8 § 36309. Standards for License Renewal.
- 9 § 36310. Continuing Education for Mortgage Loan Originators.
- 10 § 36311. Authority to Require License.
- 11 § 36312. Nationwide Mortgage Licensing System and Registry
- 12 Information Challenge Process.
- 13 § 36313. Enforcement Authorities, Violations and Penalties.
- 14 § 36314. Surety Bond Required.
- 15 § 36315. Minimum Net Worth Required.
- 16 § 36316. Confidentiality.
- 17 § 36317. Investigation and Examination Authority.
- 18 § 36318. Prohibited Acts and Practices.
- 19 § 36319. Mortgage Call Reports.
- 20 § 36320. Report to Nationwide Mortgage Licensing System and
- 21 Registry.
- 22 § 36321. Privately Insured Credit.
- 23 § 36322. Unique Identifier Shown.
- 24 § 36323. Severability.
- 25 § 36324. Effective Date.

26 **Section 2. §36301. Title.** This Act may be cited as the “Guam Secure
27 and Fair Enforcement for Mortgage Licensing Act of 2010 or Guam

1 *I Liheslatura* also finds that it is essential for the protection of the
2 residents of Guam and the stability of Guam's economy that reasonable
3 standards for licensing and regulation of the business practices of mortgage
4 loan originators be imposed.

5 *I Liheslatura* further finds that the obligations of mortgage loan
6 originators to consumers in connection with originating or making
7 residential mortgage loans are such as to warrant the regulation of the
8 mortgage lending process. The purpose of this Act is to protect consumers
9 seeking mortgage loans and to ensure that the mortgage lending industry is
10 operating without unfair, deceptive, and fraudulent practices on the part of
11 mortgage loan originators.

12 Therefore *I Liheslaturan Guåhan* establishes within this Act:

13 **(a) System of Supervision and Enforcement.** An effective system of
14 supervision and enforcement of the mortgage lending industry, including:

15 (1) The authority to issue licenses to conduct business under this
16 Act, including the authority to write rules or regulations or adopt
17 procedures necessary to the licensing of persons covered under this
18 Act.

19 (2) The authority to deny, suspend, condition or revoke licenses
20 issued under this Act.

21 (3) The authority to examine, investigate and conduct
22 enforcement actions as necessary to carry out the intended purposes of
23 this Act, including the authority to subpoena witnesses and documents,
24 enter orders, including cease and desist orders, order restitution and
25 monetary penalties and order the removal and ban of individuals from
26 office or employment.

27 **(b) Broad Administrative Authority.** That the Commissioner shall
28 have the broad administrative authority to administer, interpret and enforce
29 this Act, and promulgate rules or regulations implementing this Act, in order
30 to carry out the intentions of the *I Liheslatura*.

31 **Section 4. §36303. Definitions.** For purposes of this Act, the

1 following definitions shall apply:

2 (a) **“Commissioner”** means Guam’s Banking and Insurance
3 Commissioner.

4 (b) **“Depository Institution”** has the same meaning as in Section 3 of
5 the Federal Deposit Insurance Act. It means any bank or savings association
6 including any credit union.

7 (c) **“Federal Banking Agencies”** means the Board of Governors of
8 the Federal Reserve System, the Comptroller of the Currency, the Director of
9 the Office of Thrift Supervision, the National Credit Union Administration,
10 and the Federal Deposit Insurance Corporation.

11 (d) **“Immediate Family Member”** means a spouse, child, sibling,
12 parent, grandparent, or grandchild. This includes stepparents, stepchildren,
13 stepsiblings, and adoptive relationships.

14 (e) **“Individual”** means a natural person.

15 (f) **“Loan Processor or Underwriter”** means an individual who
16 performs clerical or support duties as an employee at the direction of and
17 subject to the supervision and instruction of a person licensed, or exempt
18 from licensing.

19 (g) **“Clerical or Support Duties”**. For purposes of subsection (a),
20 the term “Clerical or Support Duties” may include subsequent to the receipt
21 of an application:

22 (1) The receipt, collection, distribution, and analysis of
23 information common for the processing or underwriting of a
24 residential mortgage loan; *and*

25 (2) Communicating with a consumer to obtain the information
26 necessary for the processing or underwriting of a loan, to the
27 extent that such communication does not include offering or
28 negotiating loan rates or terms, or counseling consumers about
29 residential mortgage loan rates or terms.

30 (h) **“Representations to the public”**. An individual engaging solely
31 in loan processor or underwriter activities, shall not represent to the public,

1 through advertising or other means of communicating or providing
2 information including the use of business cards, stationery, brochures, signs,
3 rate lists, or other promotional items, that such individual can or will perform
4 any of the activities of a mortgage loan originator.

5 (i) **“Mortgage Loan Originator”** means an individual who for
6 compensation or gain or in the expectation of compensation or gain:

7 (1) Takes a residential mortgage loan application; *or*

8 (2) Offers or negotiates terms of a residential mortgage loan;

9 (i) Does not include an individual engaged solely as a
10 loan processor or underwriter;

11 (ii) Does not include a person or entity that only
12 performs real estate brokerage activities and is licensed or
13 registered in accordance with Guam law, unless the
14 person or entity is compensated by a lender, a mortgage
15 broker, or other mortgage loan originator or by any agent
16 of such lender, mortgage broker, or other mortgage loan
17 originator; and

18 (iii) Does not include a person or entity solely
19 involved in extensions of credit relating to timeshare plans,
20 as that term is defined in section 101(53D) of title 11,
21 United States Code.

22 (j) **“Real Estate Brokerage Activity”** means any activity that
23 involves offering or providing real estate brokerage services to the public,
24 including:

25 (1) Acting as a real estate agent or real estate broker for a buyer,
26 seller, lessor, or lessee of real property;

27 (2) Bringing together parties interested in the sale, purchase,
28 lease, rental, or exchange of real property;

29 (3) Negotiating, on behalf of any party, any portion of a contract
30 relating to the sale, purchase, lease, rental, or exchange of real
31 property (other than in connection with providing financing with

1 respect to any such transaction);

2 (4) Engaging in any activity for which a person engaged in the
3 activity is required to be registered or licensed as a real estate
4 agent or real estate broker under any applicable law; and

5 (5) Offering to engage in any activity, or act in any capacity,
6 described in subsections (i), (ii), (iii), or (iv) of this section.

7 **(k) “Nationwide Mortgage Licensing System and Registry”** means
8 a mortgage licensing system developed and maintained by the Conference of
9 State Bank Supervisors and the American Association of Residential
10 Mortgage Regulators for the licensing and registration of licensed mortgage
11 loan originators.

12 **(l) “Nontraditional Mortgage Product”** means any mortgage
13 product other than a 30-year fixed rate mortgage.

14 **(m) “Person”** means a natural person, corporation, company, limited
15 liability company, partnership, or association.

16 **(n) “Registered Mortgage Loan Originator”** means any individual
17 who:

18 (1) Meets the definition of mortgage loan originator and is an
19 employee of:

20 (i) A depository institution;

21 (ii) A subsidiary that is:

22 (A) Owned and controlled by a depository
23 institution; and

24 (B) Regulated by a Federal banking agency; *or*

25 (C) An institution regulated by the Farm Credit
26 Administration; and

27 (D) Is registered with, and maintains a unique
28 identifier through, the Nationwide Mortgage
29 Licensing System and Registry.

30 **(o) “Residential Mortgage Loan”** means any loan primarily for
31 personal, family, or household use that is secured by a mortgage, deed of

1 trust, or other equivalent consensual security interest on a dwelling (as defined
2 in section 103(v) of the Truth in Lending Act) or residential real estate upon
3 which is constructed or intended to be constructed a dwelling (as so defined).

4 **(p) “Residential Real Estate”** means any real property located in Guam,
5 upon which is constructed or intended to be constructed a dwelling.

6 **(q) “Unique Identifier”** means a number or other identifier assigned
7 by protocols established by the Nationwide Mortgage Licensing System and
8 Registry.

9 **Section 5. §36304. License and Registration Required.**

10 **(a) General.** An individual, unless specifically exempted from this Act
11 under subsection (c) of this section, shall not engage in the business of a
12 mortgage loan originator with respect to any dwelling located in Guam
13 without first obtaining and maintaining annually a license under this Act. Each
14 licensed mortgage loan originator must register with and maintain a valid
15 unique identifier issued by the Nationwide Mortgage Licensing System and
16 Registry.

17 **(b) Effective Date.** In order to facilitate an orderly transition to
18 licensing and to minimize disruption in the mortgage marketplace, the
19 effective date for subsection (a) of this section shall be July 31, 2010, or such
20 later date approved by the Secretary of the U.S. Department of Housing and
21 Urban Development, pursuant to the authority granted under Public Law
22 110-289, Section 1508(a).

23 **(c) Exemption from this Act.** The following are exempt from this
24 Act:

25 (1) Registered Mortgage Loan Originators, when acting for an
26 entity described in § 36030 (k)(1)(i),(ii) or (iii) of this section are
27 exempt from this Act;

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

31 (3) Any individual who offers or negotiates terms of a residential

1 mortgage loan secured by a dwelling that served as the
2 individual's residence;

3 (4) A licensed attorney who negotiates the terms of a residential
4 mortgage loan on behalf of a client as an ancillary matter to the
5 attorney's representation of the client, unless the attorney is
6 compensated by a lender, a mortgage broker, or other mortgage
7 loan originator or by any agent of such lender, mortgage broker,
8 or other mortgage loan originator.

9 **(d) Independent Contractor Loan Processors or Underwriters.** A
10 loan processor or underwriter who is an independent contractor may not
11 engage in the activities of a loan processor or underwriter unless such
12 independent contractor loan processor or underwriter obtains and maintains a
13 license under § 36040(a). Each independent contractor loan processor or
14 underwriter licensed as a mortgage loan originator must have and maintain a
15 valid unique identifier issued by the Nationwide Mortgage Licensing System
16 and Registry.

17 **(e) Commissioner authority to establish licensing rules,**
18 **regulations or interim procedures and accept early applications.** For the
19 purposes of implementing an orderly and efficient licensing process the
20 Commissioner may establish licensing rules or regulations and interim
21 procedures for licensing and acceptance of applications, pursuant to the
22 Administrative Adjudication Law. For previously registered or licensed
23 individuals the Commissioner may establish expedited review and licensing
24 procedures, pursuant to the Administrative Adjudication Law.

25 **Section 6. §36305. Guam License and Registration Application**
26 **and Issuance.**

27 **(a) Application form.** Applicants for a license shall apply in a form
28 as prescribed by the Commissioner. Each such form shall contain content as
29 set forth by rule, regulation, instruction or procedure of the Commissioner
30 and may be changed or updated as necessary by the Commissioner in order
31 to carry out the purposes of this Act.

1 **(b) Commissioner May Establish Relationships or Contracts.** In
2 order to fulfill the purposes of this Act, the Commissioner is authorized to
3 establish relationships or contracts with the Nationwide Mortgage Licensing
4 System and Registry or other entities designated by the Nationwide Mortgage
5 Licensing System and Registry to collect and maintain records and process
6 transaction fees or other fees related to licensees or other persons subject to
7 this Act.

8 **(c) Waive or Modify Requirements.** For the purpose of participating
9 in the Nationwide Mortgage Licensing System & Registry, the Commissioner
10 is authorized to waive or modify, in whole or in part, by rule, regulation or
11 order, any or all of the requirements of this chapter and to establish new
12 requirements as reasonably necessary to participate in the Nationwide
13 Mortgage Licensing System & Registry.

14 **(d) Background Checks.** In connection with an application for
15 licensing as a mortgage loan originator, the applicant shall, at a minimum,
16 furnish to the Nationwide Mortgage Licensing System and Registry
17 information concerning the applicant's identity, including:

18 (1) Fingerprints for submission to the Federal Bureau of
19 Investigation, and any governmental agency or entity authorized
20 to receive such information for a state, national and international
21 criminal history background check; and

22 (2) Personal history and experience in a form prescribed by the
23 Nationwide Mortgage Licensing System and Registry, including
24 the submission of authorization for the Nationwide Mortgage
25 Licensing System and Registry and the Commissioner to obtain
26 the following:

27 (i) An independent credit report obtained from a
28 consumer reporting agency described in section 603(p) of the
29 Fair Credit Reporting Act; *and*

30 (ii) Information related to any administrative, civil or
31 criminal findings by any governmental jurisdiction.

1 **(e) Agent for Purposes of Requesting and Distributing Criminal**
2 **Information.** For the purposes of this section and in order to reduce the
3 points of contact which the Federal Bureau of Investigation may have to
4 maintain for purposes of subsection (d)(1) and (2)(ii) of this section the
5 Commissioner may use the Nationwide Mortgage Licensing System and
6 Registry as a channeling agent for requesting information from and
7 distributing information to the Department of Justice or any governmental
8 agency.

9 **(f) Agent for Purposes of Requesting and Distributing Non-**
10 **Criminal Information.** For the purposes of this section and in order to
11 reduce the points of contact which the Commissioner may have to maintain
12 for purposes of subsection (d)(2)(i) and (ii) of this section the Commissioner
13 may use the Nationwide Mortgage Licensing System and Registry as a
14 channeling agent for requesting and distributing information to and from any
15 source so directed by the Commissioner.

16 **Section 7. §36306. Issuance of License.** The Commissioner shall not
17 issue a mortgage loan originator license unless the Commissioner makes at a
18 minimum the following findings:

19 (1) No License Revocation. The applicant has never had a
20 mortgage loan originator license revoked in any governmental
21 jurisdiction, except that a subsequent formal vacation of such
22 revocation shall not be deemed a revocation.

23 (2) No Felony Conviction. The applicant has not been convicted
24 of, or pled guilty or *nocontendere* to, a felony in a domestic,
25 foreign, or military court:

26 (i) During the 7-year period preceding the date of the
27 application for licensing and registration; or

28 (ii) At any time preceding such date of application, if such
29 felony involved an act of fraud, dishonesty, or a breach of trust,
30 or money laundering;

31 (iii) Provided that any pardon of a conviction shall not be

1 a conviction for purposes of this subsection.

2 (3) **Character and Fitness.** The applicant has demonstrated
3 financial responsibility, character, and general fitness such as to
4 command the confidence of the community and to warrant a
5 determination that the mortgage loan originator will operate
6 honestly, fairly, and efficiently within the purposes of this Act.

7 (i) For purposes of this subsection a person has shown
8 that he or she is not financially responsible when he or she has
9 shown a disregard in the management of his or her own financial
10 condition. A determination that an individual has not shown
11 financial responsibility may include, but not be limited to:

12 (ii) Current outstanding judgments, except judgments
13 solely as a result of medical expenses;

14 (ii)i Current outstanding tax liens or other government
15 liens and filings;

16 (iv) Foreclosures within the past three years;

17 (v) A pattern of seriously delinquent accounts within
18 the past three years.

19 (d) **Pre-Licensing Education.** The applicant has completed the pre-
20 licensing education requirement described in § 36070 of this Act.

21 (e) **Written Test.** The applicant has passed a written test that meets
22 the test requirement described in § 36080 of this Act.

23 (f) **Surety Bond or Minimum Net Worth Requirement.** The
24 applicant has met the surety bond requirement of § 36140 *or* the minimum
25 net worth requirement of § 36145 on this Act.

26 **Section 8. §36307. Pre-Licensing and Re-Licensing Education of**
27 **Loan Originators.**

28 (a) **Minimum Educational Requirements.** In order to meet the pre-
29 licensing education requirement referred to in § 36060(d) of this Act, a
30 person shall complete at least twenty (20) hours of education approved in
31 accordance with subsection (b) of this section, which shall include at least:

- 1 (1) Three (3) hours of Federal law and regulations;
2 (2) Three (3) hours of ethics, which shall include instruction on
3 fraud, consumer protection, and fair lending issues; *and*
4 (3) Two (2) hours of training related to lending standards for the
5 nontraditional mortgage product marketplace.

6 **(b) Approved Educational Courses.** For purposes of subsection (a)
7 of this section, pre-licensing education courses shall be reviewed, and
8 approved by the Nationwide Mortgage Licensing System and Registry based
9 upon reasonable standards. Review and approval of a pre-licensing education
10 course shall include review and approval of the course provider.

11 **(c) Approval of Employer and Affiliate Educational Courses.**
12 Nothing in this section shall preclude any pre-licensing education course, as
13 approved by the Nationwide Mortgage Licensing System and Registry that is
14 provided by the employer of the applicant or an entity which is affiliated with
15 the applicant by an agency contract, or any subsidiary or affiliate of such
16 employer or entity.

17 **(d) Venue of Education.** Pre-licensing education may be offered
18 either in a classroom, online or by any other means approved by the
19 Nationwide Mortgage Licensing System and Registry.

20 **(e) Reciprocity of Education.** The pre-licensing education
21 requirements approved by the Nationwide Mortgage Licensing System and
22 Registry in subsections (a)(1), (2) and (3) of this section for any state shall be
23 accepted as credit towards completion of pre-licensing education requirements
24 in Guam.

25 **(f) Re-Licensing Education Requirements.** A person previously
26 licensed under this Act subsequent to the Effective Date of this Act applying
27 to be licensed again must prove that they have completed all of the
28 continuing education requirements for the year in which the license was last
29 held.

30 **Section 9. §36308. Testing of Loan Originators.**

31 **(a) Testing of Loan Originators, General.** In order to meet the

1 written test requirement referred to in §35060(e) of this Act, an individual
2 shall pass, in accordance with the standards established under this subsection,
3 a qualified written test developed by the Nationwide Mortgage Licensing
4 System and Registry and administered by a test provider approved by the
5 Nationwide Mortgage Licensing System and Registry based upon reasonable
6 standards.

7 **(b) Qualified Test.** A written test shall not be treated as a qualified
8 written test for purposes of subsection (a) of this section unless the test
9 adequately measures the applicant's knowledge and comprehension in
10 appropriate subject areas, including:

- 11 (1) Ethics;
- 12 (2) Federal law and regulation pertaining to mortgage
13 origination;
- 14 (3) Guam law and regulation pertaining to mortgage origination;
- 15 (4) Federal and Guam law and regulation, including instruction
16 on fraud, consumer protection, the nontraditional mortgage
17 marketplace, and fair lending issues.

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

24 **(d) Minimum Competence:**

- 25 (1) Passing Score. An individual shall not be considered to have
26 passed a qualified written test unless the individual achieves a test
27 score of not less than 75 percent correct answers to questions.
- 28 (2) Initial Retests. An individual may retake a test three (3)
29 consecutive times with each consecutive taking occurring at least
30 thirty (30) days after the preceding test.
- 31 (3) Subsequent Retests. After failing 3 consecutive tests, an

1 individual shall wait at least 6 months before taking the test
2 again.

3 (4) Retest After Lapse of License. A licensed mortgage loan
4 originator who fails to maintain a valid license for a period of
5 five (5) years or longer shall retake the test, not taking into
6 account any time during which such individual is a registered
7 mortgage loan originator.

8 **Section 10. §36309. Standards for License Renewal.**

9 (a) **General.** The minimum standards for license renewal for mortgage
10 loan originators shall include the following:

11 (1) The mortgage loan originator continues to meet the
12 minimum standards for license issuance under § 35060(a) thru
13 (f) of this Act.

14 (2) The mortgage loan originator has satisfied the annual
15 continuing education requirements described in § 36100 of this
16 Act.

17 (3) The mortgage loan originator has paid all required fees for
18 renewal of the license.

19 (b) **Failure to Satisfy Minimum Standards of License Renewal.**

20 The license of a mortgage loan originator failing to satisfy the minimum
21 standards for license renewal shall expire. The Commissioner may adopt
22 procedures for the reinstatement of expired licenses consistent with the
23 standards established by the Nationwide Mortgage Licensing System and
24 Registry.

25 **Section 11. §36310. Continuing Education for Mortgage Loan**
26 **Originators.**

27 (a) **General.** In order to meet the annual continuing education
28 requirements referred to in § 36090(a)(2), a licensed mortgage loan originator
29 shall complete at least eight (8) hours of education approved in accordance
30 with subsection (b) of this section, which shall include at least:

31 (1) Three (3) hours of Federal law and regulations;

1 (2) Two (2) hours of ethics, which shall include instruction on
2 fraud, consumer protection, and fair lending issues; and

3 (3) Two (2) hours of training related to lending standards for the
4 nontraditional mortgage product marketplace.

5 **(b) Approved Educational Courses.** For purposes of subsection (a)
6 of this section, continuing education courses shall be reviewed, and approved
7 by the Nationwide Mortgage Licensing System and Registry based upon
8 reasonable standards. Review and approval of a continuing education course
9 shall include review and approval of the course provider.

10 **(c) Approval of Employer and Affiliate Educational Courses.**
11 Nothing in this section shall preclude any education course, as approved by
12 the Nationwide Mortgage Licensing System and Registry, that is provided by
13 the employer of the mortgage loan originator or an entity which is affiliated
14 with the mortgage loan originator by an agency contract, or any subsidiary or
15 affiliate of such employer or entity.

16 **(d) Venue of Education.** Continuing education may be offered either
17 in a classroom, online or by any other means approved by the Nationwide
18 Mortgage Licensing System and Registry.

19 **(e) Calculation of Continuing Education Credits.** A licensed
20 mortgage loan originator:

21 (1) Except for § 36090(b) and subsection (i) of this section may
22 only receive credit for a continuing education course in the year
23 in which the course is taken; and

24 (2) May not take the same approved course in the same or
25 successive years to meet the annual requirements for continuing
26 education.

27 **(f) Instructor Credit.** A licensed mortgage loan originator who is an
28 approved instructor of an approved continuing education course may receive
29 credit for the licensed mortgage loan originator's own annual continuing
30 education requirement at the rate of two (2) hours credit for every one (1)
31 hour taught.

1 **(g) Reciprocity of Education.** A person having successfully
2 completed the education requirements approved by the Nationwide Mortgage
3 Licensing System and Registry in subsections (a)(1), (2) and (3) of this section
4 for any state shall be accepted as credit towards completion of continuing
5 education requirements in Guam.

6 **(h) Lapse in License.** A licensed mortgage loan originator who
7 subsequently becomes unlicensed must complete the continuing education
8 requirements for the last year in which the license was held prior to issuance
9 of a new or renewed license.

10 **(i) Make up of Continuing Education.** A person meeting the
11 requirements of § 36090(a)(1) and (3) of this Act may make up any
12 deficiency in continuing education as established by rule or regulation of the
13 Commissioner.

14 **Section 12. §36311. Authority to Require License.** In addition to
15 any other duties imposed upon the Commissioner by law, the Commissioner
16 shall require mortgage loan originators to be licensed and registered through
17 the Nationwide Mortgage Licensing System and Registry. In order to carry
18 out this requirement the Commissioner is authorized to participate in the
19 Nationwide Mortgage Licensing System and Registry. For this purpose, the
20 Commissioner may establish Rules and Regulations as necessary, pursuant to
21 the Administrative Adjudication Law, including but not limited to:

22 **(a) Background Checks.** Background checks for:

23 (1) Criminal history through fingerprint or other databases;

24 (2) Civil or administrative records;

25 (3) Credit history; *or*

26 (4) Any other information as deemed necessary by the
27 Nationwide Mortgage Licensing System and Registry.

28 **(b) Fees.** The payment of fees to apply for or renew licenses through
29 the Nationwide Mortgage Licensing System and Registry;

30 **(c) Setting Dates.** The setting or resetting as necessary of renewal or
31 reporting dates; *and*

1 (d) **Other.** Requirements for amending or surrendering a license or
2 any other such activities as the Commissioner deems necessary for
3 participation in the Nationwide Mortgage Licensing System and Registry.

4 **Section 12. §36312. Nationwide Mortgage Licensing System and**
5 **Registry Information Challenge Process.** The Commissioner shall establish
6 a process whereby mortgage loan originators may challenge information
7 entered into the Nationwide Mortgage Licensing System and Registry by the
8 Commissioner.

9 **Section 13. §36313. Enforcement Authorities, Violations and**
10 **Penalties.**

11 (a) In order to ensure the effective supervision and enforcement of this
12 Act the Commissioner may, pursuant to the Administrative Adjudication
13 Law:

14 (1) Deny, suspend, revoke, condition or decline to renew a
15 license for a violation of this Act, rules or regulations issued
16 under this Act or order or directive entered under this Act.

17 (2) Deny, suspend, revoke, condition or decline to renew a
18 license if an applicant or licensee fails at any time to meet the
19 requirements of § 36060 or § 36090 of this Act, or withholds
20 information or makes a material misstatement in an application
21 for a license or renewal of a license.

22 (3) Order restitution against persons subject to this Act for
23 violations of this Act.

24 (4) Impose fines on persons subject to this Act pursuant to
25 subsections (b), (c) and (d) of this section.

26 (5) Issue orders or directives under this Act as follows:

27 (i) Order or direct persons subject to this Act to cease and
28 desist from conducting business, including immediate temporary
29 orders to cease and desist.

30 (ii) Order or direct persons subject to this Act to cease any
31 harmful activities or violations of this Act, including immediate

1 temporary orders to cease and desist.

2 (iii) Enter immediate temporary orders to cease business
3 under a license or interim license issued pursuant to the authority
4 granted under § 36040(e) of this Act if the Commissioner
5 determines that such license was erroneously granted or the
6 licensee is currently in violation of this Act;

7 (iv) Order or direct such other affirmative action as the
8 Commissioner deems necessary.

9 (b) The Commissioner may impose a civil penalty on a mortgage loan
10 originator or person subject to this Act, if the Commissioner finds, on the
11 record after notice and opportunity for hearing, that such mortgage loan
12 originator or person subject to this Act has violated or failed to comply with
13 any requirement of this Act or any regulation prescribed by the
14 Commissioner under this Act or order issued under authority of this Act.

15 (c) The maximum amount of penalty for each Act or omission
16 described in subsection (b) of this section shall be \$25,000.

17 (d) Each violation or failure to comply with any directive or order of
18 the Commissioner is a separate and distinct violation or failure.

19 **Section 14. §36140. Surety Bond Required.**

20 (a) **Coverage, Form and Regulations.** Each mortgage loan
21 originator shall be covered by a surety bond in accordance with this section.
22 In the event that the mortgage loan originator is an employee or exclusive
23 agent of a person subject to this Act, the surety bond of such person subject
24 to this Act can be used in lieu of the mortgage loan originator's surety bond
25 requirement.

26 (1) The surety bond shall provide coverage for each mortgage
27 loan originator in an amount as prescribed in subsection (b) of
28 this section.

29 (2) The surety bond shall be in a form as prescribed by the
30 Commissioner.

31 (3) The Commissioner may promulgate rules or regulations

1 with respect to the requirements for such surety bonds as are
2 necessary to accomplish the purposes of this Act.

3 **(b) Penal Sum of Surety Bond.** The penal sum of the surety bond
4 shall be maintained in an amount that reflects the dollar amount of loans
5 originated as determined by the Commissioner.

6 **(c) Action on Bond.** When an action is commenced on a licensee's
7 bond the Commissioner may require the filing of a new bond.

8 **(d) New Bond.** Immediately upon recovery upon any action on the
9 bond the licensee shall file a new bond.

10 **Section 14. §36316. Minimum Net Worth Required.**

11 (a) A minimum net worth shall be continuously maintained for
12 mortgage loan originators in accordance with this section. In the event that
13 the mortgage loan originator is an employee or exclusive agent of a person
14 subject to this Act, the net worth of such person subject to this Act can be
15 used in lieu of the mortgage loan originator's minimum net worth
16 requirement.

17 (1) Minimum net worth shall be maintained in an amount that
18 reflects the dollar amount of loans originated as determined by
19 the Commissioner.

20 (2) The Commissioner may promulgate rules or regulations, in
21 accordance with the Administrative Adjudication Law, with
22 respect to the requirements for minimum net worth as are
23 necessary to accomplish the purposes of this Act.

24 **Section 15. §36317. Confidentiality.** In order to promote more
25 effective regulation and reduce regulatory burden through supervisory
26 information sharing:

27 **(a) Protections.** Except as otherwise provided in Public Law 110-289,
28 Section 1512, the requirements under any Federal law or Guam law
29 regarding the privacy or confidentiality of any information or material
30 provided to the Nationwide Mortgage Licensing System and Registry, and
31 any privilege arising under Federal or State law (including the rules of any

1 Federal or State court) with respect to such information or material, shall
2 continue to apply to such information or material after the information or
3 material has been disclosed to the Nationwide Mortgage Licensing System
4 and Registry. Such information and material may be shared with all State and
5 Federal regulatory officials with mortgage industry oversight authority
6 without the loss of privilege or the loss of confidentiality protections provided
7 by Federal law or Guam law.

8 **(b) Agreements and Sharing Arrangements.** For these purposes,
9 the Commissioner is authorized to enter agreements or sharing arrangements
10 with other governmental agencies, the Conference of State Bank Supervisors,
11 the American Association of Residential Mortgage Regulators or other
12 associations representing governmental agencies as established by rule,
13 regulation or order of the Commissioner.

14 **(c) Non-applicability of Certain Requirements.** Information or
15 material that is subject to a privilege or confidentiality under subsection (a) of
16 this section shall not be subject to:

- 17 (1) Disclosure under any Federal or State law governing the
18 disclosure to the public of information held by an officer or an
19 agency of the Federal Government or the respective State; or
20 (2) Subpoena or discovery, or admission into evidence, in any
21 private civil action or administrative process, unless with respect
22 to any privilege held by the Nationwide Mortgage Licensing
23 System and Registry with respect to such information or
24 material, the person to whom such information or material
25 pertains waives, in whole or in part, in the discretion of such
26 person, that privilege.

27 **(d) Public Access to Information.** This section shall not apply with
28 respect to the information or material relating to the employment history of,
29 and publicly adjudicated disciplinary and enforcement actions against,
30 mortgage loan originators that is included in the Nationwide Mortgage
31 Licensing System and Registry for access by the public.

1 **Section 16. §36317. Investigation and Examination Authority.** In
2 addition to any authority allowed under this Act the Commissioner shall have
3 the authority to conduct investigations and examinations as follows:

4 **(a) Authority to Access Information.** For purposes of initial
5 licensing, license renewal, license suspension, license conditioning, license
6 revocation or termination, or general or specific inquiry or investigation to
7 determine compliance with this Act, the Commissioner shall have the
8 authority to access, receive and use any books, accounts, records, files,
9 documents, information or evidence including but not limited to:

10 (1) Criminal, civil and administrative history information,
11 including nonconviction data as specified in Title 9, Guam Code
12 Annotated, the Criminal and Correctional Code; and

13 (2) Personal history and experience information including
14 independent credit reports obtained from a consumer reporting
15 agency described in section 603(p) of the Fair Credit Reporting
16 Act; and

17 (3) Any other documents, information or evidence the
18 Commissioner deems relevant to the inquiry or investigation
19 regardless of the location, possession, control or custody of such
20 documents, information or evidence.

21 **(b) Investigation, Examination, and Subpoena Authority.** For the
22 purposes of investigating violations or complaints arising under this Act, or
23 for the purposes of examination, the Commissioner may review, investigate,
24 or examine any licensee, individual or person subject to this Act, as often as
25 necessary in order to carry out the purposes of this Act. The Commissioner
26 may direct, subpoena, or order the attendance of and examine under oath all
27 persons whose testimony may be required about the loans or the business or
28 subject matter of any such examination or investigation, and may direct,
29 subpoena, or order such person to produce books, accounts, records, files,
30 and any other documents the Commissioner deems relevant to the inquiry.

31 **(c) Availability of Books and Records.** Each licensee, individual or

1 person subject to this Act shall make available to the Commissioner upon
2 request the books and records relating to the operations of such licensee,
3 individual or person subject to this Act. The Commissioner shall have access
4 to such books and records and interview the officers, principals, mortgage
5 loan originators, employees, independent contractors, agents, and customers
6 of the licensee, individual or person subject to this Act concerning their
7 business.

8 **(d) Reports and Other Information as Directed.** Each licensee,
9 individual or person subject to this Act shall make or compile reports or
10 prepare other information as directed by the Commissioner in order to carry
11 out the purposes of this section including but not limited to:

- 12 (1) Accounting compilations;
- 13 (2) Information lists and data concerning loan transactions in a
14 format prescribed by the Commissioner; or
- 15 (3) Such other information deemed necessary to carry out the
16 purposes of this section.

17 **(e) Control Access to Records.** In making any examination or
18 investigation authorized by this Act, the Commissioner may control access to
19 any documents and records of the licensee or person under examination or
20 investigation. The Commissioner may take possession of the documents and
21 records or place a person in exclusive charge of the documents and records in
22 the place where they are usually kept. During the period of control, no
23 individual or person shall remove or attempt to remove any of the documents
24 and records except pursuant to a court order or with the consent of the
25 Commissioner. Unless the Commissioner has reasonable grounds to believe
26 the documents or records of the licensee have been, or are at risk of being
27 altered or destroyed for purposes of concealing a violation of this Act, the
28 licensee or owner of the documents and records shall have access to the
29 documents or records as necessary to conduct its ordinary business affairs.

30 **(f) Additional Authority.** In order to carry out the purposes of this
31 section, the Commissioner may:

1 (1) Retain attorneys, accountants, or other professionals and
2 specialists as examiners, auditors, or investigators to conduct or
3 assist in the conduct of examinations or investigations;

4 (2) Enter into agreements or relationships with other
5 government officials or regulatory associations in order to
6 improve efficiencies and reduce regulatory burden by sharing
7 resources, standardized or uniform methods or procedures, and
8 documents, records, information or evidence obtained under this
9 section;

10 (3) Use, hire, contract or employ public or privately available
11 analytical systems, methods or software to examine or
12 investigate the licensee, individual or person subject to this Act;

13 (4) Accept and rely on examination or investigation reports
14 made by other government officials; or

15 (5) Accept audit reports made by an independent certified public
16 accountant for the licensee, individual or person subject to this
17 Act in the course of that part of the examination covering the
18 same general subject matter as the audit and may incorporate
19 the audit report in the report of the examination, report of
20 investigation or other writing of the Commissioner.

21 **(g) Effect of Authority.** The authority of this section shall remain in
22 effect, whether such a licensee, individual or person subject to this Act acts or
23 claims to act under any licensing or registration law of Guam, or claims to act
24 without such authority.

25 **(h) Withhold Records.** No licensee, individual or person subject to
26 investigation or examination under this section may knowingly withhold,
27 abstract, remove, mutilate, destroy, or secrete any books, records, computer
28 records, or other information.

29 **Section 17. §36318. Prohibited Acts and Practices.** It is a violation
30 of this Act for a person or individual subject to this Act to:

31 (a) Directly or indirectly employ any scheme, device, or artifice to

- 1 defraud or mislead borrowers or lenders or to defraud any person;
- 2 (b) Engage in any unfair or deceptive practice toward any person;
- 3 (c) Obtain property by fraud or misrepresentation;
- 4 (d) Solicit or enter into a contract with a borrower that provides in
5 substance that the person or individual subject to this Act may earn a fee or
6 commission through “best efforts” to obtain a loan even though no loan is
7 actually obtained for the borrower;
- 8 (e) Solicit, advertise, or enter into a contract for specific interest rates,
9 points, or other financing terms unless the terms are actually available at the
10 time of soliciting, advertising, or contracting;
- 11 (f) Conduct any business covered by this Act without holding a valid
12 license as required under this Act, or assist or aide and abet any person in the
13 conduct of business under this Act without a valid license as required under
14 this Act ;
- 15 (g) Failure to make disclosures as required by this Act and any other
16 applicable Guam or federal law including regulations thereunder;
- 17 (h) Fail to comply with this Act or rules or regulations promulgated
18 under this Act, or fail to comply with any other state or federal law, including
19 the rules and regulations thereunder, applicable to any business authorized or
20 conducted under this Act;
- 21 (i) Make, in any manner, any false or deceptive statement or
22 representation including, with regard to the rates, points, or other financing
23 terms or conditions for a residential mortgage loan, or engage in bait and
24 switch advertising;
- 25 (j) Negligently make any false statement or knowingly and willfully
26 make any omission of material fact in connection with any information or
27 reports filed with a governmental agency or the Nationwide Mortgage
28 Licensing System and Registry or in connection with any investigation
29 conducted by the Commissioner or another governmental agency;
- 30 (k) Make any payment, threat or promise, directly or indirectly, to any
31 person for the purposes of influencing the independent judgment of the

1 person in connection with a residential mortgage loan, or make any payment
2 threat or promise, directly or indirectly, to any appraiser of a property, for the
3 purposes of influencing the independent judgment of the appraiser with
4 respect to the value of the property;

5 (l) Collect, charge, attempt to collect or charge or use or propose any
6 agreement purporting to collect or charge any fee prohibited by this Act;

7 (m) Cause or require a borrower to obtain property insurance coverage
8 in an amount that exceeds the replacement cost of the improvements as
9 established by the property insurer.

10 (n) Fail to truthfully account for monies belonging to a party to a
11 residential mortgage loan transaction.

12 **Section 18. §36319. Mortgage Call Reports.** Each mortgage
13 licensee shall submit to the Nationwide Mortgage Licensing System and
14 Registry reports of condition, which shall be in such form and shall contain
15 such information as the Nationwide Mortgage Licensing System and Registry
16 may require.

17 **Section 19. §36320. Report to Nationwide Mortgage Licensing**
18 **System and Registry.** The Commissioner is required to report regularly
19 violations of this Act, as well as enforcement actions and other relevant
20 information, to the Nationwide Mortgage Licensing System and Registry
21 subject to the provisions contained in § 36150 of this Act.

22 **Section 20. §36321. Privately Insured Credit.** Non-federally insured
23 credit unions which employ loan originators, as defined in PL 110-289, Title
24 V, the S.A.F.E. Act, shall register such employees with the Nationwide
25 Mortgage Licensing System and Registry by furnishing the information
26 concerning the employees' identity set forth in Section 1507(a)(2) of PL 110-
27 289, Title V.

28 **Section 21. §36322. Unique Identifier Shown.** The unique identifier
29 of any person originating a residential mortgage loan shall be clearly shown
30 on all residential mortgage loan application forms, solicitations or
31 advertisements, including business cards or websites, and any other

1 documents as established by rule, regulation or order of the Commissioner.

2 **Section 22. §36324. Effective Date.** The effective date of this Act
3 shall be July 31, 2010.”

4 **Section 23. Severability.** If any provision of this Act or its application
5 to any person or circumstance is held invalid, the remainder of the Act or the
6 application of the provision to other persons or circumstances is not affected.

MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (Second) Regular Session

Bill No. 351-30 (COR)
As Substituted by the Committee on
Appropriations, Taxation, Banking,
Insurance, Retirement and Land

Introduced by:

v.c. pangelinan
BJ Cruz

**AN ACT TO ADD A NEW ARTICLE 3 OF
CHAPTER 36 TO TITLE 18, GUAM CODE
ANNOTATED ~~AND TO ADD A NEW ITEM (5) TO
§10104(a) OF CHAPTER 10, TITLE 5 GUAM
CODE ANNOTATED~~; RELATIVE TO THE
ESTABLISHMENT OF A SECURE AND FAIR
ENFORCEMENT FOR MORTGAGE LICENSING
ACT.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** There is hereby *added* a new Article 3 of Chapter 36 to
3 Title 18 of the Guam Code Annotated to read:

4 **“Chapter 36.**

5 **Guam Secure and Fair Enforcement for Mortgage Licensing Act**
6 **of 2010.**

7 § 36301. Title.

8 § 36302. Legislative Findings and Intent.

9 § 36303. Definitions.

- 1 § 36304. License and Registration Required.
- 2 § 36305. Guam License and Registration Application and
3 Issuance.
- 4 § 36306. Issuance of License.
- 5 § 36307. Pre-Licensing and Re-Licensing Education of Loan
6 Originators.
- 7 § 36308. Testing of Loan Originators.
- 8 § 36309. Standards for License Renewal.
- 9 § 36310. Continuing Education for Mortgage Loan Originators.
- 10 § 36311. Authority to Require License.
- 11 § 36312. Nationwide Mortgage Licensing System and Registry
12 Information Challenge Process.
- 13 § 36313. Enforcement Authorities, Violations and Penalties.
- 14 § 36314. Surety Bond Required.
- 15 § 36315. Minimum Net Worth Required.
- 16 § 36316. Confidentiality.
- 17 § 36317. Investigation and Examination Authority.
- 18 § 36318. Prohibited Acts and Practices.
- 19 § 36319. Mortgage Call Reports.
- 20 § 36320. Report to Nationwide Mortgage Licensing System and
21 Registry.
- 22 § 36321. Privately Insured Credit.
- 23 § 36322. Unique Identifier Shown.
- 24 § 36323. ~~Severability.~~ Effective Date
- 25 § ~~36324.~~ ~~Effective Date.~~

26 **Section 2. §36301. Title.** This Act may be cited as the “Guam Secure
27 and Fair Enforcement for Mortgage Licensing Act of 2010 or Guam

1 S.A.F.E. Mortgage Licensing Act of 2010.”

2 **Section 3. §36302. Legislative Findings and Intent.**

3 *I Liheslaturan Guåhan* finds that the activities of mortgage loan
4 originators and the origination or offering of financing for residential real
5 property have a direct, valuable and immediate impact upon Guam’s
6 consumers, Guam’s economy, the neighborhoods and communities of
7 Guam, and the housing and real estate industry.

8 *I Liheslaturan Guåhan* finds that accessibility to mortgage credit is
9 vital to the Guam’s residents.

10 *I Liheslatura* also finds that it is essential for the protection of the
11 residents of Guam and the stability of Guam’s economy that reasonable
12 standards for licensing and regulation of the business practices of mortgage
13 loan originators be imposed.

14 *I Liheslatura* further finds that the obligations of mortgage loan
15 originators to consumers in connection with originating or making
16 residential mortgage loans are such as to warrant the regulation of the
17 mortgage lending process. The purpose of this Act is to protect consumers
18 seeking mortgage loans and to ensure that the mortgage lending industry is
19 operating without unfair, deceptive, and fraudulent practices on the part of
20 mortgage loan originators.

21 Therefore *I Liheslaturan Guåhan* establishes within this Act:

22 **(a) System of Supervision and Enforcement.** An effective system of
23 supervision and enforcement of the mortgage lending industry, including:

24 (1) The authority to issue licenses to conduct business under
25 this Act, including the authority to write rules or regulations or adopt
26 procedures necessary to the licensing of persons covered under this
27 Act.

1 (2) The authority to deny, suspend, condition or revoke licenses
2 issued under this Act.

3 (3) The authority to examine, investigate and conduct
4 enforcement actions as necessary to carry out the intended purposes of
5 this Act, including the authority to subpoena witnesses and
6 documents, enter orders, including cease and desist orders, order
7 restitution and monetary penalties and order the removal and ban of
8 individuals from office or employment.

9 **(b) Broad Administrative Authority.** That the Commissioner shall
10 have the broad administrative authority to administer, interpret and enforce
11 this Act, and promulgate rules or regulations implementing this Act, in order
12 to carry out the intentions of the *I Liheslatura*.

13 **Section 4. §36303. Definitions.** For purposes of this Act, the
14 following definitions shall apply:

15 **(a) “Commissioner”** means Guam’s Banking and Insurance
16 Commissioner.

17 **(b) “Depository Institution”** has the same meaning as in Section 3 of
18 the Federal Deposit Insurance Act. It means any bank or savings association
19 including any credit union.

20 **(c) “Federal Banking Agencies”** means the Board of Governors of
21 the Federal Reserve System, the Comptroller of the Currency, the Director
22 of the Office of Thrift Supervision, the National Credit Union
23 Administration, and the Federal Deposit Insurance Corporation.

24 **(d) “Immediate Family Member”** means a spouse, child, sibling,
25 parent, grandparent, or grandchild. This includes stepparents, stepchildren,
26 stepsiblings, and adoptive relationships.

27 **(e) “Individual”** means a natural person.

1 **(f) “Loan Processor or Underwriter”** means an individual who
2 performs clerical or support duties as an employee at the direction of and
3 subject to the supervision and instruction of a person licensed, or exempt
4 from licensing.

5 **(g) “Clerical or Support Duties”**. For purposes of subsection (a),
6 the term “Clerical or Support Duties” may include subsequent to the receipt
7 of an application:

8 (1) The receipt, collection, distribution, and analysis of
9 information common for the processing or underwriting of a
10 residential mortgage loan; *and*

11 (2) Communicating with a consumer to obtain the information
12 necessary for the processing or underwriting of a loan, to the
13 extent that such communication does not include offering or
14 negotiating loan rates or terms, or counseling consumers about
15 residential mortgage loan rates or terms.

16 **(h) “Representations to the public”**. An individual engaging solely
17 in loan processor or underwriter activities, shall not represent to the public,
18 through advertising or other means of communicating or providing
19 information including the use of business cards, stationery, brochures, signs,
20 rate lists, or other promotional items, that such individual can or will
21 perform any of the activities of a mortgage loan originator.

22 **(i) “Mortgage Loan Originator”** means an individual who for
23 compensation or gain or in the expectation of compensation or gain:

24 (1) Takes a residential mortgage loan application; *or*

25 (2) Offers or negotiates terms of a residential mortgage loan;

26 (i) Does not include an individual engaged solely as a
27 loan processor or underwriter;

1 (ii) Does not include a person or entity that only
2 performs real estate brokerage activities and is licensed
3 or registered in accordance with Guam law, unless the
4 person or entity is compensated by a lender, a mortgage
5 broker, or other mortgage loan originator or by any agent
6 of such lender, mortgage broker, or other mortgage loan
7 originator; and

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

12 (j) **“Real Estate Brokerage Activity”** means any activity that
13 involves offering or providing real estate brokerage services to the public,
14 including:

15 (1) Acting as a real estate agent or real estate broker for a buyer,
16 seller, lessor, or lessee of real property;

17 (2) Bringing together parties interested in the sale, purchase,
18 lease, rental, or exchange of real property;

19 (3) Negotiating, on behalf of any party, any portion of a
20 contract relating to the sale, purchase, lease, rental, or exchange
21 of real property (other than in connection with providing
22 financing with respect to any such transaction);

23 (4) Engaging in any activity for which a person engaged in the
24 activity is required to be registered or licensed as a real estate
25 agent or real estate broker under any applicable law; and

26 (5) Offering to engage in any activity, or act in any capacity,
27 described in subsections ~~(i), (ii), (iii), or (iv)~~ (1), (2), (3), or (4)

1 of this section.

2 (k) **“Nationwide Mortgage Licensing System and Registry”** means
3 a mortgage licensing system developed and maintained by the Conference of
4 State Bank Supervisors and the American Association of Residential
5 Mortgage Regulators for the licensing and registration of licensed mortgage
6 loan originators.

7 (l) **“Nontraditional Mortgage Product”** means any mortgage
8 product other than a 30-year fixed rate mortgage.

9 (m) **“Person”** means a natural person, corporation, company, limited
10 liability company, partnership, or association.

11 (n) **“Registered Mortgage Loan Originator”** means any individual
12 who:

13 (1) Meets the definition of mortgage loan originator and is an
14 employee of:

15 (i) A depository institution;

16 (ii) A subsidiary that is:

17 (A) Owned and controlled by a depository
18 institution; and

19 (B) Regulated by a Federal banking agency; *or*

20 (C) An institution regulated by the Farm Credit
21 Administration; and

22 (D) Is registered with, and maintains a unique
23 identifier through, the Nationwide Mortgage
24 Licensing System and Registry.

25 (o) **“Residential Mortgage Loan”** means any loan primarily for
26 personal, family, or household use that is secured by a mortgage, deed of
27 trust, or other equivalent consensual security interest on a dwelling (as

1 defined in section 103(v) of the Truth in Lending Act) or residential real
2 estate upon which is constructed or intended to be constructed a dwelling (as
3 so defined).

4 **(p) “Residential Real Estate”** means any real property located in Guam,
5 upon which is constructed or intended to be constructed a dwelling.

6 **(q) “Unique Identifier”** means a number or other identifier assigned
7 by protocols established by the Nationwide Mortgage Licensing System and
8 Registry.

9 **Section 5. §36304. License and Registration Required.**

10 **(a) General.** An individual, unless specifically exempted from this
11 Act under subsection (c) of this section, shall not engage in the business of a
12 mortgage loan originator with respect to any dwelling located in Guam
13 without first obtaining and maintaining annually a license under this Act.
14 Each licensed mortgage loan originator must register with and maintain a
15 valid unique identifier issued by the Nationwide Mortgage Licensing System
16 and Registry.

17 **(b) Effective Date.** In order to facilitate an orderly transition to
18 licensing and to minimize disruption in the mortgage marketplace, the
19 effective date for subsection (a) of this section shall be July 31, 2010, or
20 such later date approved by the Secretary of the U.S. Department of Housing
21 and Urban Development, pursuant to the authority granted under Public Law
22 110-289, Section 1508(a).

23 **(c) Exemption from this Act.** .The following are exempt from this
24 Act:

25 (1) Registered Mortgage Loan Originators, when acting for an
26 entity described in § ~~36030~~ 36303 ~~(k)~~ (n) (1) (i),(ii) ~~or (iii)~~ of
27 this section are exempt from this Act;

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

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

7 (4) A licensed attorney who negotiates the terms of a residential
8 mortgage loan on behalf of a client as an ancillary matter to the
9 attorney's representation of the client, unless the attorney is
10 compensated by a lender, a mortgage broker, or other mortgage
11 loan originator or by any agent of such lender, mortgage broker,
12 or other mortgage loan originator.

13 **(d) Independent Contractor Loan Processors or Underwriters.** A
14 loan processor or underwriter who is an independent contractor may not
15 engage in the activities of a loan processor or underwriter unless such
16 independent contractor loan processor or underwriter obtains and maintains
17 a license under § ~~36040~~ 36304(a). Each independent contractor loan
18 processor or underwriter licensed as a mortgage loan originator must have
19 and maintain a valid unique identifier issued by the Nationwide Mortgage
20 Licensing System and Registry.

21 **(e) Commissioner authority to establish licensing rules,**
22 **regulations or interim procedures and accept early applications.** For the
23 purposes of implementing an orderly and efficient licensing process the
24 Commissioner may establish licensing rules or regulations and interim
25 procedures for licensing and acceptance of applications, pursuant to the
26 Administrative Adjudication Law. For previously registered or licensed
27 individuals the Commissioner may establish expedited review and licensing

1 procedures, pursuant to the Administrative Adjudication Law.

2 **Section 6. §36305. Guam License and Registration Application**
3 **and Issuance.**

4 **(a) Application form.** Applicants for a license shall apply in a form
5 as prescribed by the Commissioner. Each such form shall contain content as
6 set forth by rule, regulation, instruction or procedure of the Commissioner
7 and may be changed or updated as necessary by the Commissioner in order
8 to carry out the purposes of this Act.

9 **(b) Commissioner May Establish Relationships or Contracts.** In
10 order to fulfill the purposes of this Act, the Commissioner is authorized to
11 establish relationships or contracts with the Nationwide Mortgage Licensing
12 System and Registry or other entities designated by the Nationwide
13 Mortgage Licensing System and Registry to collect and maintain records
14 and process transaction fees or other fees related to licensees or other
15 persons subject to this Act.

16 **(c) Waive or Modify Requirements.** For the purpose of participating
17 in the Nationwide Mortgage Licensing System & Registry, the
18 Commissioner is authorized to waive or modify, in whole or in part, by rule,
19 regulation or order, any or all of the requirements of this chapter and to
20 establish new requirements as reasonably necessary to participate in the
21 Nationwide Mortgage Licensing System & Registry.

22 **(d) Background Checks.** In connection with an application for
23 licensing as a mortgage loan originator, the applicant shall, at a minimum,
24 furnish to the Nationwide Mortgage Licensing System and Registry
25 information concerning the applicant's identity, including:

- 26 (1) Fingerprints for submission to the Federal Bureau of
27 Investigation, and any governmental agency or entity

1 authorized to receive such information for a state, national and
2 international criminal history background check; and

3 (2) Personal history and experience in a form prescribed by the
4 Nationwide Mortgage Licensing System and Registry,
5 including the submission of authorization for the Nationwide
6 Mortgage Licensing System and Registry and the
7 Commissioner to obtain the following:

8 (i) An independent credit report obtained from a
9 consumer reporting agency described in section 603(p) of the
10 Fair Credit Reporting Act; *and*

11 (ii) Information related to any administrative, civil or
12 criminal findings by any governmental jurisdiction.

13 **(e) Agent for Purposes of Requesting and Distributing Criminal**
14 **Information.** For the purposes of this section and in order to reduce the
15 points of contact which the Federal Bureau of Investigation may have to
16 maintain for purposes of subsection (d)(1) and (2)(ii) of this section the
17 Commissioner may use the Nationwide Mortgage Licensing System and
18 Registry as a channeling agent for requesting information from and
19 distributing information to the Department of Justice or any governmental
20 agency.

21 **(f) Agent for Purposes of Requesting and Distributing Non-**
22 **Criminal Information.** For the purposes of this section and in order to
23 reduce the points of contact which the Commissioner may have to maintain
24 for purposes of subsection (d)(2)(i) and (ii) of this section the Commissioner
25 may use the Nationwide Mortgage Licensing System and Registry as a
26 channeling agent for requesting and distributing information to and from any
27 source so directed by the Commissioner.

1 **Section 7. §36306. Issuance of License.** The Commissioner shall not
2 issue a mortgage loan originator license unless the Commissioner makes at a
3 minimum the following findings:

4 (1) No License Revocation. The applicant has never had a
5 mortgage loan originator license revoked in any governmental
6 jurisdiction, except that a subsequent formal vacation of such
7 revocation shall not be deemed a revocation.

8 (2) No Felony Conviction. The applicant has not been
9 convicted of, or pled guilty or *nocontendere* to, a felony in a
10 domestic, foreign, or military court:

11 (i) During the 7-year period preceding the date of the
12 application for licensing and registration; or

13 (ii) At any time preceding such date of application, if
14 such felony involved an act of fraud, dishonesty, or a breach of
15 trust, or money laundering;

16 (iii) Provided that any pardon of a conviction shall not be
17 a conviction for purposes of this subsection.

18 (3) Character and Fitness. The applicant has demonstrated
19 financial responsibility, character, and general fitness such as to
20 command the confidence of the community and to warrant a
21 determination that the mortgage loan originator will operate
22 honestly, fairly, and efficiently within the purposes of this Act.

23 (i) For purposes of this subsection a person has shown
24 that he or she is not financially responsible when he or she has
25 shown a disregard in the management of his or her own
26 financial condition. A determination that an individual has not
27 shown financial responsibility may include, but not be limited

1 to:

2 (ii) Current outstanding judgments, except judgments
3 solely as a result of medical expenses;

4 (iii) Current outstanding tax liens or other government
5 liens and filings;

6 (iv) Foreclosures within the past three years;

7 (v) A pattern of seriously delinquent accounts within
8 the past three years.

9 **(d) Pre-Licensing Education.** The applicant has completed the pre-
10 licensing education requirement described in § ~~36070~~ 36307 of this Act.

11 **(e) Written Test.** The applicant has passed a written test that meets
12 the test requirement described in § ~~36080~~ 36308 of this Act.

13 **(f) Surety Bond or Minimum Net Worth Requirement.** The
14 applicant has met the surety bond requirement of § ~~36140~~ 36314 *or* the
15 minimum net worth requirement of § ~~36145-36315~~ on this Act.

16 **Section 8. §36307. Pre-Licensing and Re-Licensing Education of**
17 **Loan Originators.**

18 **(a) Minimum Educational Requirements.** In order to meet the pre-
19 licensing education requirement referred to in § ~~36060~~ 36306 (d) of this Act,
20 a person shall complete at least twenty (20) hours of education approved in
21 accordance with subsection (b) of this section, which shall include at least:

22 (1) Three (3) hours of Federal law and regulations;

23 (2) Three (3) hours of ethics, which shall include instruction on
24 fraud, consumer protection, and fair lending issues; *and*

25 (3) Two (2) hours of training related to lending standards for
26 the nontraditional mortgage product marketplace.

27 **(b) Approved Educational Courses.** For purposes of subsection (a)

1 of this section, pre-licensing education courses shall be reviewed, and
2 approved by the Nationwide Mortgage Licensing System and Registry based
3 upon reasonable standards. Review and approval of a pre-licensing
4 education course shall include review and approval of the course provider.

5 **(c) Approval of Employer and Affiliate Educational Courses.**

6 Nothing in this section shall preclude any pre-licensing education course, as
7 approved by the Nationwide Mortgage Licensing System and Registry that
8 is provided by the employer of the applicant or an entity which is affiliated
9 with the applicant by an agency contract, or any subsidiary or affiliate of
10 such employer or entity.

11 **(d) Venue of Education.** Pre-licensing education may be offered

12 either in a classroom, online or by any other means approved by the
13 Nationwide Mortgage Licensing System and Registry.

14 **(e) Reciprocity of Education.** The pre-licensing education

15 requirements approved by the Nationwide Mortgage Licensing System and
16 Registry in subsections (a)(1), (2) and (3) of this section for any state shall
17 be accepted as credit towards completion of pre-licensing education
18 requirements in Guam.

19 **(f) Re-Licensing Education Requirements.** A person previously

20 licensed under this Act subsequent to the Effective Date of this Act applying
21 to be licensed again must prove that they have completed all of the
22 continuing education requirements for the year in which the license was last
23 held.

24 **Section 9. §36308. Testing of Loan Originators.**

25 **(a) Testing of Loan Originators, General.** In order to meet the

26 written test requirement referred to in ~~§35060~~ 36306 (e) of this Act, an
27 individual shall pass, in accordance with the standards established under this

1 subsection, a qualified written test developed by the Nationwide Mortgage
2 Licensing System and Registry and administered by a test provider approved
3 by the Nationwide Mortgage Licensing System and Registry based upon
4 reasonable standards.

5 **(b) Qualified Test.** A written test shall not be treated as a qualified
6 written test for purposes of subsection (a) of this section unless the test
7 adequately measures the applicant's knowledge and comprehension in
8 appropriate subject areas, including:

9 (1) Ethics;

10 (2) Federal law and regulation pertaining to mortgage
11 origination;

12 (3) Guam law and regulation pertaining to mortgage
13 origination;

14 (4) Federal and Guam law and regulation, including instruction
15 on fraud, consumer protection, the nontraditional mortgage
16 marketplace, and fair lending issues.

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

23 **(d) Minimum Competence:**

24 (1) **Passing Score.** An individual shall not be considered to have
25 passed a qualified written test unless the individual achieves a
26 test score of not less than 75 percent correct answers to
27 questions.

1 (2) Initial Retests. An individual may retake a test three (3)
2 consecutive times with each consecutive taking occurring at
3 least thirty (30) days after the preceding test.

4 (3) Subsequent Retests. After failing 3 consecutive tests, an
5 individual shall wait at least 6 months before taking the test
6 again.

7 (4) Retest After Lapse of License. A licensed mortgage loan
8 originator who fails to maintain a valid license for a period of
9 five (5) years or longer shall retake the test, not taking into
10 account any time during which such individual is a registered
11 mortgage loan originator.

12 **Section 10. §36309. Standards for License Renewal.**

13 **(a) General.** The minimum standards for license renewal for
14 mortgage loan originators shall include the following:

15 (1) The mortgage loan originator continues to meet the
16 minimum standards for license issuance under § ~~35060~~ 36305
17 (a) thru (f) of this Act.

18 (2) The mortgage loan originator has satisfied the annual
19 continuing education requirements described in § ~~36100~~ 36310
20 of this Act.

21 (3) The mortgage loan originator has paid all required fees for
22 renewal of the license.

23 **(b) Failure to Satisfy Minimum Standards of License Renewal.**

24 The license of a mortgage loan originator failing to satisfy the minimum
25 standards for license renewal shall expire. The Commissioner may adopt
26 procedures for the reinstatement of expired licenses consistent with the
27 standards established by the Nationwide Mortgage Licensing System and

1 Registry.

2 **Section 11. §36310. Continuing Education for Mortgage Loan**
3 **Originators.**

4 **(a) General.** In order to meet the annual continuing education
5 requirements referred to in § ~~36090~~ 36309 (a)(2), a licensed mortgage loan
6 originator shall complete at least eight (8) hours of education approved in
7 accordance with subsection (b) of this section, which shall include at least:

- 8 (1) Three (3) hours of Federal law and regulations;
9 (2) Two (2) hours of ethics, which shall include instruction on
10 fraud, consumer protection, and fair lending issues; and
11 (3) Two (2) hours of training related to lending standards for
12 the nontraditional mortgage product marketplace.

13 **(b) Approved Educational Courses.** For purposes of subsection (a)
14 of this section, continuing education courses shall be reviewed, and
15 approved by the Nationwide Mortgage Licensing System and Registry based
16 upon reasonable standards. Review and approval of a continuing education
17 course shall include review and approval of the course provider.

18 **(c) Approval of Employer and Affiliate Educational Courses.**
19 Nothing in this section shall preclude any education course, as approved by
20 the Nationwide Mortgage Licensing System and Registry, that is provided
21 by the employer of the mortgage loan originator or an entity which is
22 affiliated with the mortgage loan originator by an agency contract, or any
23 subsidiary or affiliate of such employer or entity.

24 **(d) Venue of Education.** Continuing education may be offered either
25 in a classroom, online or by any other means approved by the Nationwide
26 Mortgage Licensing System and Registry.

27 **(e) Calculation of Continuing Education Credits.** A licensed

1 mortgage loan originator:

2 (1) Except for § ~~36090~~ 36309 (b) and subsection (i) of this
3 section may only receive credit for a continuing education
4 course in the year in which the course is taken; and

5 (2) May not take the same approved course in the same or
6 successive years to meet the annual requirements for continuing
7 education.

8 **(f) Instructor Credit.** A licensed mortgage loan originator who is an
9 approved instructor of an approved continuing education course may receive
10 credit for the licensed mortgage loan originator's own annual continuing
11 education requirement at the rate of two (2) hours credit for every one (1)
12 hour taught.

13 **(g) Reciprocity of Education.** A person having successfully
14 completed the education requirements approved by the Nationwide
15 Mortgage Licensing System and Registry in subsections (a)(1), (2) and (3)
16 of this section for any state shall be accepted as credit towards completion of
17 continuing education requirements in Guam.

18 **(h) Lapse in License.** A licensed mortgage loan originator who
19 subsequently becomes unlicensed must complete the continuing education
20 requirements for the last year in which the license was held prior to issuance
21 of a new or renewed license.

22 **(i) Make up of Continuing Education.** A person meeting the
23 requirements of § ~~36090~~ 36309 (a)(1) and (3) of this Act may make up any
24 deficiency in continuing education as established by rule or regulation of the
25 Commissioner.

26 **Section 12. §36311. Authority to Require License.** In addition to
27 any other duties imposed upon the Commissioner by law, the Commissioner

1 shall require mortgage loan originators to be licensed and registered through
2 the Nationwide Mortgage Licensing System and Registry. In order to carry
3 out this requirement the Commissioner is authorized to participate in the
4 Nationwide Mortgage Licensing System and Registry. For this purpose, the
5 Commissioner may establish Rules and Regulations as necessary, pursuant
6 to the Administrative Adjudication Law, including but not limited to:

7 **(a) Background Checks.** Background checks for:

- 8 (1) Criminal history through fingerprint or other databases;
9 (2) Civil or administrative records;
10 (3) Credit history; *or*
11 (4) Any other information as deemed necessary by the
12 Nationwide Mortgage Licensing System and Registry.

13 **(b) Fees.** The payment of fees to apply for or renew licenses through
14 the Nationwide Mortgage Licensing System and Registry;

15 **(c) Setting Dates.** The setting or resetting as necessary of renewal or
16 reporting dates; *and*

17 **(d) Other.** Requirements for amending or surrendering a license or
18 any other such activities as the Commissioner deems necessary for
19 participation in the Nationwide Mortgage Licensing System and Registry.

20 **Section ~~12~~ 13. §36312. Nationwide Mortgage Licensing System
21 and Registry Information Challenge Process.** The Commissioner shall
22 establish a process whereby mortgage loan originators may challenge
23 information entered into the Nationwide Mortgage Licensing System and
24 Registry by the Commissioner.

25 **Section ~~13~~ 14. §36313. Enforcement Authorities, Violations and
26 Penalties.**

27 (a) In order to ensure the effective supervision and enforcement of this

1 Act the Commissioner may, pursuant to the Administrative Adjudication
2 Law:

3 (1) Deny, suspend, revoke, condition or decline to renew a
4 license for a violation of this Act, rules or regulations issued
5 under this Act or order or directive entered under this Act.

6 (2) Deny, suspend, revoke, condition or decline to renew a
7 license if an applicant or licensee fails at any time to meet the
8 requirements of § ~~36060~~ 36306 or § ~~36090~~ 36309 of this Act, or
9 withholds information or makes a material misstatement in an
10 application for a license or renewal of a license.

11 (3) Order restitution against persons subject to this Act for
12 violations of this Act.

13 (4) Impose fines on persons subject to this Act pursuant to
14 subsections (b), (c) and (d) of this section.

15 (5) Issue orders or directives under this Act as follows:

16 (i) Order or direct persons subject to this Act to cease and
17 desist from conducting business, including immediate
18 temporary orders to cease and desist.

19 (ii) Order or direct persons subject to this Act to cease
20 any harmful activities or violations of this Act, including
21 immediate temporary orders to cease and desist.

22 (iii) Enter immediate temporary orders to cease business
23 under a license or interim license issued pursuant to the
24 authority granted under § ~~36040~~ 36304 (e) of this Act if the
25 Commissioner determines that such license was erroneously
26 granted or the licensee is currently in violation of this Act;

27 (iv) Order or direct such other affirmative action as the

1 Commissioner deems necessary.

2 (b) The Commissioner may impose a civil penalty on a mortgage loan
3 originator or person subject to this Act, if the Commissioner finds, on the
4 record after notice and opportunity for hearing, that such mortgage loan
5 originator or person subject to this Act has violated or failed to comply with
6 any requirement of this Act or any regulation prescribed by the
7 Commissioner under this Act or order issued under authority of this Act.

8 (c) The maximum amount of penalty for each Act or omission
9 described in subsection (b) of this section shall be \$25,000.

10 (d) Each violation or failure to comply with any directive or order of
11 the Commissioner is a separate and distinct violation or failure.

12 **Section 14 15. §36314. Surety Bond Required.**

13 (a) **Coverage, Form and Regulations.** Each mortgage loan originator
14 shall be covered by a surety bond in accordance with this section. In the
15 event that the mortgage loan originator is an employee or exclusive agent of
16 a person subject to this Act, the surety bond of such person subject to this
17 Act can be used in lieu of the mortgage loan originator's surety bond
18 requirement.

19 (1) The surety bond shall provide coverage for each mortgage
20 loan originator in an amount as prescribed in subsection (b) of
21 this section.

22 (2) The surety bond shall be in a form as prescribed by the
23 Commissioner.

24 (3) The Commissioner may promulgate rules or regulations
25 with respect to the requirements for such surety bonds as are
26 necessary to accomplish the purposes of this Act.

27 (b) **Penal Sum of Surety Bond.** The penal sum of the surety bond

1 shall be maintained in an amount that reflects the dollar amount of loans
2 originated as determined by the Commissioner.

3 **(c) Action on Bond.** When an action is commenced on a licensee’s
4 bond the Commissioner may require the filing of a new bond.

5 **(d) New Bond.** Immediately upon recovery upon any action on the
6 bond the licensee shall file a new bond.

7 **Section ~~14~~ 16. §~~36316~~ 5. Minimum Net Worth Required.**

8 (a) A minimum net worth shall be continuously maintained for
9 mortgage loan originators in accordance with this section. In the event that
10 the mortgage loan originator is an employee or exclusive agent of a person
11 subject to this Act, the net worth of such person subject to this Act can be
12 used in lieu of the mortgage loan originator’s minimum net worth
13 requirement.

14 (1) Minimum net worth shall be maintained in an amount that
15 reflects the dollar amount of loans originated as determined by
16 the Commissioner.

17 (2) The Commissioner may promulgate rules or regulations, in
18 accordance with the Administrative Adjudication Law, with
19 respect to the requirements for minimum net worth as are
20 necessary to accomplish the purposes of this Act.

21 **Section ~~15-17~~. §~~36317~~ 6. Confidentiality.** In order to promote more
22 effective regulation and reduce regulatory burden through supervisory
23 information sharing:

24 **(a) Protections.** Except as otherwise provided in Public Law 110-289,
25 Section 1512, the requirements under any Federal law or Guam law
26 regarding the privacy or confidentiality of any information or material
27 provided to the Nationwide Mortgage Licensing System and Registry, and

1 any privilege arising under Federal or State law (including the rules of any
2 Federal or State court) with respect to such information or material, shall
3 continue to apply to such information or material after the information or
4 material has been disclosed to the Nationwide Mortgage Licensing System
5 and Registry. Such information and material may be shared with all State
6 and Federal regulatory officials with mortgage industry oversight authority
7 without the loss of privilege or the loss of confidentiality protections
8 provided by Federal law or Guam law.

9 **(b) Agreements and Sharing Arrangements.** For these purposes, the
10 Commissioner is authorized to enter agreements or sharing arrangements
11 with other governmental agencies, the Conference of State Bank
12 Supervisors, the American Association of Residential Mortgage Regulators
13 or other associations representing governmental agencies as established by
14 rule, regulation or order of the Commissioner.

15 **(c) Non-applicability of Certain Requirements.** Information or
16 material that is subject to a privilege or confidentiality under subsection (a)
17 of this section shall not be subject to:

- 18 (1) Disclosure under any Federal or State law governing the
19 disclosure to the public of information held by an officer or an
20 agency of the Federal Government or the respective State; or
- 21 (2) Subpoena or discovery, or admission into evidence, in any
22 private civil action or administrative process, unless with
23 respect to any privilege held by the Nationwide Mortgage
24 Licensing System and Registry with respect to such information
25 or material, the person to whom such information or material
26 pertains waives, in whole or in part, in the discretion of such
27 person, that privilege.

1 **(d) Public Access to Information.** This section shall not apply with
2 respect to the information or material relating to the employment history of,
3 and publicly adjudicated disciplinary and enforcement actions against,
4 mortgage loan originators that is included in the Nationwide Mortgage
5 Licensing System and Registry for access by the public.

6 **Section ~~16~~ 18. §36317. Investigation and Examination Authority.**

7 In addition to any authority allowed under this Act the Commissioner shall
8 have the authority to conduct investigations and examinations as follows:

9 **(a) Authority to Access Information.** For purposes of initial
10 licensing, license renewal, license suspension, license conditioning, license
11 revocation or termination, or general or specific inquiry or investigation to
12 determine compliance with this Act, the Commissioner shall have the
13 authority to access, receive and use any books, accounts, records, files,
14 documents, information or evidence including but not limited to:

15 (1) Criminal, civil and administrative history information,
16 including nonconviction data as specified in Title 9, Guam
17 Code Annotated, the Criminal and Correctional Code; and

18 (2) Personal history and experience information including
19 independent credit reports obtained from a consumer reporting
20 agency described in section 603(p) of the Fair Credit Reporting
21 Act; and

22 (3) Any other documents, information or evidence the
23 Commissioner deems relevant to the inquiry or investigation
24 regardless of the location, possession, control or custody of
25 such documents, information or evidence.

26 **(b) Investigation, Examination, and Subpoena Authority.** For the
27 purposes of investigating violations or complaints arising under this Act, or

1 for the purposes of examination, the Commissioner may review, investigate,
2 or examine any licensee, individual or person subject to this Act, as often as
3 necessary in order to carry out the purposes of this Act. The Commissioner
4 may direct, subpoena, or order the attendance of and examine under oath all
5 persons whose testimony may be required about the loans or the business or
6 subject matter of any such examination or investigation, and may direct,
7 subpoena, or order such person to produce books, accounts, records, files,
8 and any other documents the Commissioner deems relevant to the inquiry.

9 **(c) Availability of Books and Records.** Each licensee, individual or
10 person subject to this Act shall make available to the Commissioner upon
11 request the books and records relating to the operations of such licensee,
12 individual or person subject to this Act. The Commissioner shall have access
13 to such books and records and interview the officers, principals, mortgage
14 loan originators, employees, independent contractors, agents, and customers
15 of the licensee, individual or person subject to this Act concerning their
16 business.

17 **(d) Reports and Other Information as Directed.** Each licensee,
18 individual or person subject to this Act shall make or compile reports or
19 prepare other information as directed by the Commissioner in order to carry
20 out the purposes of this section including but not limited to:

- 21 (1) Accounting compilations;
- 22 (2) Information lists and data concerning loan transactions in a
23 format prescribed by the Commissioner; or
- 24 (3) Such other information deemed necessary to carry out the
25 purposes of this section.

26 **(e) Control Access to Records.** In making any examination or
27 investigation authorized by this Act, the Commissioner may control access

1 to any documents and records of the licensee or person under examination or
2 investigation. The Commissioner may take possession of the documents and
3 records or place a person in exclusive charge of the documents and records
4 in the place where they are usually kept. During the period of control, no
5 individual or person shall remove or attempt to remove any of the
6 documents and records except pursuant to a court order or with the consent
7 of the Commissioner. Unless the Commissioner has reasonable grounds to
8 believe the documents or records of the licensee have been, or are at risk of
9 being altered or destroyed for purposes of concealing a violation of this Act,
10 the licensee or owner of the documents and records shall have access to the
11 documents or records as necessary to conduct its ordinary business affairs.

12 **(f) Additional Authority.** In order to carry out the purposes of this
13 section, the Commissioner may:

14 (1) Retain attorneys, accountants, or other professionals and
15 specialists as examiners, auditors, or investigators to conduct or
16 assist in the conduct of examinations or investigations;

17 (2) Enter into agreements or relationships with other
18 government officials or regulatory associations in order to
19 improve efficiencies and reduce regulatory burden by sharing
20 resources, standardized or uniform methods or procedures, and
21 documents, records, information or evidence obtained under
22 this section;

23 (3) Use, hire, contract or employ public or privately available
24 analytical systems, methods or software to examine or
25 investigate the licensee, individual or person subject to this Act;

26 (4) Accept and rely on examination or investigation reports
27 made by other government officials within or without Guam; or

1 (5) Accept audit reports made by an independent certified
2 public accountant for the licensee, individual or person subject
3 to this Act in the course of that part of the examination covering
4 the same general subject matter as the audit and may
5 incorporate the audit report in the report of the examination,
6 report of investigation or other writing of the Commissioner.

7 **(g) Effect of Authority.** The authority of this section shall remain in
8 effect, whether such a licensee, individual or person subject to this Act acts
9 or claims to act under any licensing or registration law of Guam, or claims to
10 act without such authority.

11 **(h) Withhold Records.** No licensee, individual or person subject to
12 investigation or examination under this section may knowingly withhold,
13 abstract, remove, mutilate, destroy, or secrete any books, records, computer
14 records, or other information.

15 **Section 1719. §36318. Prohibited Acts and Practices.** It is a
16 violation of this Act for a person or individual subject to this Act to:

17 (a) Directly or indirectly employ any scheme, device, or artifice to
18 defraud or mislead borrowers or lenders or to defraud any person;

19 (b) Engage in any unfair or deceptive practice toward any person;

20 (c) Obtain property by fraud or misrepresentation;

21 (d) Solicit or enter into a contract with a borrower that provides in
22 substance that the person or individual subject to this Act may earn a fee or
23 commission through “best efforts” to obtain a loan even though no loan is
24 actually obtained for the borrower;

25 (e) Solicit, advertise, or enter into a contract for specific interest rates,
26 points, or other financing terms unless the terms are actually available at the
27 time of soliciting, advertising, or contracting;

1 (f) Conduct any business covered by this Act without holding a valid
2 license as required under this Act, or assist or aide and abet any person in the
3 conduct of business under this Act without a valid license as required under
4 this Act ;

5 (g) Failure to make disclosures as required by this Act and any other
6 applicable Guam or federal law including regulations thereunder;

7 (h) Fail to comply with this Act or rules or regulations promulgated
8 under this Act, or fail to comply with any other state or federal law,
9 including the rules and regulations thereunder, applicable to any business
10 authorized or conducted under this Act;

11 (i) Make, in any manner, any false or deceptive statement or
12 representation including, with regard to the rates, points, or other financing
13 terms or conditions for a residential mortgage loan, or engage in bait and
14 switch advertising;

15 (j) Negligently make any false statement or knowingly and willfully
16 make any omission of material fact in connection with any information or
17 reports filed with a governmental agency or the Nationwide Mortgage
18 Licensing System and Registry or in connection with any investigation
19 conducted by the Commissioner or another governmental agency;

20 (k) Make any payment, threat or promise, directly or indirectly, to any
21 person for the purposes of influencing the independent judgment of the
22 person in connection with a residential mortgage loan, or make any payment
23 threat or promise, directly or indirectly, to any appraiser of a property, for
24 the purposes of influencing the independent judgment of the appraiser with
25 respect to the value of the property;

26 (l) Collect, charge, attempt to collect or charge or use or propose any
27 agreement purporting to collect or charge any fee prohibited by this Act;

1 (m) Cause or require a borrower to obtain property insurance coverage
2 in an amount that exceeds the replacement cost of the improvements as
3 established by the property insurer.

4 (n) Fail to truthfully account for monies belonging to a party to a
5 residential mortgage loan transaction.

6 **Section ~~1820~~. §36319. Mortgage Call Reports.** Each mortgage
7 licensee shall submit to the Nationwide Mortgage Licensing System and
8 Registry reports of condition, which shall be in such form and shall contain
9 such information as the Nationwide Mortgage Licensing System and
10 Registry may require.

11 **Section ~~1921~~. §36320. Report to Nationwide Mortgage Licensing**
12 **System and Registry.** The Commissioner is required to report regularly
13 violations of this Act, as well as enforcement actions and other relevant
14 information, to the Nationwide Mortgage Licensing System and Registry
15 subject to the provisions contained in § ~~36150~~ 36316 of this Act.

16 **Section ~~2022~~. §36321. Privately Insured Credit.** Non-federally
17 insured credit unions which employ loan originators, as defined in PL 110-
18 289, Title V, the S.A.F.E. Act, shall register such employees with the
19 Nationwide Mortgage Licensing System and Registry by furnishing the
20 information concerning the employees' identity set forth in Section
21 1507(a)(2) of PL 110-289, Title V.

22 **Section ~~2123~~. §36322. Unique Identifier Shown.** The unique
23 identifier of any person originating a residential mortgage loan shall be
24 clearly shown on all residential mortgage loan application forms,
25 solicitations or advertisements, including business cards or websites, and any
26 other documents as established by rule, regulation or order of the
27 Commissioner.

1 **Section ~~2224~~. §~~36324~~-36323. Effective Date.** The effective date of
2 this Act shall be July 31, 2010.”

3 **Section ~~2325~~. Severability.** If any provision of this Act or its
4 application to any person or circumstance is held invalid, the remainder of
5 the Act or the application of the provision to other persons or circumstances
6 is not affected.



Mina' Trenta Na Liheslaturan Guahan
THIRTIETH GUAM LEGISLATURE

Senator vicente "ben" c. pangelinan

COMMITTEE ON APPROPRIATIONS, TAXATION, BANKING, INSURANCE, RETIREMENT AND LAND
PUBLIC HEARING
 Wednesday, April 7, 2010
BILL NO. 351-30 (COR)
SIGN UP SHEET

NAME	ADDRESS	PHONE	EMAIL	WRITTEN	ORAL	SUPPORT	
						Yes	No
Phil Mafuas	PO Box 442 Hagatna	687-8811	pmafuas@rpm.com		✓	Yes	
John Demacho	Box 7 TAX	635-1816	ipsumada@evicta.gov.gu	✓	✓	Yes	
John Carlson	Rev & Tax	635-1846	jcarlson@revtax.gov.gu	✓		✓	

Guam Bankers Association
C/O First Hawaiian Bank
400 Route 8
Mongmong, Guam 96910

Senator Vicente C. Pangelinan
Chairman
Committee on Appropriations, Taxation, Banking, Insurance,
Retirement, and Land
I Mina' Trenta Na Liheslaturan Guåhan
The 30th Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910

REF: Bill 351-30 (COR), An Act To Add a New Article 3 of Chapter 36 to title 18 Guam code Annotated relative to the establishment of a Secure and Fair Enforcement for Mortgage Licensing Act

Dear Chairman Pangelinan:

On behalf of members of the Guam Banking Association (GBA), I am writing in support of the above legislation as it is the first step to satisfying the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act") signed into law by President Bush on July 30, 2008.

The SAFE Act (Public Law 110-289), constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The Act is especially designed to enhance consumer protection and reduce fraud by encouraging states (and territories) to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators.

Kind note that under section 1507 of the Federal Act, the federal banking agencies (the Federal Reserve, the Comptroller, the Director of Thrift Supervision, the NCUA and the FDIC), jointly and through the Federal Financial Institutions Examination Council, and together with the Farm Credit Administration, are responsible for developing and maintaining a system of registering affected employees of depository institutions as



Dipåtamenton Kontribusiyan yan Adu'ána

DEPARTMENT OF

REVENUE AND TAXATION

GOVERNMENT OF GUAM

Gubetnamenton Guåhan

FELIX P. CAMACHO, Governor Maga'låhi
MICHAEL W. CRUZ, M.D., Lt. Governor Tiñente Gubetnadot

ARTEMIO B. ILAGAN, Director
Direktot
Paul J. Pablo, Deputy Director
Segundo Direktot

April 7, 2010

The Honorable Vicente C. Pangelinan
Chairman, Committee on Appropriations,
Taxation, Banking, Insurance and Land
Thirtieth Guam Legislature
324 West Soledad Avenue, Suite 100
Hagatna, Guam 96910

Re: Bill No. 351-30 "AN ACT TO ADD A NEW ARTICLE 3 OF CHAPTER 36 TO TITLE 18, GUAM CODE ANNOTATED RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT".

Dear Senator Pangelinan:

My name is John Carlos. I am the Regulatory Administrator for the Department of Revenue and Taxation. I am in favor of Bill No. 351-30 for the following reasons:

This bill will prevent unqualified, unethical and unscrupulous loan originators from processing loans that contributed to the drastic downward values of residential homes.

Although the banks are exempted from all of the requirements for the licensing of original residential loan originators, this bill would allow Guam banks and credit unions to register with the Nationwide Mortgage Licensing System and Registry (NMLSR) and be able to secure a unique identifier for the bank and for the residential loan officers of the bank. This will bring the banks in compliance with the SAFE Act and be able to sell the residential loan portfolio in the secondary market.

I would like to take this opportunity to ask for at least two (2) additional positions of regulatory examiners. First of all, this program will require additional work. Second of all, the Affordable Health Care Act of 2009 will require more work on the health program to protect the consumers.


Our regulatory examiners need training. The Legislature created the Banking and Insurance Fund under 11 GCA Section 103120. The sources of the Banking and Insurance Fund are the examination fees from the insurance companies and the banks. However, in one of the budget bills, the account for the Banking and Insurance Fund was unfortunately transferred to the general account.

Page 2, Revenue and Taxation support for Bill No. 351-30

I respectfully request the Legislature to reconsider and to restore the Banking and Insurance Enforcement Fund for the Insurance, Securities, Banking and Real Estate Division.

I am in favor of Bill 351-30.

Sincerely,


JOHN CARLOS
Regulatory Administrator



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DEPARTMENT OF

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April 7, 2010

The Honorable Vicente C. Pangelinan
Chairman, Committee on Appropriations,
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324 West Soledad Avenue, Suite 100
Hagatna, Guam 96910

Re: Bill No. 351-30 "AN ACT TO ADD A NEW ARTICLE 3 OF CHAPTER 36 TO TITLE 18, GUAM CODE ANNOTATED REALTIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT".

Dear Senator Pangelinan:

Our names and positions are: Artemio B. Ilagan, the Director of the Department of Revenue and Taxation and John P. Camacho, the Banking and Insurance Commissioner. We are in favor of Bill No. 351-30 for the following reasons:

1. This bill is the first stage to enable Guam to comply with the federal law that was enacted on July 30, 2008, known as The Secure and Fair Enforcement Mortgage Licensing Act (SAFE Act) that was enacted on July 30, 2008. This SAFE Act direct all states, including Guam to adopt licensing and registration requirements for loan originators that meets the minimum standards required in the law. In lieu of regulations being developed by the Housing and Urban Development (HUD), the law encouraged the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish a nationwide mortgage licensing system and registry (NMLSR).
2. This bill would allow Guam to join the other states for providing uniform state licensing application and reporting requirements and reporting requirements for residential mortgage loan originators. Loan originators who are employees of federally regulated depository institutions and their subsidiaries are required to register through the NMLSR, but are not subject to state licensing requirements. Currently, there is a uniform licensing systems for real estate appraisers. All of Guam certified and licensed real estate appraisers must comply with the uniform standards that are set by the Appraiser Qualifications Board (AQB). Similarly, all residential mortgage loan originators must comply with the uniform licensing and registration under the NMLSR.

3. This bill will protect consumers, who are applying for residential mortgages from unethical and unqualified residential mortgage loan originators. This bill will protect owners of residential units from huge declination in values of residential units within the normal economic cycle of boom and bust because there will be a lower percentage of defaults.
4. This bill will protect the mortgage lenders particularly the federally insured institutions from originating loans that are likely to go into default.
5. Individual consumers and mortgage lenders will have public access to a database as to the competence, integrity and ethical behavior of mortgage originators which we hope will promote responsible behavior in the mortgage market place including in the secondary market.

We have reviewed the proposed Bill 351-30 and believe that the HUD will find the same in compliance with the objectives of the federal SAFE Act. We request for consideration of typographical corrections as follows:

Section 4. §36303. Definitions. Subsection (j) (5) Offering to engage in any activity or act in any capacity, described in subsections ~~(i), (ii), (iii), or iv)~~ (1), (2), (3), or 4 of this section. (This is to substitute Arabic numerals in lieu of letters.)

Section 18. §36317. Investigation and Examination Authority. Subsection (f) Additional Authority. Subsection ~~(4)~~ Accept and rely on examination or investigation reports made by other government officials within or without Guam. (The underscored portion shall include examination or investigation reports by other government officials outside of Guam).

Section 21. §36320. Report to Nationwide Mortgage Licensing System and Registry. The Commissioner is required to report regularly violations of this Act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in ~~§36150~~ 36316 of this Act. (This section refers to the Confidentiality provisions.)

We must give credit to the Legislature for acting expeditiously on this proposed bill. The HUD has set a timeline of July 10, 2010 for states to be in compliance of the SAFE Act. It is our understanding that if the SAFE Act is enacted within the timeline, Guam can thereafter, asked for assistance and a specific period to put into place the requirements for licensing and the registration of the mortgage loan originators with the NMLSR.

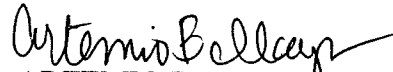
In the event that Guam shall not have the SAFE Act in place on or before 2010, the HUD can and in accord with its mandate shall have to institute a SAFE regulation for Guam.

Page 3, Revenue and Taxation support for Bill No. 351-30.

It is quite possible that financial institutions in Guam that originates residential mortgage loans will not be able to sell their loans in the secondary market until the HUD has deemed that Guam is in compliance with the SAFE Act.

For all of the foregoing considerations, we express our support in favor of Bill 351-30.

Sincerely,


ARTEMIO B. ILAGAN
Director

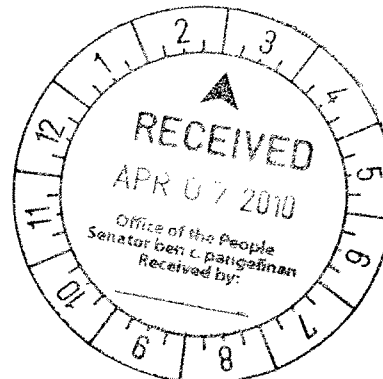

JOHN P. CAMACHO
Banking and Insurance Commissioner



Member **FDIC**

April 7, 2010

The Honorable Senator vicente "ben" c. pangelinan, Chairperson
Committee on Appropriations, Taxation, Banking,
Insurance, Retirement & Land
30th Guam Legislature
155 Hesler Place
Hagåtña, Guam 96910



Re: Bill 351-30 (COR), The Guam Secure and Fair Enforcement for Mortgage Licensing Act of 2010 (The Guam S.A.F.E. Mortgage Licensing Act of 2010)

Chairperson pangelinan:

I am writing to express the full support of Bank of Guam for the passage of Bill 351-30. This Bill, should it become Law, will clearly define the role of mortgage lenders in Guam, as well as establish their limits and responsibilities. I commend both you and Senator B.J. Cruz for introducing this important piece of legislation, and acknowledge the efforts of John Carlos of the Guam Banking Commission in helping to draft its details.

As the Committee is surely aware, the federal SAFE Act that inspired State and Territorial legislation nationwide was enacted in response to some of the more egregious lending practices that took place during the recent U.S. housing boom, such as subprime, interest-only, payment option and the so-called "liars' loans" that trapped so many people in mortgages that they could not realistically be expected to repay. Rising default rates on these loans led to the collapse of the housing "bubble" and, ultimately, to the global financial crisis that still plagues us today.

While the housing "bubble" was by no means a significant issue in Guam, since we had already gone through our real estate crisis half a decade earlier, that is no assurance that a similarly rapid escalation of real estate prices could not take place in the future. The passage of Bill 351-30 will help to control financial industry practices, as related to mortgages, so that the people of Guam will be protected from those lenders who might otherwise take undue advantage of them; it will forestall the kind of lending that drives up prices and leaves people with mortgages that the lender should have known they would likely be unable to repay. This will help to secure an orderly housing market for Guam and protect members of our community from the embarrassment and stigma of default and foreclosure.

Again, we fully support the passage of Bill 351-30, and thank you and your colleagues for dealing with these issues in an expeditious manner.

Lourdes A. Leon Guerrero
President and Chair of the Board



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DEPARTMENT OF

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MICHAEL W. CRUZ, M.D., Lt. Governor *Tiñente Gubetnadot*

ARTEMIO B. ILAGAN, Director
Direktot
Paul J. Pablo, Deputy Director
Segundo Direktot

February 1, 2010

The Honorable Vicente C. Pangelinan
Chairman, Committee on Appropriations,
Taxation, Banking, Insurance and Land
Thirtieth Guam Legislature
324 West Soledad Avenue, Suite 100
Hagatna, Guam 96910

Re: Proposed Bill on Secure And Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Mortgage Licensing Act)

Dear Mr. Chairman:

The Housing and Economic Recovery Act of 2008 (HERA) was signed into law on July 30, 2008 as Public Law 110-289. HERA required the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry.

The CSBS and the AARMR developed a template for the nationwide mortgage licensing system and registry (NMLS). Our office used this template to propose a bill on SAFE law for Guam. This proposed bill was presented to the Banking and Insurance Board on January 14, 2010. The Board agreed that the proposed bill should be submitted to your Committee. A copy of each of the SAFE Mortgage Licensing Act, template bill and the proposed bill on the SAFE law are enclosed for reference and your consideration. It must be mentioned that the HUD may determine the acceptability of state's licensing and registration system on or before July 10, 2010. In addition, it our understanding that the Federal Housing Finance Agency (FHFA) and Federal Housing Administration require all loan originators, including banks to be registered with the NMLS.

Our office has an electronic copy of the template of the SAFE Act provided by the CSBS/AARMR, the subject proposed bill of the SAFE law for Guam and the SAFE Act as enacted by the states of Hawaii and California. Our office can provide the electronic copies to your Committee upon request. Should you wish to discuss this proposed bill, our office shall make ourselves available at convenient office hours.

Sincerely,

JOHN P. CAMACHO
Banking and Insurance Commissioner

HUD News

Newsroom
 Priorities
 About HUD

Homes

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 Handbooks/ forms
 Common questions

Tools

Webcasts
 Mailing lists
 RSS Feeds
 Help



SAFE Mortgage Licensing Act

About the Act

[Information by State](#)

[Print version](#)

The Housing and Economic Recovery Act of 2008, signed into law on July 30, 2008 (Public Law 110-289) (HERA), constitutes a major new housing law that is designed to assist with the recovery and the revitalization of America's residential housing market - from modernization of the Federal Housing Administration, to foreclosure prevention, to enhancing consumer protections. The SAFE Act is a key component of HERA.

Safe Act Model State Law

The SAFE Act is designed to enhance consumer protection and reduce fraud by encouraging states to establish minimum standards for the licensing and registration of state-licensed mortgage loan originators and for the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) to establish and maintain a nationwide mortgage licensing system and registry for the residential mortgage industry for the purpose of achieving the following objectives:

- (1) Providing uniform license applications and reporting requirements for state licensed-loan originators;
- (2) Providing a comprehensive licensing and supervisory database;
- (3) Aggregating and improving the flow of information to and between regulators;
- (4) Providing increased accountability and tracking of loan originators;
- (5) Streamlining the licensing process and reducing regulatory burden;
- (6) Enhancing consumer protections and supporting anti-fraud measures;
- (7) Providing consumers with easily accessible information, offered at no charge, utilizing electronic media, including the Internet, regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators;
- (8) Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer;
- (9) Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending;
- (10) Facilitating the collection and disbursement of consumer complaints on behalf of state mortgage regulators.

The new standards, as well as the uniformity and consistency of such standards, directed to be established nationwide by the SAFE Act present a significant step in the effort to increase integrity in the residential mortgage loan market, enhance consumer protections, and reduce fraud. The SAFE Act encourages states to participate in the Nationwide Mortgage Licensing System and Registry, and requires states to have in place, by law or regulation, a system for licensing and registering loan originators that meets the requirements of sections 1505, 1506, and 1508(d) of the SAFE Act. The SAFE Act requires the states to have the licensing and registration system in place by: (1) July 31, 2009, for states whose legislatures meet annually; and (2) July 31, 2010, for states whose legislatures meet biennially. For both this 1-year period and 2-year period, HUD may extend the deadline, by not more than 24 months, if HUD determines that a state is making a good faith effort to establish a state licensing law that meets the minimum requirements of the SAFE Act. (See the complete text of the SAFE Act.)

To aid and facilitate states' compliance with the requirements of the SAFE Act, the Act directs the establishment of a nationwide mortgage licensing system and registry (NMLSR), to be developed and maintained by CSBS and AARMR. If HUD determines that a state's mortgage loan originator licensing standards do not meet the minimum requirements of the Act, HUD must implement and administer a licensing system for that state. A loan originator in such a state would have to comply with the requirements of HUD's SAFE Act-compliant licensing system for that state as well as with any applicable state requirements. A HUD license for a state would be valid only for that state, even if HUD must implement licensing systems in multiple states. Additionally, if HUD determines that the NMLSR is failing to meet the requirements and purposes of the SAFE Act, HUD must establish a system that meets the requirements of the SAFE Act.

For the last several months, CSBS and AARMR have undertaken considerable outreach to states and the financial services industry regarding the development of the NMLSR and of legislation that would meet the requirements of the SAFE Act. CSBS and AARMR have developed a model state law (MSL) designed to assist and facilitate states to enact legislation on mortgage loan originator licensing that complies with the SAFE Act and by the deadlines imposed by the SAFE Act. While states are charged with enacting licensing standards that meet the requirements of the SAFE Act, overall responsibility for interpretation, implementation, and compliance with the SAFE Act rests with HUD. In this regard, CSBS and AARMR requested that HUD review the model legislation, and advise of its sufficiency in meeting applicable minimum requirements of the SAFE Act.

CSBS/AARMR Model Legislation

HUD reviewed the model legislation to determine whether it meets the minimum requirements of the SAFE Act and finds that it does. State legislation that follows the provisions of the model legislation, whether by statute or regulation, will be determined to have met the applicable minimum requirements of the SAFE Act. The complete text of the model legislation, reviewed by HUD, is provided here.) More information about the model legislation can be found at CSBS's [website](#). The commentary that follows presents HUD's views and interpretations of certain statutory provisions that required consideration and analysis in determining that the model legislation meets the minimum requirements of the SAFE Act.

HUD Commentary

Through this commentary, HUD advises of the analysis of the SAFE Act that was undertaken in reviewing the model legislation and of HUD's interpretation of certain provisions in the SAFE Act. These interpretations are designed to assist the states, as well as members of the public, in understanding how HUD determined that the model legislation meets the minimum requirements of the SAFE Act, and to assist states in adopting legislation or regulations that meet the minimum requirements of the SAFE Act.

A. Standards in Legislation May Exceed Standards in SAFE Act

The SAFE Act's licensing and registration standards for mortgage loan originators are minimum standards. (See section 1505(b).) Legislation enacted or regulations promulgated by a state may exceed the minimum standards of the SAFE Act. States may not, however, enact legislation, promulgate regulations, or otherwise impose requirements that would frustrate the objectives of the SAFE Act, keeping in mind that the SAFE Act's primary objectives include provision of a comprehensive licensing and supervisory system with uniform application and reporting requirements.

B. Definition of Loan Originator

Section 1503(3)(A)(i) of the SAFE Act defines "loan originator" as "an individual who (I) takes a residential mortgage loan application; and (II) offers or negotiates terms of a residential mortgage loan for compensation or gain." Section 1503(3)(B), entitled "Other Definitions Relating to Loan Originator" provides "For purposes of this subsection, an individual 'assists a consumer in obtaining or applying to obtain a residential mortgage loan' by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

" HUD interprets "application" to include any request from a borrower, however communicated, for an offer (or in response to a solicitation of an offer) of residential mortgage loan terms, as well as the information from the borrower that is typically required in order to make such an offer. HUD interprets "tak[ing]" an application to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower.

Since it generally would not be possible for an individual to offer to or negotiate residential mortgage loan terms with a borrower without first receiving the request from the borrower (including a positive response to a solicitation of an offer) as well as the information typically contained in a borrower's application, HUD considers the definition of loan originator to encompass any individual who, for compensation or gain, offers or negotiates pursuant to a request from and based on the information provided by the borrower. Such an individual would be included in the definition of loan originator, regardless of whether the individual takes the request from the borrower for an offer (or positive response to an offer) of residential mortgage loan terms directly or indirectly from the borrower.

The SAFE Act also describes activities in the residential mortgage process that are excluded from the definition of "loan originator." Activities that are excluded are those that pertain to administrative or clerical tasks; real estate brokerage activities by individuals licensed or registered by a state to undertake real estate brokerage activities unless a person is compensated by a loan originator, loan processing or underwriting undertaken under the direction and supervision of a state-licensed loan originator or registered loan originator; and those individuals solely involved in extensions of credit relating to timeshare plans.

HUD interprets an individual who "takes a residential mortgage loan application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. This interpretation is consistent with the exclusion defined in section 1503(3)(C) of the SAFE Act. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act provided by section 1503(3)(B). As a result, an individual who offers or negotiates residential mortgage loan terms for compensation or gain could not avoid applicability of the SAFE Act standards by having another person or entity take the application from the prospective borrower and then pass the application to the individual. A state licensing and registration system that permits such individuals to avoid compliance with SAFE Act standards would be determined by HUD to be not in compliance with the SAFE Act. A state may clarify that such individuals are not exempt from licensing requirements. The MSL provides one approach in making this clarification in section XX.XXX.030(6).

Notwithstanding the broad definition of "loan originator" in the SAFE Act, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator. The provision in the definition that loan originators are individuals who take an "application" implies a formality and commercial context that is wholly absent where an individual offers or negotiates terms of a residential mortgage loan with or on behalf of a member of his or her immediate family. State legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only with or on behalf of an immediate family member will not be found to be out of compliance with the SAFE Act merely because of such exclusion. The MSL includes this exclusion in section XX.XXX.040(3)(b).

The commercial context implied by the taking of an "application" is also absent where an individual seller provides financing to a buyer pursuant to the sale of the seller's own residence. The frequency with which a particular seller provides financing is so limited that HUD's view is that Congress did not intend to require such sellers to obtain loan originator licenses. Accordingly, state legislation that excludes from licensing and registration requirements an individual who offers or negotiates terms of a residential mortgage loan only to the buyer or prospective buyer of the seller's residence will not be found to be out of compliance with the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(c).

Additionally, the definition generally would not apply to, for example, a licensed attorney who negotiates terms of a residential mortgage loan with a prospective

lender 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, mortgage broker, or other mortgage loan originator or by an agent of such lender, mortgage broker, or other loan originator. In such cases, the duties of loyalty, competence, and diligence owed by the attorney to his or her client are significant. HUD views the SAFE Act's requirements for registration and licensing as not applying in this context, which is distinguished from the commercial context contemplated in the SAFE Act. The MSL includes this exclusion in section XX.XXX.040(3)(d).

C. Definition of "Dwelling"

The SAFE Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling" and cross-references the definition of dwelling in section 103(v) of the Truth in Lending Act (TILA) (15 U.S.C. 1601 note).

Regulation Z, which implements TILA, defines dwelling to mean "a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence." (12 CFR 226.2(a)(19).) Since both the SAFE Act and TILA address consumer protections for borrowers in housing finance transactions, HUD finds that the same interpretation applies under the SAFE Act. In addition, HUD interprets "mobile home" to include a manufactured home, as defined in the National Manufactured Housing Construction and Safety Standards Act of 1974. (42 U.S.C. 5402(6).)

D. Delayed Effective Date of Requirement to Obtain and Maintain a License

Under the SAFE Act, HUD may determine the acceptability of states' licensing and registration systems and of their participation in the NMLS as early as July 31, 2009, or July 31, 2010, as applicable. As a result, states are facing tight deadlines before they must enact legislation and implement systems to carry out licensing and registration requirements. To meet the SAFE Act's licensing requirements, NMLSR will have to develop tests and approve educational courses, mortgage loan originators will have to comply with testing, education, and bonding requirements, and states will have to evaluate the records of thousands of applicants.

Although a state should enact legislation or promulgate regulations by the applicable deadline, HUD's position is that Congress did not intend for states to require all mortgage loan originators to be licensed in accordance with the SAFE Act's standards immediately upon enactment of the state's legislation or issuance of regulations. Such a requirement could cause a massive disruption in the housing finance industry at a time when millions of Americans may be seeking to refinance their existing mortgages or to purchase a new home. The ability of loan originators to facilitate such transactions is critical to ameliorate the current conditions in the housing market, but in many states, individuals currently performing loan originations may not be able to meet the educational, testing, and background check requirements by the time required legislation or regulations become effective. In addition, HUD is aware that some states already require licensure of loan originators, and that some individuals in those states will hold licenses that do not expire until as late as December 2010. Nonetheless, the provision for HUD to enforce the SAFE Act's standards in any state that fails to implement these standards reflects the underlying statutory concern that loan originators who do not meet these standards pose a significant risk to borrowers and the housing finance system. As a result, any period during which loan originators may operate without a SAFE Act-compliant license must be only as long as necessary for substantial numbers of qualified loan originators to obtain licenses.

Accordingly, HUD will not determine that a state's legislation is not in compliance with the SAFE Act merely because the legislation or regulations provide for a reasonable period following enactment for certain loan originators to be licensed under the new requirements. Considering the education, testing, and background check standards that license applicants must meet, HUD views a reasonable delay, with respect to individuals who do not already possess a valid loan originator license, is one which does not extend past July 31, 2010. Such a delay generally provides one year from state enactment of legislation for individuals to come into compliance with applicable requirements. (HUD has determined that all state

legislatures that meet only biennially meet in 2009, which means that these states will have the opportunity to enact SAFE Act compliant legislation by July 31, 2009.) For individuals who possess licenses granted under a system that was in place prior to the SAFE Act-compliant system, HUD views a reasonable delay is one that does not extend past December 31, 2010. This effective date will accommodate individuals with two-year licenses that were granted or renewed as late as December 2008, and also synchronizes with the NMLSR's uniform annual license expiration date of December 31. The MSL provides in section L26-(1)(2) for these delayed effective dates for the state licensing requirement, and provides that these effective dates could be further extended only with HUD's approval. HUD may approve a later date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act to be in the state legislation and in obtaining state licenses within one year.

E. State of Licensure

Section 1504(a) of the SAFE Act prohibits an individual from "engag[ing] in the business of a loan originator" without first obtaining a registration or state license. HUD interprets this provision to mean that an individual must comply with licensing and registry requirements of a state in order to engage in the business of a loan originator with respect to any residential property in that state, regardless of whether the individual or the prospective borrower is located in the state. This interpretation ensures that each state is able to establish and enforce the provisions of its SAFE Act licensing system and prevents an individual from circumventing a state's requirements simply by physically locating outside of the state and conducting business by telephone or other means. This interpretation, however, does not affect the level of reciprocity a state may grant to another state's determination that its own SAFE Act-compliant licensing requirements have been met. This interpretation promotes clarity by unambiguously determining which state's license is required for a given transaction. The MSL incorporates this interpretation in section XX.XXX.040(1).

F. Felony Convictions

Section 1505(b)(2) of the SAFE Act provides that, to be eligible for a license, an individual must not have been convicted of any felony within the preceding seven years or convicted of certain types of felonies at any time prior to application. Since the provision is triggered by a conviction, rather than by an extant record of a conviction, HUD interprets the provision to make an individual ineligible for a loan originator license even if the conviction is later expunged. Pardoned convictions, in contrast, are generally treated as legal nullities for all purposes under state law and would not render an individual ineligible. The law under which an individual is convicted, rather than the state where the individual applies for a license, determines whether a particular crime is classified as a felony. The MSL clarifies that a pardoned conviction does not render an individual ineligible for a license under section XX.XXX.060(2)(c).

G. Surety Bond

Section 1508(d)(6) of the SAFE Act provides that states must set minimum net worth or surety bond requirements or establish a recovery fund paid into by loan originators. HUD has determined that a state may comply with the SAFE Act requirement by providing that, in the case of a company that employs more than one loan originator, the bonding requirement may be met at the company level. Individual loan originators would not have to be bonded separately. The MSL incorporates this interpretation in section XX.XXX.140(1).

FURTHER INFORMATION CONTACT:

HUD
Office of Regulatory Affairs and Manufactured Housing
Department of Housing and Urban Development
451 Seventh Street, SW
Rm. 9162
Washington, DC 20410-8000
Telephone: (202) 708-6401
FAX: (202) 708-2678

Email: <http://www.hud.gov/utilities/intercept.cfm?mailto:safeprogram@hud.gov>

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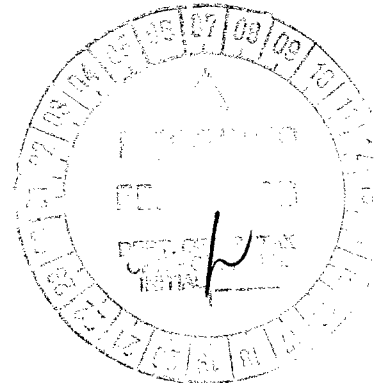




U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

JAN 27 2010



Mr. Artemio B. Ilagan
Director
Department of Revenue and Taxation
P. O. Box 23607
GMF Bariguda, GU 96921

Dear Mr. Ilagan:

I am writing to inquire about Guam's intentions regarding enacting legislation to comply with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act). The SAFE Act was signed into law July 30, 2008, as part of the Housing and Economic Recovery Act of 2008 (HERA).

Congress gave overall responsibility for interpretation, implementation, and enforcement of the SAFE Act to the Department with each state and US territory responsible for enacting statutes or adopting regulations that meet the minimum requirements for residential mortgage loan originator licensure specified in the SAFE Act.

Working closely with the Department's statutory partners, the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, HUD has developed expertise in assisting the states and territories with preparation of their SAFE Act laws. I would like to know if Guam has a timetable for enacting legislation that will comply with the SAFE Act, or wishes the Department to provide assistance in drafting SAFE Act-complaint legislation. In any event, the sooner Guam can comply with the SAFE Act, the sooner it can begin licensing mortgage loan originators within the territory.

Please feel free to contact me if you want to discuss this issue.

Sincerely,

David H. Stevens
Assistant Secretary for Housing –
Federal Housing Commissioner

**Bureau of Budget & Management Research
Fiscal Note of Bill No. 351-30**

AN ACT TO ADD A NEW ARTICLE 3 OF CHAPTER 36 TO TITLE 18, GUAM CODE ANNOTATED AND TO ADD A NEW ITEM (5) TO §10104(a) OF CHAPTER 10, TITLE 5 GUAM CODE ANNOTATED; RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

Department/Agency Appropriation Information	
Dept./Agency Affected: Department of Revenue & Taxation	Dept./Agency Head: Artemio B. Ilagan
Department's General Fund (GF) appropriation(s) to date:	\$9,592,193
Department's Other Fund (Specify) appropriation(s) to date: \$755,482 (Tax Collection Enhancement Fund) / \$1,542,232 (Better Public Service Fund)	\$2,297,714
Total Department/Agency Appropriation(s) to date:	\$11,889,907

Fund Source Information of Proposed Appropriation			
	General Fund:	Other:	Total:
FY 2010 Adopted Revenues	\$540,218,638	\$112,566,011	\$652,784,649
FY 2010 Appro. (P.L. 30-55 thru 30-112)	(\$540,228,724)	(\$120,120,186)	(\$660,348,910)
Sub-total:	(\$10,086)	(\$7,554,175)	(\$7,564,261)
Less appropriation in Bill	\$0	\$0	\$0
Total:	(\$10,086)	(\$7,554,175)	(\$7,564,261)

Estimated Fiscal Impact of Bill						
	One Full Fiscal Year	For Remainder of FY 2010 (if applicable)	FY 2011	FY 2012	FY 2013	FY 2014
General Fund	\$0	\$0	\$0	\$0	\$0	\$0
Tourist Attraction Fund	\$0	\$0	\$0	\$0	\$0	\$0
Total	\$0	\$0	\$0	\$0	\$0	\$0

- Does the bill contain "revenue generating" provisions? /x/ Yes // No
If Yes, see attachment
- Is amount appropriated adequate to fund the intent of the appropriation? /x/ N/A // Yes // No
If no, what is the additional amount required? \$ _____ /x/ N/A
- Does the Bill establish a new program/agency? // Yes /x/ No
If yes, will the program duplicate existing programs/agencies? // N/A // Yes /x/ No
Is there a federal mandate to establish the program/agency? // Yes /x/ No
- Will the enactment of this Bill require new physical facilities? // Yes /x/ No
- Was Fiscal Note coordinated with the affected dept/agency? If no, indicate reason: /x/ Yes // No
/x/ Requested agency comments not received by due date // Other: _____

9/10/10

Analyst: <u>Michael M. Aflague, B&M Analyst, BBMR</u>	Date: <u>4/12/10</u>	Director: <u>Bertha M. Duenas, Director, BBMR</u>	APR 12 2010
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Footnotes: The Bill has a potential for additional funding impact, however in its present form that impact cannot be determined at this time.

I Mina Trenta Na Liheslaturan Guåhan
Bill Log Sheet
 Page 1 of 1

Bill No.	Sponsor(s)	Title	Date Introduced	Date Referred	Committee Referred	Public Hearing Date	Date Committee Report Filed	Status (Date)
B350-30 (COR)	v. c. pangelinan, B. J.F. Cruz	An Act To Repeal Section 30106 (c) Of Chapter 30, Title 11 of the Guam Code Annotated relative to exemptions from hotel occupancy tax.	3/22/10 12:26 p.m.	3/23/10	Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land			
B351-30 (COR)	v. c. pangelinan, B. J.F. Cruz	An act to add a new Article 3 of Chapter 36 to title 18, Guam Code Annotated and to add a new item (5) to §10104(a) of Chapter 10, Title 5 Guam Code Annotated; relative to the establishment of a secure and fair enforcement for Mortgage Licensing Act.	3/22/10 12:26 p.m.	3/23/10	Committee on Appropriations, Taxation, Banking, Insurance, Retirement, and Land			



Office of

The People

Mina' Trenta Na Liheslaturan Guahan

Senator vicente (ben) c. pangelinan (D)

March 31, 2010

Memorandum

To: All Senators

From: Senator vicente c. pangelinan

Re: Public Hearing - FIRST NOTICE

Chairman
Committee on
Appropriations, Taxation,
Banking, Insurance, and
Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

The Committee on Appropriations, Taxation, Banking, Insurance and Land will conduct a public hearing on numerous bills beginning at **9:00am on Wednesday, April 7, 2010** at the Guam Legislature's Public Hearing Room. The following bills are on the agenda:

Bill No. 345-30 (COR): (Taitague) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

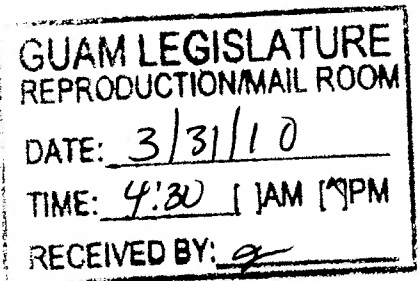
Bill No. 349-30 (COR): (Muna Barnes) An Act to *add* a New §80105 (c) to Chapter 80 of Title 21, Guam Code Annotated Relative to the transfer of properties under the jurisdiction of the Port Authority of Guam to the jurisdiction of the Guam Ancestral Lands Commission.

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For copies of the bill, you can log onto www.guamlegislature.com or www.senbenp.com

Si Yu'os Ma'ase,



324 W. Soledad Ave. Suite 100, Hagåtña, Guam 96910

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BJ Cruz <senadotbjcruz@aol.com>,
Jimmy Espaldon <senator@espaldon.com>,
Senator Judi Guthertz <judiguthertz@pticom.com>,
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vparriola@teleguam.net
Wed, Mar 31, 2010 at 3:58 PM
First Public Hearing Notice
guamlegislature.org

First Notice for Public Hearing for Wednesday, April 7, 2010 beginning at 9:00am. Please see attached.

--
Lisa Cipollone
Chief of Staff
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 Subject: First Public Hearing Notice
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
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Therese Terfaje

Wed, Mar 31, 2010 at 12:25 PM

Toby Castro

Public Hearing - First Notice

guamlegislature.org

**Public Hearing Notice
Wednesday, April 7, 2010
Guam Legislature Public Hearing Room**

**Agenda
9:00am**

Bill No. 345-30 (COR): (Taitgue) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

Bill No. 349-30 (COR): (Muna Barnes) An Act to add a New §80105 (c) to Chapter 80 of Title 21, Guam Code Annotated Relative to the transfer of properties under the jurisdiction of the Port Authority of Guam to the jurisdiction of the Guam Ancestral Lands Commission.

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For clarification, The Committee on Appropriations, Taxation, Banking, Insurance, Retirement and Land will be conducting the public hearing.

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Thx. Catriona

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Date: Wed, 31 Mar 2010 12:28:41 +1000
To: "Melyan, Catriona" <cmelyan@guam.gannett.com>
Conversation: Public Hearing - First Notice
Subject: Re: Public Hearing - First Notice

Yes, Sorry Committee on Appropriations, Taxation, Banking, Insurance, Retirement and Land.

On Wed, Mar 31, 2010 at 12:27 PM, Melyan, Catriona <cmelyan@guam.gannett.com> wrote:
Thanks. Is there a particular committee holding the hearing??

Catriona

From: Lisa Cipollone <cipo@guamlegislature.org>
Date: Wed, 31 Mar 2010 12:25:57 +1000
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Public Hearing Notice
Wednesday, April 7, 2010
Guam Legislature Public Hearing Room

Agenda
9.00am

Bill No. 345-30 (COR): (Taitgue) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

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
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Senator vicente "ben" c. pangelinan
Office of the People

Public Hearing Notice
Wednesday, April 7, 2010
Guam Legislature Public Hearing Room

Agenda
9:00am

Bill No. 345-30 (COR): (Taitgue) An Act to add a New Article 2 to Chapter 30 of SGCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

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7	Y	42:08.71	1165	Mike Hayden	68	S	50:04.55	1245	Zane Iain	18	J	55:36.62
16	J	42:10.18	1166	Nate Respicio	21	O	50:07.40	1246	Dwight Bernard	51	GM	55:37.06
25	O	42:10.58	1167	Darien Blas	10	Y	50:10.42	1247	James Howard Jr.	8	Y	55:37.68
7	Y	42:11.30	1168	Austin Domingo	19	J	50:10.87	1248	Jake Bernard	15	J	55:38.12
31	SM	42:12.58	1169	Travis Mesa	19	J	50:11.93	1249	Frederick Alades	14	J	55:39.71
12	Y	42:15.90	1170	Eddie Sato	46	M	50:14.71	1250	Kyle DeLeon	6	Y	55:46.54
	O	42:18.02	1171	Maynard	14	J	50:15.18	1251	Robert Quindera	17	J	55:50.40
0	Y	42:27.96	1172	Michael S. Racuyal	27	O	50:15.49	1252	Jean DeLeon	31	SM	55:52.24
20	O	42:30.98	1173	Casey	8	Y	50:18.62	1253	Anne Quintanary	20	O	55:54.43
41	M	42:34.68	1174	Myles Monez	40	M	50:20.30	1254	Joe L. Flores	42	M	55:56.21
27	O	42:35.11	1175	Alporeno Q.	46	M	50:26.02	1255	2nd Life	58	GM	55:56.81
20	O	42:36.17	1176	Bing An	45	M	50:26.55	1256	Jason S.	26	O	56:11.49
11	Y	42:38.90	1177	Andrew Limfueco	21	O	50:28.33	1257	John Mafnas	42	M	56:12.52
54	GM	42:42.31	1178	Elias Abulencia	13	Y	50:31.36	1258	Troy Torres	29	O	56:12.89
9	Y	42:45.34	1179	Rj Ubaldio	10	Y	50:41.87	1259	Angelo Q.	6	Y	56:13.34
14	J	42:45.87	1180	Kody	7	Y	50:59.34	1260	Ron Abshire	54	GM	56:18.26
48	M	42:49.30	1181	No Name	Y	Y	51:13.65	1261	R. Niel	81	Mko	56:30.34
10	Y	42:51.46	1182	Jon J.	11	Y	51:14.34	1262	Raymond Sinamban	34	SM	56:30.99
45	M	43:00.43	1183	Marvin	34	SM	51:15.55	1263	Chede M. Lumahan	22	O	56:37.37
6	Y	43:02.02	1184	Noli V.	53	GM	51:21.46	1264	Mharc Mendoza	8	Y	56:48.30
46	M	43:03.11	1185	Ref Gabriel Flores	12	Y	51:24.20	1265	Brian Arceo	23	O	56:50.14
6	Y	43:03.58	1186	Rocilio Mendoza	16	J	51:25.08	1266	Pat Wolff	61	S	56:50.87
58	GM	43:11.55	1187	Emmanuel E.	16	J	51:26.21	1267	Juan	45	M	56:53.86
36	SM	43:14.21	1188	Amiel Alba	15	J	51:28.74	1268	Danny Pobre	59	GM	56:55.08
45	M	43:18.84	1189	Joffin Kebekol	49	M	51:31.62	1269	RSEL	4	Y	56:55.55
42	M	43:23.30	1190	No Name	Y	Y	51:35.21	1270	Jim Blend	66	S	56:56.93
42	M	43:31.93	1191	Saxon Isim	10	Y	51:41.18	1271	Edden T.	9	Y	56:58.68
45	M	43:32.84	1192	Giordan Kho	11	Y	51:45.02	1272	Matthew Ecijan	7	Y	57:00.77
16	J	43:35.21	1193	William Guinattu	32	SM	51:45.84	1273	Christian Ecijan	9	Y	57:01.08
21	Y	43:35.80	1194	Carlo T.	20	O	51:47.26	1274	Darwin Ecijan	45	M	57:05.81
40	M	43:40.40	1195	Micaliah	10	Y	51:50.46	1275	Antonio Cura	75	Mko	57:09.30
46	M	43:40.71	1196	Justin De Guzman	5	Y	51:51.08	1276	Renegene Mendiola	12	Y	57:10.46
34	SM	43:42.40	1197	Kris Zablan	14	J	51:54.93	1277	Alex Menritoe Jr.	17	J	57:18.99
11	Y	43:42.96	1198	Duc Dao	58	GM	51:56.78	1278	Artan Valencia	18	J	57:20.24
7	Y	43:44.78	1199	Robert Torres	31	SM	51:59.96	1279	KC	22	O	57:21.34
37	SM	43:49.32	1200	Douglas Venton	15	J	52:00.99	1280	Aaron	7	Y	57:26.46
49	M	43:52.87	1201	Jesus V. Bernal	52	GM	52:03.49	1281	Amedeo Lev	30	SM	57:27.55
46	M	44:01.18	1202	EJ Sato Domingo	17	J	52:05.40	1282	Kenneth B. Duenas	47	M	57:34.96
46	M	44:05.21	1203	Seichiro Tajihiee	70	Mko	52:13.49	1283	Vincent Sonafede	36	SM	57:35.43
49	M	44:08.58	1204	Christian DeGuzman	10	Y	52:14.46	1284	Javin Takai	14	J	57:39.51
10	Y	44:13.14	1205	No Name	0	Y	52:15.52	1285	Steven Esmeralda	17	J	57:52.08
10	Y	44:13.86	1206	Emmanuel Estebat	17	J	52:18.30	1286	Jon Talavera	13	Y	57:52.56
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Y	Y	44:27.49	1208	Pablo S. Rotnao Jr.	50	GM	52:38.46					
3	Y	44:27.77										
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64	S	44:38.02										
44	M	44:40.58										
34	SM	44:42.27										
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J	J	48:28.74										

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Mina' Trenta Na Liheslaturan Guahan
THIRTIETH GUAM LEGISLATURE
 Senator vicente "ben" c. pangelinan
 Office of the People

Public Hearing Notice
Wednesday, April 7, 2010
Guam Legislature Public Hearing Room

Agenda
9:00am

Bill No. 345-30 (COR): (Taitgue) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

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Bill No. 351-30 (COR): (pangelinan) An Act to Add a New Article 3 of Chapter 36 to Title 18 Guam Code Annotated Relative to the establishment of a Secure and Fair Enforcement for Mortgage Licensing Act.

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Senator vicente (ben) c. pangelinan (D)

April 5, 2010

Memorandum

To: All Senators

From: ~~Senator~~ vicente c. pangelinan

Re: Public Hearing - SECOND NOTICE

Chairman
Committee on Appropriations,
Taxation, Banking, Insurance,
Retirement, and Land

Member
Committee on Education

Member
Committee on
Municipal Affairs,
Aviation, Housing, and
Recreation

Member
Committee on Labor, the
Public Structure,
Public Libraries, and
Technology

The Committee on Appropriations, Taxation, Banking, Insurance and Land will conduct a public hearing on numerous bills beginning at **9:00am on Wednesday, April 7, 2010** at the Guam Legislature's Public Hearing Room. The following bills are on the agenda:

Bill No. 345-30 (COR): (Taitague) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

Bill No. 349-30 (COR): (Muna Barnes) An Act to *add* a New §80105 (c) to Chapter 80 of Title 21, Guam Code Annotated Relative to the transfer of properties under the jurisdiction of the Port Authority of Guam to the jurisdiction of the Guam Ancestral Lands Commission.

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Bill No. 351-30 (COR): (pangelinan) An Act to Add a New Article 3 of Chapter 36 to Title 18 Guam Code Annotated Relative to the establishment of a Secure and Fair Enforcement for Mortgage Licensing Act.

For copies of the bill, you can log onto www.guamlegislature.com or www.senbenp.com

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Jimmy Espaldon <senator@espaldon.com>, Senator Judi Guthertz <judiguthertz@pticom.com>,

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Public Hearing Notice Wednesday, April 7, 2010 Guam Legislature Public Hearing Room

Agenda

9:00am

Bill No. 345-30 (COR): (Taitgue) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

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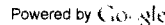
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THIRTIETH GUAM LEGISLATURE

Senator vicente "ben" c. pangelinan
Office of the People

Public Hearing Notice
Wednesday, April 7, 2010
Guam Legislature Public Hearing Room

Agenda
9:00am

Bill No. 345-30 (COR): (Taitgue) An Act to add a New Article 2 to Chapter 30 of 5GCA Relative to authorizing the office of the Attorney General to recover costs associated with providing statutorily mandated legal services to agencies and programs that are not supported by the tax-base of the government of Guam.

Bill No. 349-30 (COR): (Muna Barnes) An Act to *add* a New §80105 (c) to Chapter 80 of Title 21, Guam Code Annotated Relative to the transfer of properties under the jurisdiction of the Port Authority of Guam to the jurisdiction of the Guam Ancestral Lands Commission.

Bill No. 350-30 (COR): (pangelinan) An Act to repeal Section 30106 (c) of Chapter 30 Title 11 of the Guam Code Annotated Relative to exemptions from Hotel Occupancy Tax.

Bill No. 351-30 (COR): (pangelinan) An Act to Add a New Article 3 of Chapter 36 to Title 18 Guam Code Annotated Relative to the establishment of a Secure and Fair Enforcement for Mortgage Licensing Act.

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THIRTIETH GUAM LEGISLATURE

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MINA' TRENTA NA LIHESLATURAN GUÅHAN
2010 (Second) Regular Session

Bill No. 351-30(Cor)

Introduced by:

v.c. pangelinan
BJ Cruz

WVW
[Signature]

2010 JUN 23 PM 12:26

AN ACT TO ADD A NEW ARTICLE 3 OF CHAPTER 36 TO TITLE 18, GUAM CODE ANNOTATED AND TO ADD A NEW ITEM (5) TO §10104(a) OF CHAPTER 10, TITLE 5 GUAM CODE ANNOTATED; RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. There is hereby *added* a new Article 3 of Chapter 36 to Title 18 of the Guam Code Annotated to read:

“Chapter 36.

Guam Secure and Fair Enforcement for Mortgage Licensing Act of 2010.

§ 36301. Title.

§ 36302. Legislative Findings and Intent.

§ 36303. Definitions.

§ 36304. License and Registration Required.

§ 36305. Guam License and Registration Application and Issuance.

§ 36306. Issuance of License.

§ 36307. Pre-Licensing and Re-Licensing Education of Loan

1 Originators.

2 § 36308. Testing of Loan Originators.

3 § 36309. Standards for License Renewal.

4 § 36310. Continuing Education for Mortgage Loan Originators.

5 § 36311. Authority to Require License.

6 § 36312. Nationwide Mortgage Licensing System and Registry

7 Information Challenge Process.

8 § 36313. Enforcement Authorities, Violations and Penalties.

9 § 36314. Surety Bond Required.

10 § 36315. Minimum Net Worth Required.

11 § 36316. Confidentiality.

12 § 36317. Investigation and Examination Authority.

13 § 36318. Prohibited Acts and Practices.

14 § 36319. Mortgage Call Reports.

15 § 36320. Report to Nationwide Mortgage Licensing System and

16 Registry.

17 § 36321. Privately Insured Credit.

18 § 36322. Unique Identifier Shown.

19 § 36323. Severability.

20 § 36324. Effective Date.

21 **Section 2. §36301. Title.** This Act may be cited as the “Guam Secure
22 and Fair Enforcement for Mortgage Licensing Act of 2010 or Guam
23 S.A.F.E. Mortgage Licensing Act of 2010.”

24 **Section 3. §36302. Legislative Findings and Intent.**

25 *I Liheslaturan Guåhan* finds that the activities of mortgage loan
26 originators and the origination or offering of financing for residential real
27 property have a direct, valuable and immediate impact upon Guam’s
28 consumers, Guam’s economy, the neighborhoods and communities of
29 Guam, and the housing and real estate industry.

30 *I Liheslaturan Guåhan* finds that accessibility to mortgage credit is
31 vital to the Guam’s residents.

1 *I Liheslatura* also finds that it is essential for the protection of the
2 residents of Guam and the stability of Guam’s economy that reasonable
3 standards for licensing and regulation of the business practices of mortgage
4 loan originators be imposed.

5 *I Liheslatura* further finds that the obligations of mortgage loan
6 originators to consumers in connection with originating or making
7 residential mortgage loans are such as to warrant the regulation of the
8 mortgage lending process. The purpose of this Act is to protect consumers
9 seeking mortgage loans and to ensure that the mortgage lending industry is
10 operating without unfair, deceptive, and fraudulent practices on the part of
11 mortgage loan originators.

12 Therefore *I Liheslaturan Guåhan* establishes within this Act:

13 **(a) System of Supervision and Enforcement.** An effective system of
14 supervision and enforcement of the mortgage lending industry, including:

15 (1) The authority to issue licenses to conduct business under this
16 Act, including the authority to write rules or regulations or adopt
17 procedures necessary to the licensing of persons covered under this
18 Act.

19 (2) The authority to deny, suspend, condition or revoke licenses
20 issued under this Act.

21 (3) The authority to examine, investigate and conduct
22 enforcement actions as necessary to carry out the intended purposes of
23 this Act, including the authority to subpoena witnesses and documents,
24 enter orders, including cease and desist orders, order restitution and
25 monetary penalties and order the removal and ban of individuals from
26 office or employment.

27 **(b) Broad Administrative Authority.** That the Commissioner shall
28 have the broad administrative authority to administer, interpret and enforce
29 this Act, and promulgate rules or regulations implementing this Act, in order
30 to carry out the intentions of the *I Liheslatura*.

31 **Section 4. §36303. Definitions.** For purposes of this Act, the

1 following definitions shall apply:

2 (a) **“Commissioner”** means Guam’s Banking and Insurance
3 Commissioner.

4 (b) **“Depository Institution”** has the same meaning as in Section 3 of
5 the Federal Deposit Insurance Act. It means any bank or savings association
6 including any credit union.

7 (c) **“Federal Banking Agencies”** means the Board of Governors of
8 the Federal Reserve System, the Comptroller of the Currency, the Director of
9 the Office of Thrift Supervision, the National Credit Union Administration,
10 and the Federal Deposit Insurance Corporation.

11 (d) **“Immediate Family Member”** means a spouse, child, sibling,
12 parent, grandparent, or grandchild. This includes stepparents, stepchildren,
13 stepsiblings, and adoptive relationships.

14 (e) **“Individual”** means a natural person.

15 (f) **“Loan Processor or Underwriter”** means an individual who
16 performs clerical or support duties as an employee at the direction of and
17 subject to the supervision and instruction of a person licensed, or exempt
18 from licensing.

19 (g) **“Clerical or Support Duties”**. For purposes of subsection (a),
20 the term “Clerical or Support Duties” may include subsequent to the receipt
21 of an application:

22 (1) The receipt, collection, distribution, and analysis of
23 information common for the processing or underwriting of a
24 residential mortgage loan; *and*

25 (2) Communicating with a consumer to obtain the information
26 necessary for the processing or underwriting of a loan, to the
27 extent that such communication does not include offering or
28 negotiating loan rates or terms, or counseling consumers about
29 residential mortgage loan rates or terms.

30 (h) **“Representations to the public”**. An individual engaging solely
31 in loan processor or underwriter activities, shall not represent to the public,

1 through advertising or other means of communicating or providing
2 information including the use of business cards, stationery, brochures, signs,
3 rate lists, or other promotional items, that such individual can or will perform
4 any of the activities of a mortgage loan originator.

5 (i) **“Mortgage Loan Originator”** means an individual who for
6 compensation or gain or in the expectation of compensation or gain:

7 (1) Takes a residential mortgage loan application; *or*

8 (2) Offers or negotiates terms of a residential mortgage loan;

9 (i) Does not include an individual engaged solely as a
10 loan processor or underwriter;

11 (ii) Does not include a person or entity that only
12 performs real estate brokerage activities and is licensed or
13 registered in accordance with Guam law, unless the
14 person or entity is compensated by a lender, a mortgage
15 broker, or other mortgage loan originator or by any agent
16 of such lender, mortgage broker, or other mortgage loan
17 originator; and

18 (iii) Does not include a person or entity solely
19 involved in extensions of credit relating to timeshare plans,
20 as that term is defined in section 101(53D) of title 11,
21 United States Code.

22 (j) **“Real Estate Brokerage Activity”** means any activity that
23 involves offering or providing real estate brokerage services to the public,
24 including:

25 (1) Acting as a real estate agent or real estate broker for a buyer,
26 seller, lessor, or lessee of real property;

27 (2) Bringing together parties interested in the sale, purchase,
28 lease, rental, or exchange of real property;

29 (3) Negotiating, on behalf of any party, any portion of a contract
30 relating to the sale, purchase, lease, rental, or exchange of real
31 property (other than in connection with providing financing with

1 respect to any such transaction);

2 (4) Engaging in any activity for which a person engaged in the
3 activity is required to be registered or licensed as a real estate
4 agent or real estate broker under any applicable law; and

5 (5) Offering to engage in any activity, or act in any capacity,
6 described in subsections (i), (ii), (iii), or (iv) of this section.

7 **(k) “Nationwide Mortgage Licensing System and Registry”** means
8 a mortgage licensing system developed and maintained by the Conference of
9 State Bank Supervisors and the American Association of Residential
10 Mortgage Regulators for the licensing and registration of licensed mortgage
11 loan originators.

12 **(l) “Nontraditional Mortgage Product”** means any mortgage
13 product other than a 30-year fixed rate mortgage.

14 **(m) “Person”** means a natural person, corporation, company, limited
15 liability company, partnership, or association.

16 **(n) “Registered Mortgage Loan Originator”** means any individual
17 who:

18 (1) Meets the definition of mortgage loan originator and is an
19 employee of:

20 (i) A depository institution;

21 (ii) A subsidiary that is:

22 (A) Owned and controlled by a depository
23 institution; and

24 (B) Regulated by a Federal banking agency; *or*

25 (C) An institution regulated by the Farm Credit
26 Administration; and

27 (D) Is registered with, and maintains a unique
28 identifier through, the Nationwide Mortgage
29 Licensing System and Registry.

30 **(o) “Residential Mortgage Loan”** means any loan primarily for
31 personal, family, or household use that is secured by a mortgage, deed of

1 trust, or other equivalent consensual security interest on a dwelling (as defined
2 in section 103(v) of the Truth in Lending Act) or residential real estate upon
3 which is constructed or intended to be constructed a dwelling (as so defined).

4 (p) **“Residential Real Estate”** means any real property located in Guam,
5 upon which is constructed or intended to be constructed a dwelling.

6 (q) **“Unique Identifier”** means a number or other identifier assigned
7 by protocols established by the Nationwide Mortgage Licensing System and
8 Registry.

9 **Section 5. §36304. License and Registration Required.**

10 (a) **General.** An individual, unless specifically exempted from this Act
11 under subsection (c) of this section, shall not engage in the business of a
12 mortgage loan originator with respect to any dwelling located in Guam
13 without first obtaining and maintaining annually a license under this Act. Each
14 licensed mortgage loan originator must register with and maintain a valid
15 unique identifier issued by the Nationwide Mortgage Licensing System and
16 Registry.

17 (b) **Effective Date.** In order to facilitate an orderly transition to
18 licensing and to minimize disruption in the mortgage marketplace, the
19 effective date for subsection (a) of this section shall be July 31, 2010, or such
20 later date approved by the Secretary of the U.S. Department of Housing and
21 Urban Development, pursuant to the authority granted under Public Law
22 110-289, Section 1508(a).

23 (c) **Exemption from this Act.** The following are exempt from this
24 Act:

- 25 (1) Registered Mortgage Loan Originators, when acting for an
26 entity described in § 36030 (k)(1)(i),(ii) or (iii) of this section are
27 exempt from this Act;
- 28 (2) Any individual who offers or negotiates terms of a residential
29 mortgage loan with or on behalf of an immediate family member
30 of the individual;
- 31 (3) Any individual who offers or negotiates terms of a residential

1 mortgage loan secured by a dwelling that served as the
2 individual's residence;

3 (4) A licensed attorney who negotiates the terms of a residential
4 mortgage loan on behalf of a client as an ancillary matter to the
5 attorney's representation of the client, unless the attorney is
6 compensated by a lender, a mortgage broker, or other mortgage
7 loan originator or by any agent of such lender, mortgage broker,
8 or other mortgage loan originator.

9 **(d) Independent Contractor Loan Processors or Underwriters.** A
10 loan processor or underwriter who is an independent contractor may not
11 engage in the activities of a loan processor or underwriter unless such
12 independent contractor loan processor or underwriter obtains and maintains a
13 license under § 36040(a). Each independent contractor loan processor or
14 underwriter licensed as a mortgage loan originator must have and maintain a
15 valid unique identifier issued by the Nationwide Mortgage Licensing System
16 and Registry.

17 **(e) Commissioner authority to establish licensing rules,**
18 **regulations or interim procedures and accept early applications.** For the
19 purposes of implementing an orderly and efficient licensing process the
20 Commissioner may establish licensing rules or regulations and interim
21 procedures for licensing and acceptance of applications, pursuant to the
22 Administrative Adjudication Law. For previously registered or licensed
23 individuals the Commissioner may establish expedited review and licensing
24 procedures, pursuant to the Administrative Adjudication Law.

25 **Section 6. §36305. Guam License and Registration Application**
26 **and Issuance.**

27 **(a) Application form.** Applicants for a license shall apply in a form
28 as prescribed by the Commissioner. Each such form shall contain content as
29 set forth by rule, regulation, instruction or procedure of the Commissioner
30 and may be changed or updated as necessary by the Commissioner in order
31 to carry out the purposes of this Act.

1 **(b) Commissioner May Establish Relationships or Contracts.** In
2 order to fulfill the purposes of this Act, the Commissioner is authorized to
3 establish relationships or contracts with the Nationwide Mortgage Licensing
4 System and Registry or other entities designated by the Nationwide Mortgage
5 Licensing System and Registry to collect and maintain records and process
6 transaction fees or other fees related to licensees or other persons subject to
7 this Act.

8 **(c) Waive or Modify Requirements.** For the purpose of participating
9 in the Nationwide Mortgage Licensing System & Registry, the Commissioner
10 is authorized to waive or modify, in whole or in part, by rule, regulation or
11 order, any or all of the requirements of this chapter and to establish new
12 requirements as reasonably necessary to participate in the Nationwide
13 Mortgage Licensing System & Registry.

14 **(d) Background Checks.** In connection with an application for
15 licensing as a mortgage loan originator, the applicant shall, at a minimum,
16 furnish to the Nationwide Mortgage Licensing System and Registry
17 information concerning the applicant's identity, including:

18 (1) Fingerprints for submission to the Federal Bureau of
19 Investigation, and any governmental agency or entity authorized
20 to receive such information for a state, national and international
21 criminal history background check; and

22 (2) Personal history and experience in a form prescribed by the
23 Nationwide Mortgage Licensing System and Registry, including
24 the submission of authorization for the Nationwide Mortgage
25 Licensing System and Registry and the Commissioner to obtain
26 the following:

27 (i) An independent credit report obtained from a
28 consumer reporting agency described in section 603(p) of the
29 Fair Credit Reporting Act; *and*

30 (ii) Information related to any administrative, civil or
31 criminal findings by any governmental jurisdiction.

1 **(e) Agent for Purposes of Requesting and Distributing Criminal**
2 **Information.** For the purposes of this section and in order to reduce the
3 points of contact which the Federal Bureau of Investigation may have to
4 maintain for purposes of subsection (d)(1) and (2)(ii) of this section the
5 Commissioner may use the Nationwide Mortgage Licensing System and
6 Registry as a channeling agent for requesting information from and
7 distributing information to the Department of Justice or any governmental
8 agency.

9 **(f) Agent for Purposes of Requesting and Distributing Non-**
10 **Criminal Information.** For the purposes of this section and in order to
11 reduce the points of contact which the Commissioner may have to maintain
12 for purposes of subsection (d)(2)(i) and (ii) of this section the Commissioner
13 may use the Nationwide Mortgage Licensing System and Registry as a
14 channeling agent for requesting and distributing information to and from any
15 source so directed by the Commissioner.

16 **Section 7. §36306. Issuance of License.** The Commissioner shall not
17 issue a mortgage loan originator license unless the Commissioner makes at a
18 minimum the following findings:

19 (1) No License Revocation. The applicant has never had a
20 mortgage loan originator license revoked in any governmental
21 jurisdiction, except that a subsequent formal vacation of such
22 revocation shall not be deemed a revocation.

23 (2) No Felony Conviction. The applicant has not been convicted
24 of, or pled guilty or *nocontendere* to, a felony in a domestic,
25 foreign, or military court:

26 (i) During the 7-year period preceding the date of the
27 application for licensing and registration; or

28 (ii) At any time preceding such date of application, if such
29 felony involved an act of fraud, dishonesty, or a breach of trust,
30 or money laundering;

31 (iii) Provided that any pardon of a conviction shall not be

1 a conviction for purposes of this subsection.

2 (3) Character and Fitness. The applicant has demonstrated
3 financial responsibility, character, and general fitness such as to
4 command the confidence of the community and to warrant a
5 determination that the mortgage loan originator will operate
6 honestly, fairly, and efficiently within the purposes of this Act.

7 (i) For purposes of this subsection a person has shown
8 that he or she is not financially responsible when he or she has
9 shown a disregard in the management of his or her own financial
10 condition. A determination that an individual has not shown
11 financial responsibility may include, but not be limited to:

12 (ii) Current outstanding judgments, except judgments
13 solely as a result of medical expenses;

14 (ii)i Current outstanding tax liens or other government
15 liens and filings;

16 (iv) Foreclosures within the past three years;

17 (v) A pattern of seriously delinquent accounts within
18 the past three years.

19 **(d) Pre-Licensing Education.** The applicant has completed the pre-
20 licensing education requirement described in § 36070 of this Act.

21 **(e) Written Test.** The applicant has passed a written test that meets
22 the test requirement described in § 36080 of this Act.

23 **(f) Surety Bond or Minimum Net Worth Requirement.** The
24 applicant has met the surety bond requirement of § 36140 *or* the minimum
25 net worth requirement of § 36145 on this Act.

26 **Section 8. §36307. Pre-Licensing and Re-Licensing Education of**
27 **Loan Originators.**

28 **(a) Minimum Educational Requirements.** In order to meet the pre-
29 licensing education requirement referred to in § 36060(d) of this Act, a
30 person shall complete at least twenty (20) hours of education approved in
31 accordance with subsection (b) of this section, which shall include at least:

- 1 (1) Three (3) hours of Federal law and regulations;
2 (2) Three (3) hours of ethics, which shall include instruction on
3 fraud, consumer protection, and fair lending issues; *and*
4 (3) Two (2) hours of training related to lending standards for the
5 nontraditional mortgage product marketplace.

6 **(b) Approved Educational Courses.** For purposes of subsection (a)
7 of this section, pre-licensing education courses shall be reviewed, and
8 approved by the Nationwide Mortgage Licensing System and Registry based
9 upon reasonable standards. Review and approval of a pre-licensing education
10 course shall include review and approval of the course provider.

11 **(c) Approval of Employer and Affiliate Educational Courses.**
12 Nothing in this section shall preclude any pre-licensing education course, as
13 approved by the Nationwide Mortgage Licensing System and Registry that is
14 provided by the employer of the applicant or an entity which is affiliated with
15 the applicant by an agency contract, or any subsidiary or affiliate of such
16 employer or entity.

17 **(d) Venue of Education.** Pre-licensing education may be offered
18 either in a classroom, online or by any other means approved by the
19 Nationwide Mortgage Licensing System and Registry.

20 **(e) Reciprocity of Education.** The pre-licensing education
21 requirements approved by the Nationwide Mortgage Licensing System and
22 Registry in subsections (a)(1), (2) and (3) of this section for any state shall be
23 accepted as credit towards completion of pre-licensing education requirements
24 in Guam.

25 **(f) Re-Licensing Education Requirements.** A person previously
26 licensed under this Act subsequent to the Effective Date of this Act applying
27 to be licensed again must prove that they have completed all of the
28 continuing education requirements for the year in which the license was last
29 held.

30 **Section 9. §36308. Testing of Loan Originators.**

31 **(a) Testing of Loan Originators, General.** In order to meet the

1 written test requirement referred to in §35060(e) of this Act, an individual
2 shall pass, in accordance with the standards established under this subsection,
3 a qualified written test developed by the Nationwide Mortgage Licensing
4 System and Registry and administered by a test provider approved by the
5 Nationwide Mortgage Licensing System and Registry based upon reasonable
6 standards.

7 **(b) Qualified Test.** A written test shall not be treated as a qualified
8 written test for purposes of subsection (a) of this section unless the test
9 adequately measures the applicant's knowledge and comprehension in
10 appropriate subject areas, including:

- 11 (1) Ethics;
- 12 (2) Federal law and regulation pertaining to mortgage
13 origination;
- 14 (3) Guam law and regulation pertaining to mortgage origination;
- 15 (4) Federal and Guam law and regulation, including instruction
16 on fraud, consumer protection, the nontraditional mortgage
17 marketplace, and fair lending issues.

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

24 **(d) Minimum Competence:**

- 25 (1) **Passing Score.** An individual shall not be considered to have
26 passed a qualified written test unless the individual achieves a test
27 score of not less than 75 percent correct answers to questions.
- 28 (2) **Initial Retests.** An individual may retake a test three (3)
29 consecutive times with each consecutive taking occurring at least
30 thirty (30) days after the preceding test.
- 31 (3) **Subsequent Retests.** After failing 3 consecutive tests, an

1 individual shall wait at least 6 months before taking the test
2 again.

3 (4) Retest After Lapse of License. A licensed mortgage loan
4 originator who fails to maintain a valid license for a period of
5 five (5) years or longer shall retake the test, not taking into
6 account any time during which such individual is a registered
7 mortgage loan originator.

8 **Section 10. §36309. Standards for License Renewal.**

9 (a) **General.** The minimum standards for license renewal for mortgage
10 loan originators shall include the following:

11 (1) The mortgage loan originator continues to meet the
12 minimum standards for license issuance under § 35060(a) thru
13 (f) of this Act.

14 (2) The mortgage loan originator has satisfied the annual
15 continuing education requirements described in § 36100 of this
16 Act.

17 (3) The mortgage loan originator has paid all required fees for
18 renewal of the license.

19 (b) **Failure to Satisfy Minimum Standards of License Renewal.**

20 The license of a mortgage loan originator failing to satisfy the minimum
21 standards for license renewal shall expire. The Commissioner may adopt
22 procedures for the reinstatement of expired licenses consistent with the
23 standards established by the Nationwide Mortgage Licensing System and
24 Registry.

25 **Section 11. §36310. Continuing Education for Mortgage Loan**
26 **Originators.**

27 (a) **General.** In order to meet the annual continuing education
28 requirements referred to in § 36090(a)(2), a licensed mortgage loan originator
29 shall complete at least eight (8) hours of education approved in accordance
30 with subsection (b) of this section, which shall include at least:

31 (1) Three (3) hours of Federal law and regulations;

1 (2) Two (2) hours of ethics, which shall include instruction on
2 fraud, consumer protection, and fair lending issues; and

3 (3) Two (2) hours of training related to lending standards for the
4 nontraditional mortgage product marketplace.

5 **(b) Approved Educational Courses.** For purposes of subsection (a)
6 of this section, continuing education courses shall be reviewed, and approved
7 by the Nationwide Mortgage Licensing System and Registry based upon
8 reasonable standards. Review and approval of a continuing education course
9 shall include review and approval of the course provider.

10 **(c) Approval of Employer and Affiliate Educational Courses.**
11 Nothing in this section shall preclude any education course, as approved by
12 the Nationwide Mortgage Licensing System and Registry, that is provided by
13 the employer of the mortgage loan originator or an entity which is affiliated
14 with the mortgage loan originator by an agency contract, or any subsidiary or
15 affiliate of such employer or entity.

16 **(d) Venue of Education.** Continuing education may be offered either
17 in a classroom, online or by any other means approved by the Nationwide
18 Mortgage Licensing System and Registry.

19 **(e) Calculation of Continuing Education Credits.** A licensed
20 mortgage loan originator:

21 (1) Except for § 36090(b) and subsection (i) of this section may
22 only receive credit for a continuing education course in the year
23 in which the course is taken; and

24 (2) May not take the same approved course in the same or
25 successive years to meet the annual requirements for continuing
26 education.

27 **(f) Instructor Credit.** A licensed mortgage loan originator who is an
28 approved instructor of an approved continuing education course may receive
29 credit for the licensed mortgage loan originator's own annual continuing
30 education requirement at the rate of two (2) hours credit for every one (1)
31 hour taught.

1 **(g) Reciprocity of Education.** A person having successfully
2 completed the education requirements approved by the Nationwide Mortgage
3 Licensing System and Registry in subsections (a)(1), (2) and (3) of this section
4 for any state shall be accepted as credit towards completion of continuing
5 education requirements in Guam.

6 **(h) Lapse in License.** A licensed mortgage loan originator who
7 subsequently becomes unlicensed must complete the continuing education
8 requirements for the last year in which the license was held prior to issuance
9 of a new or renewed license.

10 **(i) Make up of Continuing Education.** A person meeting the
11 requirements of § 36090(a)(1) and (3) of this Act may make up any
12 deficiency in continuing education as established by rule or regulation of the
13 Commissioner.

14 **Section 12. §36311. Authority to Require License.** In addition to
15 any other duties imposed upon the Commissioner by law, the Commissioner
16 shall require mortgage loan originators to be licensed and registered through
17 the Nationwide Mortgage Licensing System and Registry. In order to carry
18 out this requirement the Commissioner is authorized to participate in the
19 Nationwide Mortgage Licensing System and Registry. For this purpose, the
20 Commissioner may establish Rules and Regulations as necessary, pursuant to
21 the Administrative Adjudication Law, including but not limited to:

22 **(a) Background Checks.** Background checks for:

23 (1) Criminal history through fingerprint or other databases;

24 (2) Civil or administrative records;

25 (3) Credit history; *or*

26 (4) Any other information as deemed necessary by the
27 Nationwide Mortgage Licensing System and Registry.

28 **(b) Fees.** The payment of fees to apply for or renew licenses through
29 the Nationwide Mortgage Licensing System and Registry;

30 **(c) Setting Dates.** The setting or resetting as necessary of renewal or
31 reporting dates; *and*

1 (d) **Other.** Requirements for amending or surrendering a license or
2 any other such activities as the Commissioner deems necessary for
3 participation in the Nationwide Mortgage Licensing System and Registry.

4 **Section 12. §36312. Nationwide Mortgage Licensing System and**
5 **Registry Information Challenge Process.** The Commissioner shall establish
6 a process whereby mortgage loan originators may challenge information
7 entered into the Nationwide Mortgage Licensing System and Registry by the
8 Commissioner.

9 **Section 13. §36313. Enforcement Authorities, Violations and**
10 **Penalties.**

11 (a) In order to ensure the effective supervision and enforcement of this
12 Act the Commissioner may, pursuant to the Administrative Adjudication
13 Law:

14 (1) Deny, suspend, revoke, condition or decline to renew a
15 license for a violation of this Act, rules or regulations issued
16 under this Act or order or directive entered under this Act.

17 (2) Deny, suspend, revoke, condition or decline to renew a
18 license if an applicant or licensee fails at any time to meet the
19 requirements of § 36060 or § 36090 of this Act, or withholds
20 information or makes a material misstatement in an application
21 for a license or renewal of a license.

22 (3) Order restitution against persons subject to this Act for
23 violations of this Act.

24 (4) Impose fines on persons subject to this Act pursuant to
25 subsections (b), (c) and (d) of this section.

26 (5) Issue orders or directives under this Act as follows:

27 (i) Order or direct persons subject to this Act to cease and
28 desist from conducting business, including immediate temporary
29 orders to cease and desist.

30 (ii) Order or direct persons subject to this Act to cease any
31 harmful activities or violations of this Act, including immediate

1 temporary orders to cease and desist.

2 (iii) Enter immediate temporary orders to cease business
3 under a license or interim license issued pursuant to the authority
4 granted under § 36040(e) of this Act if the Commissioner
5 determines that such license was erroneously granted or the
6 licensee is currently in violation of this Act;

7 (iv) Order or direct such other affirmative action as the
8 Commissioner deems necessary.

9 (b) The Commissioner may impose a civil penalty on a mortgage loan
10 originator or person subject to this Act, if the Commissioner finds, on the
11 record after notice and opportunity for hearing, that such mortgage loan
12 originator or person subject to this Act has violated or failed to comply with
13 any requirement of this Act or any regulation prescribed by the
14 Commissioner under this Act or order issued under authority of this Act.

15 (c) The maximum amount of penalty for each Act or omission
16 described in subsection (b) of this section shall be \$25,000.

17 (d) Each violation or failure to comply with any directive or order of
18 the Commissioner is a separate and distinct violation or failure.

19 **Section 14. §36140. Surety Bond Required.**

20 (a) **Coverage, Form and Regulations.** Each mortgage loan
21 originator shall be covered by a surety bond in accordance with this section.
22 In the event that the mortgage loan originator is an employee or exclusive
23 agent of a person subject to this Act, the surety bond of such person subject
24 to this Act can be used in lieu of the mortgage loan originator's surety bond
25 requirement.

26 (1) The surety bond shall provide coverage for each mortgage
27 loan originator in an amount as prescribed in subsection (b) of
28 this section.

29 (2) The surety bond shall be in a form as prescribed by the
30 Commissioner.

31 (3) The Commissioner may promulgate rules or regulations

1 with respect to the requirements for such surety bonds as are
2 necessary to accomplish the purposes of this Act.

3 **(b) Penal Sum of Surety Bond.** The penal sum of the surety bond
4 shall be maintained in an amount that reflects the dollar amount of loans
5 originated as determined by the Commissioner.

6 **(c) Action on Bond.** When an action is commenced on a licensee's
7 bond the Commissioner may require the filing of a new bond.

8 **(d) New Bond.** Immediately upon recovery upon any action on the
9 bond the licensee shall file a new bond.

10 **Section 14. §36316. Minimum Net Worth Required.**

11 (a) A minimum net worth shall be continuously maintained for
12 mortgage loan originators in accordance with this section. In the event that
13 the mortgage loan originator is an employee or exclusive agent of a person
14 subject to this Act, the net worth of such person subject to this Act can be
15 used in lieu of the mortgage loan originator's minimum net worth
16 requirement.

17 (1) Minimum net worth shall be maintained in an amount that
18 reflects the dollar amount of loans originated as determined by
19 the Commissioner.

20 (2) The Commissioner may promulgate rules or regulations, in
21 accordance with the Administrative Adjudication Law, with
22 respect to the requirements for minimum net worth as are
23 necessary to accomplish the purposes of this Act.

24 **Section 15. §36317. Confidentiality.** In order to promote more
25 effective regulation and reduce regulatory burden through supervisory
26 information sharing:

27 **(a) Protections.** Except as otherwise provided in Public Law 110-289,
28 Section 1512, the requirements under any Federal law or Guam law
29 regarding the privacy or confidentiality of any information or material
30 provided to the Nationwide Mortgage Licensing System and Registry, and
31 any privilege arising under Federal or State law (including the rules of any

1 Federal or State court) with respect to such information or material, shall
2 continue to apply to such information or material after the information or
3 material has been disclosed to the Nationwide Mortgage Licensing System
4 and Registry. Such information and material may be shared with all State and
5 Federal regulatory officials with mortgage industry oversight authority
6 without the loss of privilege or the loss of confidentiality protections provided
7 by Federal law or Guam law.

8 **(b) Agreements and Sharing Arrangements.** For these purposes,
9 the Commissioner is authorized to enter agreements or sharing arrangements
10 with other governmental agencies, the Conference of State Bank Supervisors,
11 the American Association of Residential Mortgage Regulators or other
12 associations representing governmental agencies as established by rule,
13 regulation or order of the Commissioner.

14 **(c) Non-applicability of Certain Requirements.** Information or
15 material that is subject to a privilege or confidentiality under subsection (a) of
16 this section shall not be subject to:

- 17 (1) Disclosure under any Federal or State law governing the
18 disclosure to the public of information held by an officer or an
19 agency of the Federal Government or the respective State; or
- 20 (2) Subpoena or discovery, or admission into evidence, in any
21 private civil action or administrative process, unless with respect
22 to any privilege held by the Nationwide Mortgage Licensing
23 System and Registry with respect to such information or
24 material, the person to whom such information or material
25 pertains waives, in whole or in part, in the discretion of such
26 person, that privilege.

27 **(d) Public Access to Information.** This section shall not apply with
28 respect to the information or material relating to the employment history of,
29 and publicly adjudicated disciplinary and enforcement actions against,
30 mortgage loan originators that is included in the Nationwide Mortgage
31 Licensing System and Registry for access by the public.

1 **Section 16. §36317. Investigation and Examination Authority.** In
2 addition to any authority allowed under this Act the Commissioner shall have
3 the authority to conduct investigations and examinations as follows:

4 **(a) Authority to Access Information.** For purposes of initial
5 licensing, license renewal, license suspension, license conditioning, license
6 revocation or termination, or general or specific inquiry or investigation to
7 determine compliance with this Act, the Commissioner shall have the
8 authority to access, receive and use any books, accounts, records, files,
9 documents, information or evidence including but not limited to:

10 (1) Criminal, civil and administrative history information,
11 including nonconviction data as specified in Title 9, Guam Code
12 Annotated, the Criminal and Correctional Code; and

13 (2) Personal history and experience information including
14 independent credit reports obtained from a consumer reporting
15 agency described in section 603(p) of the Fair Credit Reporting
16 Act; and

17 (3) Any other documents, information or evidence the
18 Commissioner deems relevant to the inquiry or investigation
19 regardless of the location, possession, control or custody of such
20 documents, information or evidence.

21 **(b) Investigation, Examination, and Subpoena Authority.** For the
22 purposes of investigating violations or complaints arising under this Act, or
23 for the purposes of examination, the Commissioner may review, investigate,
24 or examine any licensee, individual or person subject to this Act, as often as
25 necessary in order to carry out the purposes of this Act. The Commissioner
26 may direct, subpoena, or order the attendance of and examine under oath all
27 persons whose testimony may be required about the loans or the business or
28 subject matter of any such examination or investigation, and may direct,
29 subpoena, or order such person to produce books, accounts, records, files,
30 and any other documents the Commissioner deems relevant to the inquiry.

31 **(c) Availability of Books and Records.** Each licensee, individual or

1 person subject to this Act shall make available to the Commissioner upon
2 request the books and records relating to the operations of such licensee,
3 individual or person subject to this Act. The Commissioner shall have access
4 to such books and records and interview the officers, principals, mortgage
5 loan originators, employees, independent contractors, agents, and customers
6 of the licensee, individual or person subject to this Act concerning their
7 business.

8 **(d) Reports and Other Information as Directed.** Each licensee,
9 individual or person subject to this Act shall make or compile reports or
10 prepare other information as directed by the Commissioner in order to carry
11 out the purposes of this section including but not limited to:

- 12 (1) Accounting compilations;
- 13 (2) Information lists and data concerning loan transactions in a
14 format prescribed by the Commissioner; or
- 15 (3) Such other information deemed necessary to carry out the
16 purposes of this section.

17 **(e) Control Access to Records.** In making any examination or
18 investigation authorized by this Act, the Commissioner may control access to
19 any documents and records of the licensee or person under examination or
20 investigation. The Commissioner may take possession of the documents and
21 records or place a person in exclusive charge of the documents and records in
22 the place where they are usually kept. During the period of control, no
23 individual or person shall remove or attempt to remove any of the documents
24 and records except pursuant to a court order or with the consent of the
25 Commissioner. Unless the Commissioner has reasonable grounds to believe
26 the documents or records of the licensee have been, or are at risk of being
27 altered or destroyed for purposes of concealing a violation of this Act, the
28 licensee or owner of the documents and records shall have access to the
29 documents or records as necessary to conduct its ordinary business affairs.

30 **(f) Additional Authority.** In order to carry out the purposes of this
31 section, the Commissioner may:

1 (1) Retain attorneys, accountants, or other professionals and
2 specialists as examiners, auditors, or investigators to conduct or
3 assist in the conduct of examinations or investigations;

4 (2) Enter into agreements or relationships with other
5 government officials or regulatory associations in order to
6 improve efficiencies and reduce regulatory burden by sharing
7 resources, standardized or uniform methods or procedures, and
8 documents, records, information or evidence obtained under this
9 section;

10 (3) Use, hire, contract or employ public or privately available
11 analytical systems, methods or software to examine or
12 investigate the licensee, individual or person subject to this Act;

13 (4) Accept and rely on examination or investigation reports
14 made by other government officials; or

15 (5) Accept audit reports made by an independent certified public
16 accountant for the licensee, individual or person subject to this
17 Act in the course of that part of the examination covering the
18 same general subject matter as the audit and may incorporate
19 the audit report in the report of the examination, report of
20 investigation or other writing of the Commissioner.

21 **(g) Effect of Authority.** The authority of this section shall remain in
22 effect, whether such a licensee, individual or person subject to this Act acts or
23 claims to act under any licensing or registration law of Guam, or claims to act
24 without such authority.

25 **(h) Withhold Records.** No licensee, individual or person subject to
26 investigation or examination under this section may knowingly withhold,
27 abstract, remove, mutilate, destroy, or secrete any books, records, computer
28 records, or other information.

29 **Section 17. §36318. Prohibited Acts and Practices.** It is a violation
30 of this Act for a person or individual subject to this Act to:

31 (a) Directly or indirectly employ any scheme, device, or artifice to

1 defraud or mislead borrowers or lenders or to defraud any person;

2 (b) Engage in any unfair or deceptive practice toward any person;

3 (c) Obtain property by fraud or misrepresentation;

4 (d) Solicit or enter into a contract with a borrower that provides in
5 substance that the person or individual subject to this Act may earn a fee or
6 commission through “best efforts” to obtain a loan even though no loan is
7 actually obtained for the borrower;

8 (e) Solicit, advertise, or enter into a contract for specific interest rates,
9 points, or other financing terms unless the terms are actually available at the
10 time of soliciting, advertising, or contracting;

11 (f) Conduct any business covered by this Act without holding a valid
12 license as required under this Act, or assist or aide and abet any person in the
13 conduct of business under this Act without a valid license as required under
14 this Act ;

15 (g) Failure to make disclosures as required by this Act and any other
16 applicable Guam or federal law including regulations thereunder;

17 (h) Fail to comply with this Act or rules or regulations promulgated
18 under this Act, or fail to comply with any other state or federal law, including
19 the rules and regulations thereunder, applicable to any business authorized or
20 conducted under this Act;

21 (i) Make, in any manner, any false or deceptive statement or
22 representation including, with regard to the rates, points, or other financing
23 terms or conditions for a residential mortgage loan, or engage in bait and
24 switch advertising;

25 (j) Negligently make any false statement or knowingly and willfully
26 make any omission of material fact in connection with any information or
27 reports filed with a governmental agency or the Nationwide Mortgage
28 Licensing System and Registry or in connection with any investigation
29 conducted by the Commissioner or another governmental agency;

30 (k) Make any payment, threat or promise, directly or indirectly, to any
31 person for the purposes of influencing the independent judgment of the

1 person in connection with a residential mortgage loan, or make any payment
2 threat or promise, directly or indirectly, to any appraiser of a property, for the
3 purposes of influencing the independent judgment of the appraiser with
4 respect to the value of the property;

5 (l) Collect, charge, attempt to collect or charge or use or propose any
6 agreement purporting to collect or charge any fee prohibited by this Act;

7 (m) Cause or require a borrower to obtain property insurance coverage
8 in an amount that exceeds the replacement cost of the improvements as
9 established by the property insurer.

10 (n) Fail to truthfully account for monies belonging to a party to a
11 residential mortgage loan transaction.

12 **Section 18. §36319. Mortgage Call Reports.** Each mortgage
13 licensee shall submit to the Nationwide Mortgage Licensing System and
14 Registry reports of condition, which shall be in such form and shall contain
15 such information as the Nationwide Mortgage Licensing System and Registry
16 may require.

17 **Section 19. §36320. Report to Nationwide Mortgage Licensing**
18 **System and Registry.** The Commissioner is required to report regularly
19 violations of this Act, as well as enforcement actions and other relevant
20 information, to the Nationwide Mortgage Licensing System and Registry
21 subject to the provisions contained in § 36150 of this Act.

22 **Section 20. §36321. Privately Insured Credit.** Non-federally insured
23 credit unions which employ loan originators, as defined in PL 110-289, Title
24 V, the S.A.F.E. Act, shall register such employees with the Nationwide
25 Mortgage Licensing System and Registry by furnishing the information
26 concerning the employees' identity set forth in Section 1507(a)(2) of PL 110-
27 289, Title V.

28 **Section 21. §36322. Unique Identifier Shown.** The unique identifier
29 of any person originating a residential mortgage loan shall be clearly shown
30 on all residential mortgage loan application forms, solicitations or
31 advertisements, including business cards or websites, and any other

1 documents as established by rule, regulation or order of the Commissioner.

2 **Section 22. §36324. Effective Date.** The effective date of this Act
3 shall be July 31, 2010.”

4 **Section 23. Severability.** If any provision of this Act or its application
5 to any person or circumstance is held invalid, the remainder of the Act or the
6 application of the provision to other persons or circumstances is not affected.