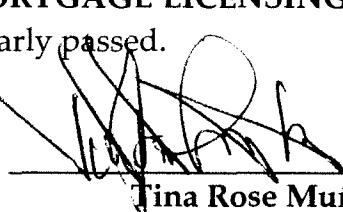


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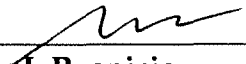
I MINA'TRENTA NA LIHESLATURAN GUÅHAN  
2010 (SECOND) Regular Session

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

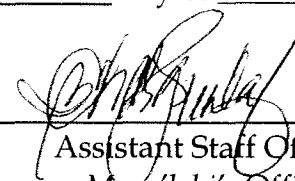
This is to certify that Substitute Bill No. 351-30 (COR), "AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 36 OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT", was on the 3<sup>rd</sup> day of May, 2010, duly and regularly passed.

  
Tina Rose Muña Barnes  
Acting Speaker

Attested:

  
Rory J. Respicio  
Acting Legislative Secretary

-----  
This Act was received by *I Maga'lahaen Guåhan* this 13<sup>th</sup> day of MAY, 2010, at 10:20 o'clock P.M.

  
Assistant Staff Officer  
Maga'lahaen's Office

APPROVED:

\_\_\_\_\_  
FELIX P. CAMACHO  
*I Maga'lahaen Guåhan*

Date: \_\_\_\_\_

Public Law No. \_\_\_\_\_

*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 <sup>OK</sup> 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.”