

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

Bill No. 351-30(Cor)

Introduced by:

v.c. pangelinan
BJ Cruz

WJW
2010-12-28

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 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.