



Office of the Governor of Guam

P.O. Box 2950 Hagåtña, GU 96932
Tel: (671) 472-8931 • Fax: (671) 477-4826 • Email: governor@guam.gov

2010 MAY 27 AM 10:25

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Felix P. Camacho
Governor

Michael W. Cruz, M.D.
Lieutenant Governor

MAY 26 2010

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

Dear Speaker Won Pat:

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

Sinseru yan Magåhet,

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

Attachment: copy of Bill

30-10-0480

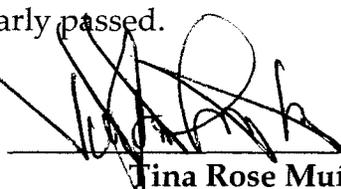
Office of the Speaker
Judith T. Won Pat, Ed. D.

Date 5/26/2010
Time 5:11 pm
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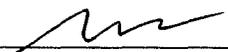
I MINA'TRENTA NA LIHESLATURAN GUÅHAN
2010 (SECOND) Regular Session

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

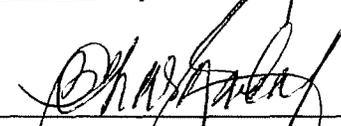
This is to certify that Substitute Bill No. 351-30 (COR), "AN ACT TO ADD A NEW ARTICLE 3 TO CHAPTER 36 OF TITLE 18, GUAM CODE ANNOTATED, RELATIVE TO THE ESTABLISHMENT OF A SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT", was on the 3rd day of May, 2010, duly and regularly passed.


Tina Rose Muña Barnes
Acting Speaker

Attested:


Rory J. Respicio
Acting Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 15th day of May, 2010, at 11:20 o'clock P.M.


Assistant Staff Officer
Maga'lahaen's Office

APPROVED:


MIKE W. CRUZ, MD
GOVERNOR OF GUAM ACTING

MAY 25 2010

Date: _____

Public Law No. P.L. 30-151

- 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.**
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16 **Information Challenge Process.**
- 17 **§36313. Enforcement Authorities, Violations and Penalties.**
- 18 **§36314. Surety Bond Required.**
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- 20 **§36316. Confidentiality.**
- 21 **§36317. Investigation and Examination Authority.**
- 22 **§36318. Prohibited Acts and Practices.**
- 23 **§36319. Mortgage Call Reports.**
- 24 **§36320. Report to Nationwide Mortgage Licensing System and**
25 **Registry.**
- 26 **§36321. Privately Insured Credit.**
- 27 **§36322. Unique Identifier Shown.**

1 **§36323. Effective Date.**

2 **§36324. Severability.**

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

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

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

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

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

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

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

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

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

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

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

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

17 **§36303. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (A) a depository institution;

22 (B) a subsidiary that is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 **§36306. Issuance of License.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (1) Ethics;

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

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

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

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

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

5 (d) Minimum Competence:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 (a) Background Checks. Background checks for:

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

16 (2) civil or administrative records;

17 (3) Credit history; *or*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 **§36314. Surety Bond Required.**

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

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

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

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

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

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

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

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

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

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

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

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

5 **§36316. Confidentiality.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (1) accounting compilations;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (c) obtain property by fraud or misrepresentation;

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

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

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

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

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

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

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

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

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

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

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

1 **§36319. Mortgage Call Reports.**

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

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

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

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

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

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

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

24 **§36323. Effective Date.**

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

1 **§36324. Severability.**

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