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TO THE
HOUSE COMMITTEE ON FINANCE

THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Wednesday, February 27, 2008
11:00 a.m.

TESTIMONY ON H.B. NO. 3088, H.D.1 - RELATING TO RESIDENTIAL MORTGAGE
PRACTICES

THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs
("Department"). We appreciate the opportunity to testify on House Bill No. 3088 H.D. 1.
In light of the amendments made by House Draft 1, the Department strongly opposes this
bill relating to residential mortgage practices.

As introduced, the purpose of this bill was to repeal the existing law on Mortgage
Brokers and Solicitors, chapter 454, Hawaii Revised Statutes ("HRS"), and to replace it

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with a statute that would provide for more specialized regulation of mortgage brokers, loan originators and mortgage lenders by the Division of Financial Institutions ("DFI").

After hearing testimony on House Bill No. 3088, the House Committee on Consumer Protection and Commerce gutted from House Bill No. 3088 all of the substantive provisions for regulation of the mortgage broker industry, while leaving an incomplete and arguably defective funding provision intended for House Bill No. 2408, as amended, provided the latter bill is passed by the legislature this session.

House Bill No. 3088, H.D.1 has left unspecified the amount that would now be appropriated to be expended by the Department for fiscal year 2008-2009 to administer and enforce the provisions of House Bill No. 2408. Additionally, House Bill No. 3088, H.D.1 calls for an appropriation from the general fund, while the bill, as originally drafted by the Department, called for an appropriation of \$140,000 from the compliance resolution fund, rather than general revenues of the State. It is the general practice of the Department to develop regulatory and supervisory programs that are, to the greatest extent possible, funded by the industries regulated. We therefore believe that H.D.1 may fail to provide appropriately sourced initial funding for this expanded Department program, and further, does not appear to contain provisions for its ongoing staffing and operation.

As noted, House Bill No. 3088, H.D.1 proposes to fund the implementation of House Bill No. 2408, as amended, provided it is passed by the legislature in the regular

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session of 2008. House Bill No. 2408 is a measure that the Department is already on record as vigorously opposing, and which we continue to oppose for the following reasons, among others:

House Bill No. 2408 would amend, rather than repeal, Chapter 454, HRS, the historic objective of which has been to serve as a simple registry for industry participants. As such, the Department considers that statute to be an inadequate foundation for a program that would meet the challenges of today's increasingly complex mortgage markets. While the intent of House Bill No. 2408 is reportedly to improve the regulation of mortgage brokers and mortgage solicitors, which are referred to as "loan originators", that measure falls significantly short of providing the robust regulatory and supervisory framework that has been the hallmark of effective state consumer protection programs, and which are now, in the midst of the most damaging mortgage loan crisis in memory, being mandated by federal legislative initiatives that have been passed by the U.S. House of Representatives and are under consideration in the U.S. Senate.

The Federal H.R. 3915, *The Mortgage Reform and Anti-Predatory Lending Act of 2007*, if enacted, would require the Secretary of Housing and Urban Development ("HUD") to provide for the establishment and maintenance of a Federal program for states that do not have in place a system for regulation and licensing that meets Federal requirements.

The program envisioned by House Bill No. 2408 does not meet these Federal requirements. Among that bill's major shortcomings:

- There is no provision for Hawaii's participation in the Nationwide Mortgage Licensing System ("NMLS"), as would be required upon passage of Federal H.R. 3915. This system, which became operative in 2008, is the backbone of state and federal mortgage broker/loan originator programs, and states that do not participate would become immediate targets for HUD's further scrutiny.
- The bill purports to confer upon the Commissioner the power to regulate employer-employee relationships. That power is not only statutorily beyond the Commissioner's authority¹, but would be a significant diversion from the primary duties and responsibilities of the DFI, which are focused on safety and soundness and consumer protection. House Bill No. 3088, as drafted by the Department, focused on issues related to appropriate industry practices and consumer protection issues and did not address initiatives beyond the scope of a regulatory and supervisory framework necessary to ensure that the mortgage brokerage industry here in Hawaii operates for the benefit of brokers and consumers alike.

¹ This provision may present legal issues in terms of existing labor and tax laws, in that the Hawaii Supreme Court has specifically addressed what does and does not create an employer-employee relationship, and no such disclaimer can change such relationships. It is also beyond the Commissioner's statutory authority to regulate such relationships.

- A new Subsection (e), pertaining to suspension and revocation of a license, which is being added to Section 454-5, Hawaii Revised Statutes ("HRS"), is unacceptable as it requires the Commissioner to obtain a court order to enforce the section. This appears to conflict with the Commissioner's existing rights to bring a Chapter 91 proceeding. House Bill No. 3088, as drafted by the Department, retained the Commissioner's existing rights to bring a Chapter 91 proceeding, in accord with the normal and customary process of financial institution regulation and supervision, which places a premium on prompt and decisive action with respect to unsafe and unsound conduct or violations of consumer protection statutes.
- The effective date of House Bill No. 2408, with the exception of Section 454-A, is envisioned as "upon approval". DFI research and planning on this issue indicates that given the significant logistical challenges associated with moving an ongoing program from one division to another, any implementation of such a transition would involve a far longer time horizon. House Bill No. 3088, as drafted by the Department, adhered to a realistic, process driven timeline focused on addressing all elements of this significant transfer of functional, regulatory, and supervisory oversight, from the Professional and Vocational Licensing Division ("PVL") and the Regulated Industries Complaints Office ("RICO") to DFI. That transfer

would involve, at a minimum, the drafting and approval of administrative rules, the hiring and training of new licensing staff, the implementation of a new application process and format compatible with the NMLS and the increased pre-licensing requirements, the development and sub-contracting of pre-licensing testing and continuing education programs, the arrangement of programs and processes for criminal background checks and the development, staffing and training of a field examination team.

- While the stated intent of House Bill No. 2408 is to shift the responsibility of regulating mortgage brokers and loan originators from PVL to DFI, the provisions of Chapter 436B, HRS, the Uniform Professional and Vocational Licensing Act, which apply under Chapter 454, HRS when PVL is the licensing authority, are inapplicable should DFI become the licensing authority under the provisions of House Bill No. 2408, since DFI is not now, nor has it ever been, a board or commission contemplated by, and subject to, Chapter 436B, HRS. As a result, DFI, although nominally responsible for the regulation and supervision of mortgage brokers, would have no authority to engage in a significant number of administrative, regulatory and supervisory actions contemplated by House Bill No. 2408. House Bill No. 3088, as drafted by the Department, created a new section of the HRS which clearly and fully established responsibilities and

provided appropriate authority to implement and carry out the provisions of the new statute.

Therefore, while the intent of House Bill No. 2408 may be commendable, the approach taken to reach its objective – reportedly to improve the regulation of mortgage brokers and mortgage solicitors – does not do the job. Unless it is substantially amended going forward, it is, in the Department's view, wholly inadequate and legally deficient as a foundation for a program to meet the challenges of today's mortgage markets.

For the reasons enumerated, among others, the Department continues to strongly oppose House Bill No. 2408, as it stands, as well as House Bill No. 3088, H.D.1.

The Department respectfully requests this Committee to reinstate the original language of House Bill No. 3088 as H.D.2, to constitute the basis for any further discussions with the industry, given that the alternative, as represented by House Bill No. 3088, H.D.1 in conjunction with House Bill No. 2408 as it currently stands, is neither fiscally nor operationally feasible, nor is it legally tenable in the Department's view.

Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.



HB3088 HD1 Relating to Residential Mortgage Practices
Committee on Finance

February 27, 2008.
Room 308

11:00 am

The Office of Hawaiian Affairs supports the purpose and intent of HB 3088, HD 1 (HSCR 439-08).

The growing affordable housing problem is one of the most critical issues faced by our communities, especially our Native Hawaiian Communities. This issue seems to have many of our families struggling to find adequate housing and to make ends meet.

We have had beneficiaries who were first time homebuyers within the last 5 years call asking for assistance on their sub prime loans that were used to complete their first time purchase. These beneficiaries were led to believe the purchase of the real estate with the high cost of financing was doable and was the only option they had with the high cost of housing in Hawaii.

The residential mortgage industry in the nation has not done a commendable job in regulating themselves. Unfortunately, the residential mortgage industry in Hawaii has been influenced by the top mortgage originators in the nation because Hawaii has not had enough capital to fund real estate mortgages. The selling of the risks and benefits of a mortgage product therefore, come from the nation's top mortgage originators and others who come to Hawaii to reap the benefits then leave and return when the real estate market is generating a lot of business.

The centralization of the regulation of residential mortgage brokers, mortgage lenders, and loan originators licensed to do business in Hawaii will provide consistent enforcement of regulations.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be

sustained without a coherent and supportive physical
framework.

Mahalo nui loa for the opportunity to provide this testimony.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 27, 2008

The Honorable Marcus R. Oshiro, Chair and
Members of the House Committee on Finance
State Capitol, Room 308
Honolulu, Hawaii 96813

Re: House Bill 3088, HD 1 Relating to Residential Mortgage Practices

Dear Chair Oshiro and members of the House Committee on Finance:

I am Rick Tsujimura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH supports House Bill 3088, HD 1 Relating to Residential Mortgage Practices as drafted.

Thank you for the opportunity to present this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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February 27, 2008

Rep. Marcus R. Oshiro, Chair,
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

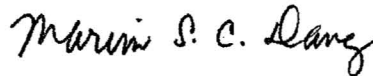
Re: **House Bill 3088, House Draft 1 (Residential Mortgage Practices)**
Hearing Date/Time: Wednesday, February 27, 2008, 11:00 A.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies.

The HFSA **supports** the intent of this Bill.

The purpose of this Bill is to appropriate funds for the Department of Commerce and Consumer Affairs to administer and enforce amendments to the law on mortgage brokers and solicitors. If House Bill 2408 (Mortgage Brokers) is enacted into law, this Bill (HB 3088, H.D. 1) is necessary to the implementation of any mortgage broker program.

Thank you for considering this testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)



HAWAII BANKERS ASSOCIATION

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Presentation to the House Committee on Finance
Wednesday, February 27, 2008
11:00 a.m.
Conference Room 308

February 27, 2008

Testimony in support of HB3088 HD1 – Relating to Residential Mortgage Practices

TO: The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
Members of the House Finance Committee

My name is Neal Okabayashi of First Hawaiian Bank, and I testify for the Hawaii Bankers Association in support of HB 3088, HD 1.

The purpose of this bill is to fund a testing and licensing regulatory system of mortgage brokers within the Division of Financial Institutions of the Department of Commerce and Consumer Affairs. It is undisputed that many of the problems regarding predatory lending, abusive lending and subprime mortgage lending issues arose due to the acts of a minority of unregulated and unlicensed mortgage brokers. While banks and savings banks are heavily regulated on the federal level, being subject to federal banking examinations which include compliance and consumer credit examinations, mortgage brokers are not regulated on any level.

Hawaii's present law is merely a registration system, requiring no testing; a level of scrutiny which does not even rise to the level of driver's license testing. This bill will fund the implementation of HB 2408 which fills the void of unlicensed brokers by subjecting those involved in residential mortgage lending, and not examined by federal banking regulators for consumer credit compliance, to an examination by the Division of Financial Institutions.

Thank you for this opportunity to testify in support of HB 3088, HD1.

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February 27, 2008

Rep. Marcus R. Oshiro, Chair,
and members of the House Committee on Finance
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 3088, House Draft 1 (Residential Mortgage Practices)**
Hearing Date/Time: Wednesday, February 27, 2008, 11:00 A.M.

I represent **Primerica Financial Services Home Mortgages, Inc.** ("Primerica"), a Hawaii licensed mortgage broker with nearly 500 licensed mortgage solicitors in Hawaii.

Primerica **supports** the intent of this Bill.

The purpose of this Bill is to appropriate funds for the Department of Commerce and Consumer Affairs to administer and enforce amendments to the law on mortgage brokers and solicitors. If House Bill 2408 (Mortgage Brokers) is enacted into law, this Bill (HB 3088, H.D. 1) is necessary to the implementation of any mortgage broker program.

Thank you for considering this testimony.


MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/af)