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REGULATED INDUSTRIES COMPLAINTS OFFICE

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION, 2008

FRIDAY, MARCH 28, 2008
2:00 P.M.

TESTIMONY ON SENATE BILL NO. 2407 S.D.1 H.D.1 – RELATING TO REAL ESTATE APPRAISALS

TO THE HONORABLE TOMMY WATERS, CHAIR,
AND TO THE HONORABLE BLAKE K. OSHIRO, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Regulated Industries Complaints Office ("RICO") of the Department of Commerce and Consumer Affairs appreciates the opportunity to testify regarding Senate Bill No. 2407 S.D.1 H.D.1, Relating To Real Estate Appraisals. My name is Jo Ann Uchida, RICO's Complaints and Enforcement Officer. RICO has no objection to Section 2 of the bill.

Senate Bill No. 2407 S.D.1 H.D.1 prohibits financial institutions and mortgage brokers from improperly influencing the reporting or results of a real estate appraisal. In prior testimony before the House Committee on Consumer Protection and Commerce, RICO expressed concerns that the bill's enforcement provisions regarding mortgage brokers and solicitors in Section 2 were vague, established an extremely high threshold of conduct, and unnecessary. The current draft deletes the problematic language and, as such, RICO now has no objection to Section 2 of the bill.

Thank you for this opportunity to testify on Senate Bill No. 2407 S.D.1 H.D.1. I will be happy to answer any questions that members of the Committee may have.

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March 28, 2008

The Honorable Tommy Waters, Chair
House Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: S.B. 2407, SD1, HD1 Relating to Real Estate Appraisers
Hearing Date: March 28, 2008 @ 2:00 p.m., Room 325

Dear Chair Waters and Members of the House Committee on Judiciary:

On behalf of our 10,000 members in Hawaii, the Hawaii Association of REALTORS® (HAR) **submits comments** on S.B. 2407, SD1, HD1.

Appraisers have a serious responsibility to accurately and independently valuate the properties; otherwise, serious ramifications to homebuyers, the housing market and the economy, due to inaccurate inflated market prices will be suffered. The financial and mortgage institution sector provides core services to the real estate industry and to homeowners. It appears that issues with the professional relationship between appraisers and the mortgage lenders may have prompted this legislation.

On March 3, 2008, Fannie Mae (FNMA), an entity established by the government to provide affordable housing opportunities and to expand the flow of mortgage funds in all communities, announced the adoption of the Home Valuation Protection Code, which will go into effect on January 1, 2009. The Home Valuation Protection Code establishes requirements for government appraisal selection, solicitation compensation, conflicts of interest, and corporate independence. FNMA will require lenders to represent and warrant that appraisals prepared in connection with mortgage loans originated on or after January 1, 2009 that are delivered to FNMA conform to the Code.

Also on March 3, 2008, Freddie Mac, created by the government to buy mortgages from lenders to increase the supply of funds available to homebuyers, announced the launching of the Independent Valuation Protection Institute in partnership with FNMA. The Institute will monitor and study the area of home valuations. The Institute will also establish a hotline for consumers to contact in the event that they feel they have been harmed, and appraisers can contact the Institute if they believe their independence has been threatened.

In light of this recent development, this legislation may not be necessary. However, if it is determined that this legislation should move forward, HAR believes that any further amendments should continue to be limited to financial institutions and mortgage institutions.

Mahalo for the opportunity to testify.

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Presentation to the House Committee on Judiciary
Friday, March 28, 2008
2:00 p.m.
Conference Room 325

March 28, 2008

Testimony in opposition of SB 2407, SD 1, HD 1 Relating to Real Estate Appraisals

TO: The Honorable Tommy Waters, Chair
The Honorable Blake Oshiro, Vice Chair
Members of the House Judiciary Committee

My name is Neal Okabayashi from First Hawaiian Bank and I am testifying for the Hawaii Bankers Association on SB 2407, SD 1, HD 1. While we support the intent of the bill, the drafting flaws of the bill make it likely that the bill will not accomplish its intended goal and therefore, for this draft, we must oppose this draft of the bill.

A major flaw of this bill is that it does not govern the activities of many participants in the mortgage market who have as great an interest in the valuation set by the appraisal as a mortgage broker and certainly more than a lender, whose interest in the valuation ranks at the bottom end of the scale. Participants such as sellers, buyers, and realtors have a greater stake in the appraisal valuation and by their absence from the bill, this bill is destined to disappoint the proponents.

This bill is flawed because it addresses the flow of information to the appraiser and as lenders, especially in these times, we want the most accurate and informed appraisal that was developed free from coercion, bribery, and duress. Unfortunately, this bill focuses too much on the flow of information to the appraiser rather than the coercive aspects leading to inaccurate appraisals.

This bill only governs the activities of mortgage brokers and lenders subject to the Code of Financial Institutions. Because of federal preemption rights, depending on the final version of the bill, federally chartered banks and savings associations which are presently subject only to portions of the Code, may not be subject to the bill at all. Based on year to date recording data on all mortgages, including commercial mortgages, the banks that would be subject to this bill are about 25% of the mortgage lending market.

There are no known statistics on the number of Hawaii mortgage loans involving mortgage brokers and solicitors.

The solution is to amend chapter 466K to add a new section which would prohibit all persons from engaging in the prohibited activity.

This can be accomplished by using the language in section 1 of the bill and amending it.

Page 1, line 5. Substitute "person" for "financial institution".

Page 1, lines 7-9. Delete "if the financial institution's compensation is dependent on or affected by the value conclusion generated by the appraisal." Compensation should not be a trigger for the prohibited activity. This standard would create a loophole through which an ostensibly non-interested person could engage in the activity we wish to prohibit.

Page 1, lines 10 and 11. Substitute "person" for "financial institution".

Page 2, lines 1-5. Delete.

Page 2, line 11. Delete "suggest or". Same for page 2, line 14.

All permissible communications with an appraiser can be said to suggest a price. For example, the permissible act of providing comps to an appraiser can be construed to suggest a price. As lenders, we are interested in the most accurate and honest assessment of the value of the property we will lend on. To accomplish that goal, we need an appraiser to have all the relevant facts but any prohibition on suggestive communication will act as a chilling effect on the free flow of information to and from the appraiser.

Anecdotally, we know there are issues regarding coercion and pressure of appraisers. The most egregious conduct, besides outright bribery (which is not prohibited by this bill) is a threat to withhold payment or future work if a certain valuation is not met.

Nationally, there is a move afoot to address this issue. There are good parts to the proposal and there are some bad parts to it which will lead to unforeseen consequences. Perhaps, at the end of the day, it might be more prudent to await the outcome of national discussions to determine if Hawaii needs to enact legislation.

We are in the throes of a credit crisis derived from the subprime mortgage crisis, which, no doubt, witnessed appraisals determined under duress. Not only were borrowers damaged, so were lenders as we know from the number of unregulated lenders that closed their offices. Going forward, as lenders, we want the best and most accurate appraisals, free from duress, coercion, and bribery and the result of a rigorous analysis based on all available data and information.

Thank you for this opportunity to testify and I will be happy to answer any questions you may have.