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TO THE  
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND  
AFFORDABLE HOUSING

THE TWENTY-FOURTH STATE LEGISLATURE  
REGULAR SESSION OF 2008

Monday, February 4, 2008  
9:00 a.m.

TESTIMONY ON S.B. NO. 2306 - RELATING TO MORTGAGE BROKERS

THE HONORABLE RUSSELL S. KOKUBUN, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

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 Senate Bill No. 2306 relating to mortgage brokers.

The Department opposes this bill, which we feel is a cosmetic amendment to an existing, and, in light of the current national climate, arguably deficient statute, the historic objective of which has been to serve as a simple and non-selective registry for industry

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participants. As such, it is inadequate as a foundation for a program to meet the challenges of today's increasingly complex mortgage markets.

The Department instead recommends that this Committee give serious consideration to Senate Bill No. 3010, which provides well thought out, wide ranging solutions for the regulatory and supervisory framework necessary to ensure that the mortgage brokerage industry here in Hawaii operates for the benefit of brokers and consumers alike.

While the intent of Senate Bill No. 2306 is reportedly to improve the regulation of mortgage brokers and mortgage solicitors, which are referred to as "loan originators", the bill falls significantly short of providing the robust regulatory and supervisory framework which 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 which 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 Senate Bill No. 2306 does not meet these Federal requirements. A review of the bill reveals the following major shortcomings:

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- 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. We therefore strongly urge this Committee to ensure that any proposed mortgage broker related bill should include specific provisions establishing this State's participation in the NMLS as expeditiously as possible. Senate Bill No. 3010, drafted by the Department, contains provisions providing for State membership and participation in a uniform multi-state licensing system.
- A new section entitled "Employer-employee relationship" states that nothing in the chapter shall be deemed to create an employer-employee relationship between mortgage brokers and independent contractors and that the Commissioner has the power to regulate such relationships. This power is not only statutorily beyond the Commissioner's authority<sup>1</sup>, but would be a significant diversion from the primary duties and responsibilities of the Division of Financial Institutions ("DFI"), which are

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<sup>1</sup> 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.

focused on safety and soundness and consumer protection. Senate Bill No. 3010, drafted by the Department, focuses on issues related to appropriate industry practices and consumer protection issues and does 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.

- 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, and also is not 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. Senate Bill No. 3010, drafted by the Department, retains 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.

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In addition to the numerous unremarked lapses, oversights and contradictions in Senate Bill No. 2306, there are three major deficiencies in this bill which essentially disable the initiative:

- The effective date of Senate Bill No. 2306, with the exception of Section 1, 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. Senate Bill No. 3010, drafted by the Department, adheres to a realistic, process driven timeline focused on addressing all elements of this significant shift of functional, regulatory, and supervisory oversight, from PVL/RICO to DFI which involves, 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.

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- While the stated intent of this bill is to shift the responsibility of regulating mortgage brokers and loan originators from the Professional and Vocational Licenses Division ("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 not relevant should DFI become the licensing authority, as mandated in this bill, 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 Senate Bill No. 2306. Senate Bill No. 3010, drafted by the Department, creates a new section of HRS which clearly and fully establishes responsibilities and provides appropriate authority to implement and carry out the provisions of the new statute.
- Senate Bill No. 2306 makes no provision at all for the staffing and funding necessary to implement its provisions, leaving the transferred program essentially dead on arrival. Senate Bill No. 3010, drafted by the Department, provides for an appropriate phase in of a staffing and

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financial plan adequate to fund the operations of the program  
contemplated by the bill.

Therefore, while the intent of Senate Bill No. 2306 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. This measure is clearly inadequate as a foundation for a program to meet the challenges of today's mortgage markets.

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



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

February 1, 2008

The Honorable Russell Kokubun, Chair and  
Members of the Senate Committee on  
Commerce, Consumer Protection &  
Affordable Housing  
State Capitol, Room 229  
Honolulu, Hawaii 96813

Re: Senate Bill 2306 Relating to Mortgage Brokers

Dear Chair Kokubun and members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing:

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 is in support of SB 2306 Relating to Mortgage Brokers. This measure as drafted will strengthen the oversight of the mortgage brokers in the current law. We believe that tightening the current law will benefit the community now.

Thank you for the opportunity to present this testimony.





February 1, 2008

To: The Honorable Senator Russell S. Kokubun, Chair  
The Honorable Senator David Y. Ige, Vice Chair  
Members of the Senate Committee on Commerce, Consumer Protection & Affordable Housing

Re: S. B. No. 2306- Relating to Mortgage Brokers

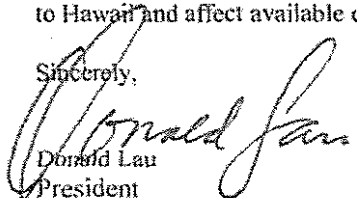
I am Donald Lau, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers (HAMB), a 450+ member organization, actively works to improve the mortgage broker industry since its inception in 1992. After the 2007 State Legislature, HAMB with the other key financial industry stakeholders developed SB 2306 which re-codifies the existing mortgage broker statues by amending Chapter 454 on Mortgage Brokers and which is supported also by the Mortgage Bankers Association of Hawaii, the Hawaii Bankers Association, the Financial Services Group, Hawaii Credit Union League and other stakeholders. We support legislation that strikes a balance between effective new regulatory requirements without damaging the industry and borrowing public.

The bill would improve the residential mortgage broker industry and give the Department of Financial Institutions enforcement authority to protect consumers with the following requirements:

1. Pre-licensure examination
2. Background checks of brokers and loan originators
3. Continuing education requirement for brokers and loan originators
4. Examination audits by the DFI Commissioner
5. Increase of bond amounts depending on the size of the brokerage firm
6. Written agreements: 1. loan commitment letter to name the lender and 2. mortgage brokerage agreement be executed within 3 days of a completed loan application
7. Prohibition of certain kinds of advertising
8. Increase in monetary penalty amount

The Hawaii Association of Mortgage Brokers supports passage of SB 2306 by the Senate Committee on Commerce, Consumer Protection, and Affordable Housing because the bill provides significant improvement in consumer protection by establishing standards of professionalism that will reassure the public that they are dealing with knowledgeable practitioners. Also it prepares Hawaii for compliance with proposed current congressional legislation, yet does not contain lending prohibitions that would be unique to Hawaii and affect available credit products.

Sincerely,

  
Donald Lau  
President

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February 4, 2008

Senator Russell S. Kokubun, Chair,  
and members of the Senate Committee on Commerce, Consumer Protection, &  
Affordable Housing  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2306 (Mortgage Brokers)**  
**Hearing Date/Time: Monday, February 4, 2008, 9:00 A.M.**

We are the attorneys 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 make extensive amendments to Chapter 454, Hawaii Revised Statutes, relating to regulation and licensing of mortgage brokers and solicitors.

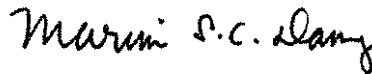
Financial services loan companies (and other financial institutions such as banks, savings banks, credit unions, and others) are not considered a "mortgage broker" under existing law (Chapter 454 of the Hawaii Revised Statutes) and under this Bill. And, this should not change.

However, the HFSA and other trade associations for mortgage lenders have an interest in how lending issues are addressed by this Bill so that legitimate mortgage lending is not adversely impacted by overly broad legislation or by unforeseen consequences.

The HFSA was a member of the Mortgage Broker Task Force of the Commissioner of Financial Institutions in 2006 and has an interest in this and other mortgage broker legislation.

We understand that certain details in this Bill may need to be refined. We are willing to work with interested parties and your Committee to craft an acceptable bill.

Thank you for your consideration.



MARVIN S.C. DANG

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Attorneys for Hawaii Financial Services Association

(MSCD/hfsa)

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February 4, 2008

Senator Russell S. Kokubun, Chair,  
and members of the Senate Committee on Commerce, Consumer Protection &  
Affordable Housing  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2306 (Mortgage Brokers)**  
**Hearing Date/Time: Monday, February 4, 2008, 9:00 A.M.**

I represent **Primerica Financial Services Home Mortgages, Inc.** ("Primerica"), a Hawaii licensed mortgage broker, and a subsidiary of Citigroup, Inc., a financial services holding company.

The purpose of this Bill is to make extensive amendments to Chapter 454, Hawaii Revised Statutes, relating to regulation and licensing of mortgage brokers and solicitors.

**Primerica supports this Bill and proposes an amendment.**

This Bill provides a means to prevent a reoccurrence of situations where certain mortgage brokers and solicitors packaged inappropriate mortgage loans which were made to vulnerable borrowers. In Hawaii, delinquent mortgage loans have increased in recent years. While not all of the delinquencies are attributed to the origination of inappropriate loans (since job loss, divorces, and medical expenses also contribute to delinquencies), some of these delinquencies can be linked to inappropriate loans. As some of these adjustable rate mortgages reset to higher interest rates, the number of families who are unable to afford their payments and who are threatened with foreclosure has risen.

**Overview of Bill**

Presently, Hawaii mortgage brokers and mortgage solicitors are licensed by the Professional and Vocational Licensing Division of the Department of Commerce & Consumer Affairs. The current procedures for licensing applicants and regulating licensees are enhanced under this Bill.

Oversight of mortgage brokers and loan originators (the new term for mortgage solicitors) would be by the Commissioner of Financial Institutions. This Bill would require license applicants to disclose certain criminal convictions and be subject to criminal background checks. The Bill establishes the concept of a principal mortgage broker who would be responsible for the supervision and management of mortgage brokers and loan originators at the mortgage brokerage firm. The Commissioner of Financial Institutions would have various powers including the authority to examine mortgage brokers and loan originators for compliance with laws and rules. In the Bill, various prohibited acts or conduct of a licensee may result in the license being

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revoked, suspended, or terminated by the Commissioner. The Commissioner can also impose fines.

Primerica supports this approach.

### **Exemptions in the Bill**

Under the current law, various entities and individuals are exempt from being licensed as mortgage brokers or solicitors. There are sound and valid reasons to exempt these entities which include certain financial institutions. This Bill continues these exemptions. And, this Bill appropriately adds another exemption from licensure. In Section 3 on page 11, line 19, HRS § 454-2(3) would exempt:

**“(3) An individual who is an exclusive agent of a bank or savings association.”**

This Bill correctly recognizes that exclusive agents of a bank or savings association perform the same functions as loan officers of banks and savings associations.

Primerica supports this exemption to the extent that it would exempt Primerica's Exclusive Representatives.

Primerica is an affiliate of a bank and is wholly owned by the same bank holding company (Citigroup, Inc.) which also owns the bank<sup>1</sup>. Primerica's Exclusive Representatives are exclusive agents of Primerica for the purpose of brokering mortgage loans. Primerica, as an exclusive agent of its affiliate bank, can only broker those mortgage loans to the affiliated bank.

### **Primerica's Exclusive Representatives**

Under the Primerica model, Primerica's Exclusive Representatives do not engage in many of the practices that precipitated the mortgage lending crisis and which call for stronger regulation. Primerica's Exclusive Representatives originate only 15 and 30 year fixed mortgages - not the ARMs and exotic loan products that have been so controversial.

Primerica's Exclusive Representatives have a limited role of counseling potential borrowers on different loan options and how these options may affect the borrowers, taking mortgage loan applications, providing state and federally mandated disclosures, and assisting potential borrowers in producing and collecting the materials required by the lender to begin underwriting the loan.

The Primerica Exclusive Representatives sell only affiliated bank products (Citigroup mortgage loan products) and are identified only with Citigroup. Importantly, these Exclusive

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<sup>1</sup> Primerica is a wholly owned second tier subsidiary of Citigroup Inc. (“Citigroup”), a publicly traded bank holding company. Citigroup is the ultimate parent of Primerica and various other entities including Citicorp Trust Bank, FSB (“CTB”), a federal savings bank, and CitiMortgage, Inc. (“CMI”), an operating subsidiary of Citibank, NA., a national bank. Primerica is an affiliate and an exclusive agent of both CTB and CMI. Primerica brokers debt consolidation home loans and refinancing of home loans exclusively for CTB. It brokers conventional purchase money mortgage loans exclusively for CMI.

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Representatives are subject to required background screening and internal training programs with  
Primerica.

The Primerica Exclusive Representatives do not hire appraisers, do not obtain credit  
reports, do not verify employment and/or income of applicants, do not shop loans to banks  
outside of Citigroup, and do not underwrite loans. The bank that is affiliated with Primerica  
performs these functions.

Additionally, the Exclusive Representatives do not collect fees from borrowers or handle  
the borrowers' funds. Primerica pays the Exclusive Representatives only after the loans close.

In Hawaii, there are about 500 Primerica Exclusive Representatives who are licensed as  
mortgage solicitors by the Hawaii Department of Commerce & Consumer Affairs. Since the  
total number of licensed mortgage solicitors in Hawaii is about 6,000, Primerica's Exclusive  
Representatives comprise roughly 1 out of every 12 licensed mortgage solicitors. Primerica is  
unaware of any regulatory complaints against it or its Exclusive Representatives in Hawaii over  
the past 8 years.

#### Suggested Exemption Wording

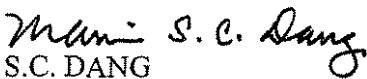
While the newly added exemption in the Bill could be interpreted to cover the Primerica  
model, Primerica suggests the following rewording of HRS § 454-2(3) in Section 3 of the Bill:

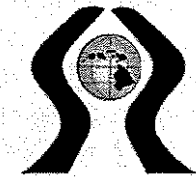
"(3) An individual who is an exclusive agent of a bank, a savings  
association, or a licensee under this chapter if the licensee is an affiliate of a bank  
or savings association and if the licensee is wholly owned by the holding company  
that owns the bank or the savings association."

With the proposed exemption wording, Primerica will still need to be licensed as a  
mortgage broker. As a licensed mortgage broker, Primerica would be subject to regulation  
and oversight by the Commissioner of Financial Institutions ... the same Commissioner who  
also regulates and oversees Hawaii's state banks. As a mortgage broker licensee, Primerica  
would be responsible for the regulated activities of its Exclusive Representatives, who  
would be exempt from licensing ... just as a bank is responsible for the activities of its bank  
employees and bank loan officers who are exempt from licensing. Under this Bill, the  
Commissioner of Financial Institutions would be able examine and investigate Primerica.  
And for violations, the Commissioner could revoke, suspend or terminate Primerica's  
license, and impose fines.

During the past 2 years, other states have enacted laws with concepts and wording  
similar to that which Primerica is proposing. These states include Georgia (in 2006), New  
York (in 2006), Washington (in 2006), and Texas (in 2007). These statutory changes have  
taken place well after the Gramm-Leach-Bliley Financial Services Modernization Act of  
1999. Other states which have recognized this approach including Idaho. We can provide  
the Committee with copies of these statutes.

Thank you for considering this testimony.

  
MARVIN S.C. DANG  
Attorney for  
Primerica Financial Services Home Mortgages, Inc.



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February 1, 2008

The Honorable Russell S. Kokubun, Chair  
Senate Committee on Commerce, Consumer  
Protection & Affordable Housing  
State Capitol, Room 229  
Honolulu, HI 96813

Chair Kokubun and members of the Committee:

*S.B. No. 2306, Relating to Mortgage Brokers*

My name is Mike Leach, Legislative & Regulatory Manager for the Hawaii Credit Union League (HCUL). I am testifying on behalf of HCUL as the local trade association for Hawaii's 93 federally and state-chartered credit unions to support the general intent of S.B. No. 2306.

HCUL has worked with the Commissioner of Financial Institutions and Hawaii's financial services community, particularly Neal Okabayashi of First Hawaiian Bank, for several years to consider alternative approaches to improve the state oversight of mortgage brokers. Based on discussions with Mr. Okabayashi, HCUL concurs with what we believe will be his comments.

We commend the Chair for introducing this bill and for holding this hearing. S.B. No. 2306 provides a good vehicle for all parties to express and consider legitimate concerns.

Thank you for the opportunity to ask for your favorable consideration of this measure.

Sincerely,

Michael Leach  
Legislative & Regulatory Manager

cc: Dennis K. Tanimoto, President

**SENATE COMMITTEE ON  
COMMERCE, CONSUMER PROTECTION AND  
AFFORDABLE HOUSING**

February 4, 2008

Senate Bill 2306 Relating to Mortgage Brokers

Chair Kokubun and members of the Senate Committee on Commerce, Consumer Protection and Affordable Housing, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders.

State Farm supports Senate Bill 2306 Relating to Mortgage Brokers as drafted and urges its passage.

Thank you for the opportunity to present this testimony.