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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. 3010 - RELATING TO RESIDENTIAL MORTGAGE
PRACTICES

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

My name is Nick Griffin, Commissioner of Financial Institutions, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify on Senate Bill No. 3010. The Department strongly supports this Administration bill relating to residential mortgage practices.

The purpose of this bill is to repeal the existing law on Mortgage Brokers and Solicitors, chapter 454, Hawaii Revised Statutes ("HRS"), and to replace it with a statute that provides for more specialized regulation of mortgage brokers, loan originators and

TESTIMONY ON SENATE BILL NO. 3010

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mortgage lenders by the Division of Financial Institutions ("DFI"). The practical effects of this bill will be to transfer responsibility for regulation of the mortgage broker industry from the Professional and Vocational Licensing Division ("PVL"), in conjunction with the Regulated Industries Complaints Office ("RICO"), to DFI, and to expand and strengthen the regulation of this industry to encompass mortgage brokers, loan originators (known as "mortgage solicitors" under chapter 454, HRS), and mortgage lenders doing business in Hawaii. Presently, only some mortgage lenders are required to be licensed and regulated by DFI under provisions of the Code of Financial Institutions, chapter 412, HRS, based on available exemptions under the law on Interest and Usury, chapter 478, HRS. This bill will ensure that non-exempt mortgage lenders that may not be subject to licensing and regulation by DFI as a Hawaii financial institution under chapter 412, HRS, are nevertheless still subject to licensing and regulatory oversight by DFI with respect to the residential mortgage loans they make in this State.

The residential real estate boom of the past several years, which has only recently come to an abrupt end, spawned a significant number of national complaints against mortgage brokers, and those complaints continue as borrowers find that what they had understood to be a "good" loan now turns out to be anything but. Increased loan interest rates, pre-payment penalties, esoteric repayment schedules and downright fraud have all contributed to create what the U.S. Federal Bureau of Investigation has termed " ...the fastest growing white collar crime in the country". While the volume of

TESTIMONY ON SENATE BILL NO. 3010

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complaints in Hawaii has not been as overwhelming as that seen on the mainland, complaints here are tracking on a continuous and disturbing upward trend line which shows little sign of declining.

The growing variety and complexity of so called "nontraditional" mortgage loan products has made it not only difficult for the consumer to understand, but equally difficult for the inexperienced mortgage broker to explain. John Dugan, Comptroller of the Currency, the primary regulator of United States national banks, stated that "...all mortgage originators should be providing prospective customers clear and balanced disclosures about the relative risks and benefits of nontraditional mortgages, including the risk of payment shock and negative amortization." From 2000 to 2005 nontraditional mortgage loans soared from 2% to roughly 30% of the market, Mr. Dugan said. In the highest-priced markets, up to half of all borrowers were taking out loans with features such as interest-only payments in the early years or an option to skip payments.

Many of the loans are being made by lenders that are not supervised by a federal regulator, he said.

"Indeed, the need for comparable action at the state level is perhaps even more acute given the volume of nontraditional mortgages made by nonfederally regulated lenders to subprime borrowers," Mr. Dugan said. "We know, for example, that recent investigations at the state level have produced evidence that some mortgage brokers

TESTIMONY ON SENATE BILL NO. 3010

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have purposely steered prospective customers, often of low and moderate income or limited English-language ability, into loans that they cannot afford by using misleading tactics and, in some cases, by committing fraud."

In addition, problems stemming from inappropriate subprime mortgage lending practices that have recently come to light, and which are now well-known by regulators and borrowers alike, have now spread like a contagion to impact the prime mortgage loan sector as well, resulting in a curtailment of mortgage loans even for credit-worthy borrowers. The fact that both the Federal Reserve System and Wall Street are now grappling with the consequences of these problems in the industry only underscores the need to impose enhanced State regulatory scrutiny of the residential mortgage lending industry.

Responsibility for the licensing of mortgage brokers and loan originators (also known as mortgage solicitors) currently rests with PVL pursuant to chapters 436B and 454, HRS, and PVL's oversight of mortgage brokers and solicitors is essentially limited to registration of licensed brokers and solicitors. Mere registration no longer is adequate in light of the aforementioned industry problems that clearly demonstrate that the activities of mortgage brokers, loan originators and mortgage lenders have a direct, significant, and immediate impact upon this State's consumers. The reorganization contemplated by this bill will initiate a more thorough, unified, effective and seamless supervision of the residential mortgage industry's activities in Hawaii. Industry practices

identified as harmful to the public will be monitored and addressed in a comprehensive and consistent fashion by the division charged with overall supervision of the financial services industry in Hawaii, rather than dividing this responsibility between three agencies (DFI, PVL, and RICO) as is presently the case. In sum, consumer interests will be better protected.

Key provisions in the bill include the licensing of residential mortgage brokers, loan originators and mortgage lenders; establishment of pre-licensing criminal history background checks and testing for applicants; continuing education requirements; periodic examinations for licensees; and a bond requirement of \$50,000 for each mortgage broker, mortgage lender, and loan originator. Brokers and originators of non-residential property will no longer be regulated. The State will also be authorized to join and participate in a uniform multistate automated licensing system that is now being implemented nationwide for mortgage brokers, loan originators and mortgage lenders.

These changes will improve licensed residential mortgage broker, lender and loan originator skill and experience levels, and will better ensure that licensees do not engage in unfair, deceptive, or fraudulent practices.

Mortgage loans, like all lending transactions, are "sold" to the borrower by individual persons. Predatory lending practices, which remain a problem in Hawaii, can best be addressed by an approach that ensures proper training and supervision of the individual persons selling mortgage products to the consumer, rather than selectively

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restricting local mortgage products themselves, as has been proposed from time to time.

This initiative will likely reduce occurrences of predatory lending by improving the professionalism, knowledge and integrity of the mortgage brokerage industry and providing for robust examination powers and sanctions to ensure compliance. At the same time, it will avoid the imposition of selective restrictions on mortgage products, thereby limiting possible unintended consequences that may occur when the local mortgage loan product is reconfigured to meet short term objectives.

The Department strongly supports this bill and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.



LAUHALA MORTGAGE

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

Sent Via: Senate Sergeant-At-Arms Office - FAX 1-800-586-6659
Legislatures Public Access Room - E-mail - testimony@capitol.hawaii.gov

Re: S. B. No. 3010 - Relating To Residential Mortgage Practices Letter in Opposition to Passage

Thank you for taking the initiative to recognize the need for change in the way mortgage brokers and mortgage solicitors are regulated. My name is Andrew Meislin, President of Lauhala Mortgage. As a Hawaii State licensed Mortgage Broker (MB #1139), Mortgage Solicitor (MS #10972), and long time member of the Hawaii Association of Mortgage Brokers (HAMB), **I request that you vote AGAINST the passage of SB 3010.**

While I agree with you, change is needed in the mortgage industry; however, can I encourage you to look at Hawaii Revised Statute 454 (Mortgage Brokers & Solicitors) to consider the following changes to the industry in order better protect the consumer:

Education & Training

Problem - Current Hawaii Revised Statutes does not have any testing, training or continuing education requirements. In the most states, mortgage brokers/solicitors must pass at a minimum some level of testing in order to obtain their license. In fact, in the State of California, not only do you have to pass a mortgage exam, you must also hold a California Real Estate license BEFORE you can obtain a mortgage solicitors license. It is apparent that the lack of any Hawaii education and training requirement is not in the best interest of the consumer.

Solution – Require that in order to obtain and continue to maintain a mortgage broker/solicitor license, the individual must hold a Hawaii Real Estate License, pass a mortgage exam, and fulfill continuing mortgage education requirements. The National Association of Mortgage Brokers has training & exam curriculums that would solve this problem.

Mortgage Solicitor is an Employee

Problem – Many mortgage solicitors are hired and/or paid as independent contractors. This practice allows many mortgage brokerages to operate as fly-by-night operations and shirk the tax and



LAUHALA MORTGAGE

employment liabilities (wages, FICA, medical insurance, etc.) that an honest brokerage must cover in order to compete fairly in the marketplace. Pursuant to Hawaii Revised Statute 454 (Mortgage Brokers & Solicitors) this work arrangement is contrary to the law and should be regulated:

A mortgage solicitor however, is an individual who performs the same functions as a mortgage broker but must be employed by a mortgage broker. See Haw. Rev. Stat. sections 454-1, 454-2, 454-3(g)-(h) (1993). Accordingly, a mortgage solicitor is an employee (instead of an independent contractor) and will be subject to the Hawaii income tax on salary or wages received from the mortgage broker. Haw. Rev. Stat. sections 241-3 (1993), 235-51 (1998 Supp.).

Solution – Enforce the existing law that is in place. Perhaps the DCCA, RICO, and/or the Labor Board should conduct a full audit of every licensed Hawaii State Mortgage Broker to ensure the compliance with the current standards. As a caveat, many of the out-of-state operations that are allowed to conduct mortgage origination activity in the State of Hawaii maintain their mortgage solicitors as independent contractors. If an out-of-state originator is going to conduct business in Hawaii, they should be held to the same standard required by all in-state originators.

Barriers of Entry

Problem - Current Hawaii Revised Statutes allows non-licensed out-of-state originators to conduct business in Hawaii **without** a license. This loophole in the law is not only detrimental to consumers, but is also results in **loss revenues** (wages, expenses, taxes, etc.) for the State of Hawaii.

Solution – Require that any out of state mortgage broker/solicitor must hold a Hawaii Mortgage Broker & Mortgage Solicitor license. Additionally, out-of-state brokers/solicitors should be required to pass all Hawaii testing and continuing education requirements before they can conduct business.

While I commend your efforts to change mortgage origination laws, I urge you to consider the above changes and work with HAMB to get their recommendations. Perhaps if I can be of any assistance, please contact me at (808) 331-0585 or Andrew@LauhalaMortgage.com

Kind Regards,

(Original Signed)

Andrew Meislin
President

Best Mortgage

2850 Paa Street Suite # 214

Honolulu, Hawaii 96819

Phone: (808) 838-7778

Fax: (808) 838-7719

February 1st 2008

The Honorable Senator Russell S. Kokubun, Chair
The Honorable Senator David Y. Ige, Vice Chair
Member of the Senate Committee on commerce, Consumer Protection &
Affordable Housing

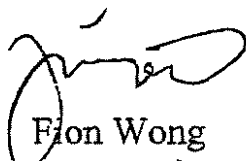
Re: S.B. No 3010 – Relating to Residential Mortgage Practices

I am Fion Wong, Broker of Best Mortgage Inc, and HAMB member. I oppose Senate Bill 3010. There are a number of issues that will negatively affect the lending industry and consumers if this bill is passed.

This bill, if passed would shut down more down 85% of the local mortgage broker industry because of the onerous fees charges and prohibitive acts. It is a bill which would not benefit the people of Hawaii.

I am against passage of this bill.

Sincerely,



Fion Wong
Broker of Best Mortgage Inc
2850 Paa St, #214
Honolulu, HI 96819

Date: 2/1/2008

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 3010 – Relating to Residential Mortgage Practices

I am Peter J Park, a mortgage broker and a member of HAMB (Hawaii Association of Mortgage Brokers). I oppose Senate Bill 3010. There are a number of issues that will negatively affect the lending industry and consumers if this bill is passed. The bill has the follow components which affect the mortgage broker industry:

- High increase in bond requirements on all individual mortgage brokers and loan originators to be bonded for \$50,000 each versus \$15,000 per mortgage brokerage company presently.
- Large increase in state fees for mortgage brokers - \$2,000 Application Fee, \$100 License fee, \$1,000 renewal fee verses \$320 every two year for a mortgage broker currently. Fees for individual loan originators are also up dramatically, too.
- Sets an hourly fee for compliance audit examinations which does not differentiate between a sole practitioner and a large firm for many loan originators is it a further barrier for small business in Hawaii.
- Contains a list of 11 prohibitive acts for brokers and loan originators in Hawaii (only). Need to enforce existing federal mortgage lending statutes, not new ones.
- Increases the monetary penalties for individual violations to an amount five time the existing penalty.

Please do not vote for passage of this bill.

Sincerely,

Peter J Park

MORTGAGESOURCE, LLC

All Home Loans

Peter J. Park, Principal Broker
Aia Moana Building, Suite 2010
1441 Kapiolani Boulevard, Honolulu, HI 96814
Cel (808) 295-1101
Fax (808) 440-7272
peter@mortgage808.com
www.mortgage808.com



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, and Affordable Housing

Re: S. B. No. 3010 – Relating To Residential Mortgage Practices

I am Donald Lau, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers (HAMB), a 450+ member organization, opposes and does not support passage of SB No. 3010 because the bill does not provide a balance between new regulatory requirements without damaging the mortgage brokerage industry and does not benefit Hawaii's consumers. The bill has a number of onerous issues which would shut down 90% of the local mortgage broker industry which is made up primarily of small businesses, thus allowing big businesses to rule because it would create a serious barrier to entry into the business for companies and individuals. This government sponsored bill is highly regulatory and constricting and is no panacea for unfair practices. The detrimental items in the bill are as follows:

1. Requires all mortgage brokers and loan originators to be bonded for \$50,000 up from the current \$15,000 per company today.
2. Imposes new state fees for mortgage brokers including a \$2,000 application fee, a \$100 license fee and \$1,000 renewal fee as compared to \$320 every two years for a mortgage broker currently. Individual loan originator fees are also up dramatically.
3. Charges a set hourly fee for compliance and audit examinations which do not differentiate between a sole practitioner and a large firm of many brokers, creating another barrier for small business because small brokerage firm can not afford to pay the cost of a state audit.
4. Contains a list of vague, prohibitive acts against "false promises" and "misrepresentations" which will make the bill unique to Hawaii and which will probably cause secondary mortgage lenders like Fannie Mae or Freddie Mac to not purchase loans in Hawaii, thus creating a capital shortage in Hawaii.
5. Increases the monetary penalty to an amount of five times the existing penalty.

HAMB supports concepts associated with SB 3010 such as comprehensive back ground checks, testing before licensing, and continuing education. These features are also contained in SB 2306, which HAMB and the lending industry does support.

If HB 3010 passes, the end result is that the consumers will suffer because there will be less loan products offered and fewer qualified mortgage brokers to assist potential home owners secure financing. Also the home ownership percentage will not increase. Presently, the Hawaii homeownership ratio is less than 60% which is one of the lowest in the nation. This bill is not conducive to the mortgage broker industry and the Hawaii consumers. The ripple effect is that it will impact negatively many other vital industries such as building, real estate, architecture, engineering and related fields.

The Hawaii Association of Mortgage Brokers does not support passage of SB 3010 by the Senate Committee on Commerce, Consumer Protection and Affordable Housing because the bill is unfairly regulatory and would destroy the Hawaii mortgage broker industry, small businesses and would hurt the Hawaii consumers.

Sincerely,

Donald Lau

February 1, 2008

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
Date: Monday, February 4
Time: 9:00 a.m.

Re: S. B. No 3010 – Relating to Residential Mortgage Practices

I am Tiare Fullerton, Broker, VP, and HAMB member). I oppose Senate Bill 3010. There are a number of issues that will negatively affect the lending industry and consumers if this bill is passed. The bill has the follow components which affect the mortgage broker industry:

- High increase in bond requirements on all individual mortgage brokers and loan originators to be bonded for \$50,000 each versus \$15,000 per mortgage brokerage company presently.
- Large increase in state fees for mortgage brokers - \$2,000 Application Fee, \$100 License fee, \$1,000 renewal fee verses \$320 every two year for a mortgage broker currently. Fees for individual loan originators are also up dramatically, too.
- Sets an hourly fee for compliance audit examinations which does not differentiate between a sole practitioner and a large firm for many loan originators is it a further barrier for small business in Hawaii.
- Contains a list of 11 prohibitive acts for brokers and loan originators in Hawaii (only). Need to enforce existing federal mortgage lending statutes, not new ones.
- Increases the monetary penalties for individual violations to an amount five time the existing penalty.

Please do not vote for passage of this bill.

Sincerely,



Tiare Fullerton
Broker, V.P., and Senior Loan Officer
Mortgage Associates of Hawaii, Inc
Cellular (808)347-1028
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Fax (808)237-5786
Aikahi Park Shopping Center
25 Kaneohe Bay Drive, Suite 109
Kailua, HI 96734
Email: tfullerton@mahiloans.com
[SECURE Online Application Link](#)

Please visit our website at www.mahiloans.com

Member of HAMB
Member of NAMB
Affiliate Member HBR
Member of Kailua Chamber of Commerce



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 3010 Relating to Residential Mortgage Practices

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 opposes Senate Bill 3010 Relating to Residential Mortgage Practices and prefers Senate Bill 2306 Relating to Mortgage Brokers. We prefer Senate Bill 2306 Relating to Mortgage Brokers because it strengthens the oversight of the mortgage brokers in the current law. While discussions need to be held with DFI/DCCA over the sweeping changes to the law that are proposed by SB 3010, we feel that tightening the current law will benefit the community now. We recommend that Senate Bill 3010 be held. The MBAH will continue to work with the proponents of this measure as the legislature progresses.

Thank you for the opportunity to present this testimony.

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

February 4, 2008

Senate Bill 3010 Relating to Residential Mortgage Practices

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 3010 Relating to Residential Mortgage Practices as drafted and urges its passage.

Thank you for the opportunity to present this testimony.

HAWAII FINANCIAL SERVICES ASSOCIATION

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

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

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 3010 (Residential Mortgage Practices)**
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 repeal the law on Mortgage Brokers and Solicitors and replace it with a statute that provides for more specialized regulation of residential mortgage brokers, residential mortgage lenders and residential loan originators by the Division of Financial Institutions.

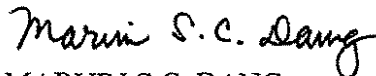
Financial services loan companies (and other financial institutions such as banks, savings banks, credit unions, and others) are not considered a "mortgage broker" under existing law (Chapter 454 of the Hawaii Revised Statutes) and under this Bill. And, this should not change.

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

PAUL HOLTROP

Attorneys for Hawaii Financial Services Association

(MSCD/hfsa)

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OF
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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 3010 (Residential Mortgage Practices)**
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 repeal the law on Mortgage Brokers and Solicitors, and replace it with a statute that provides for more specialized regulation of residential mortgage brokers, residential mortgage lenders and residential loan originators by the Division of Financial Institutions.

Primerica supports the intent of this Bill.

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.

Presently, Hawaii mortgage brokers and mortgage solicitors are licensed by the Professional and Vocational Licensing Division and regulated by the Regulated Industries Complaints Office of the Department of Commerce & Consumer Affairs. This Bill seeks to unify licensing and regulation under the purview of the Commissioner of Financial Institutions and Division of Financial Institutions.

This Bill would allow the Commissioner to obtain criminal history record checks of license applicants. 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. The State would be authorized to join and participate in a uniform multi-state automated licensing system for mortgage brokers, mortgage lenders and mortgage loan originators. In the Bill, various prohibited acts or conduct of a licensee would result in the license being revoked, suspended, or terminated by the Commissioner. The Commissioner could also impose fines.

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

February 4, 2008

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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.

This Bill appropriately adds another exemption from licensure – “employees and agents of a licensee if the licensee is an affiliate of a bank and is wholly owned by the holding company that owns the bank.”¹ Primerica supports this approach regarding the exemption which is based on the Idaho law.

During the past 2 years, other states have enacted laws with concepts and wording similar to that exemption. 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. We can provide the Committee with copies of these statutes.

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 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.

¹Pg. 7, Lines 18-21 of S.B. 3010.

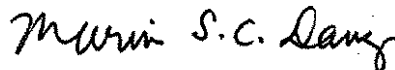
Senator Russell S. Kokubun, Chair,
and members of the Senate Committee on Commerce, Consumer Protection
& Affordable Housing

February 4, 2008

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With the exemption wording in this Bill, 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.

Thank you for considering this testimony.



MARVIN S.C. DANG

Attorney for

Primerica Financial Services Home Mortgages, Inc.

(MSCD/af)



Neal K. Okabayashi
Vice President & Attorney

Presentation to the
Senate Committee on Commerce, Consumer Protection & Affordable Housing
Monday, February 4, 2008 at 9:00 a.m., Room 229

SB 2306 Relating to Mortgage Brokers
SB 3010 Relating to Residential Mortgage Practices

Senator Russell Kokubun, Chair
and members of the Senate Committee on Commerce, Consumer Protection & Affordable Housing

My name is Neal Okabayashi of First Hawaiian Bank, and I testify for the Hawaii Banker's Association in support of SB 2603 (the industry bill) and the concepts of SB 3010 (the administration bill). Companion bills were also heard in the House and the Chair of the House CPC committee has asked that the companion to SB 2306, the industry bill (HB 2408), be used as the vehicle. He asked that I, along with HAMB, and the Commissioner of Financial Institutions work together on a bill which melds the two bills together. Since many of the Commissioner's concerns are transitional matters, I believe this can be done. To afford the necessary time, the Chair has asked for a re-referral of the vehicle bill to CPC/JUD jointly so that we have time until crossover to complete our task. Because of the need for appropriations, it is my understanding that the administration bill, which contains the appropriation request, will be amended to solely provide for the appropriate appropriation by House Finance.

Many of us have attempted over the years to amend the mortgage broker chapter to provide for regulatory oversight of mortgage brokers. While I recognize that this bill is a work in progress, and its final form may be different, the core of the bill regarding:

- testing
- licensure
- continuing education and renewal of licensure
- transfer of jurisdiction to the commissioner of financial institutions
- enhanced examination and supervisory powers of the commissioner of financial institutions
- principal mortgage broker
- required disclosures
- restrictions on misleading advertising and door to door sales
- limiting the mortgage broker chapter to residential mortgages
- elimination of the impact of the Kida bill
- no new exemptions except clarifying exemptions

should not be altered materially.

There is no need to amplify on the multitude of studies and analysis which have demonstrated that one failing of our regulatory system on residential mortgage lending is that mortgage brokers are unregulated on both the federal or state level. This measure should be viewed as a step towards filling that void so that we would have effective state supervision and regulation of mortgage brokers, especially in light of the pending federal legislation which relies on state supervision and regulation of mortgage brokers.

We believe that this measure reflects a balance between industry needs and consumer needs, and we applaud the industry for stepping up to the plate on this issue.

Hawaii's mortgage broker statute is a licensing statute and not a regulatory statute. Thus, mortgage brokers did not complain about the statute nor did they attempt to be exempted from the statute. However, now that the mortgage broker statute will become a regulatory statute with teeth, we can expect complaints and attempts to exempt themselves from the statute.

The present exemptions have not been altered other than two clarifications. One is to clarify that FNMA and FHLMC, who are secondary investors, are not subject to the mortgage broker law. The other is to clarify exclusive agents of a bank or savings association are also exempt. That is consistent with the exemption scheme which exempts persons whose mortgage brokering role is incidental, or are investors who buy mortgages rather than interact with potential mortgage borrowers, who are already subject to federal banking regulatory supervision and oversight. The later is consistent with the concept that you should be subject to either federal or state banking regulatory supervision and oversight but not free from both federal and state supervision and oversight.

Last year, this legislature amended section 454-2 on Exemptions to provide that an operating subsidiary of a bank or savings association would be exempt from chapter 454. That amendment reflected the legal reality that an operating subsidiary is deemed for all purposes to be part of the bank or savings association and is thus subject to examination for compliance, safety and soundness, and consumer credit compliance by a federal banking regulator.

SB 2306 would also exempt an individual who is an exclusive agent of a bank or savings association. Exempting exclusive agents is the logical outgrowth of last year's measure because like an operating subsidiary, exclusive agents are deemed part of the bank or savings association and thus subject to federal banking regulatory supervision and oversight. This exemption is consistent with the concept that if you are subject to federal banking regulatory supervision and oversight, there is no need to replicate that supervision on the state level and thus, we support this exemption. Another reason for this exemption is that federally chartered banks and savings associations can preempt Hawaii law and any attempt to regulate exclusive agents of banks and savings associations would fail.

However, we would strongly object to any attempt to exempt those who are agents of a bank affiliate because such persons are not subject to federal banking regulatory supervision and oversight because they are not part of a bank or savings association. I emphasize banking examination because only a banking examination, rather than a financial examination, would be

sufficient to deter and uncover untoward behavior. A bank affiliate is not a bank; it is what we call a nonbank subsidiary. If exempted from Hawaii law, those exclusive agents would not be subject to any banking regulatory supervision and oversight, state or federal, and any exemption would not be consistent with the rationale for exemption.

Some states have mistakenly believed that if you are a bank affiliate, you are subject to federal banking regulatory supervision and oversight. That is simply not true because those states have failed to take into account the changing landscape of bank affiliates after Gramm-Leach-Bliley and the unintended consequence of exempting exclusive agents of bank affiliates. Under the Gramm-Leach-Bliley Act, bank affiliates may engage in insurance and securities underwriting, and even before Gramm-Leach, a bank affiliate could engage in data processing, IT work, administrative services, and many other nonbanking activities. For example, one of the largest bank holding companies in the United States, Citigroup, has over 260 nonbank affiliates and a large securities operation reflecting the operations of Smith Barney, Lehman Brothers and Salomon Brothers as well as a large insurance arm which reflects the insurance operations of Travelers and other insurance entities. Under Gramm-Leach, the functional regulator of those companies is not a federal banking regulator but may well be the SEC and/or FINRA.

The net result is that the person acting as a mortgage broker and as an exclusive agent for a bank affiliate, meaning a nonbank, would be subject to no banking supervision and oversight, and thus we would strongly oppose any measure to expand the exemptions to agents for bank affiliates.

We realize that this bill will need to be amended to fold in matters such as the mortgage broker registry, a more effective timeline and I am ready to assist in that task.

I realize that SB 2306, which we request the Committee use as a vehicle, has a CPH, JDL referral. I do not think that we will have a HD 1, which could also be used as a SD 1, by such time. May I suggest that, in light of the time schedule, the SB 2306 with a defective date be adopted and transmitted to JDL for further consideration. As to SB 3010, I suggest that the entire bill be deleted except for only section 6 and 9.

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