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TO THE HOUSE COMMITTEE ON FINANCE
THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Thursday, April 2, 2009
3:00 p.m.

TESTIMONY ON S.B. NO. 1218, S.D. 2, H.D. 1 - RELATING TO MORTGAGE LOAN
ORIGINATORS

THE HONORABLE MARCUS R. OSHIRO, 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. 1218, S.D. 2, H.D. 1. The
Department opposes the bill, and believes it to be unnecessary.

In each of the past five years, the Department has submitted (or, in one case,
supported) legislative proposals that it believed would address problems in the mortgage
broker industry and the Hawai'i housing market. We have worked steadily over that time

to bring various industry and interest groups together to try to reach consensus on a revised approach to mortgage broker regulation. Consensus, however, proved elusive, and, as a result, legislation did not pass. This past summer, securitized mortgages (created largely through brokered mortgages) lost their value, and the United States housing and financial markets spiraled downward.

Mortgage brokers no longer play the central role in the nation's or Hawai'i's housing market. Residential real estate appears largely, once again, under the control of lenders, who define the market and effectively limit the operation of mortgage brokers. In addition, Congress has addressed the subject by enacting the *Secure and Fair Enforcement for Mortgage Licensing Act* (the "SAFE Act"), Public Law 110-289, Part V, which endorses the Nationwide Mortgage Licensing System (NMLS) for residential mortgage loan originators and provides important tools to establish a more robust nationwide mortgage broker (*aka* mortgage loan originator) regulatory and supervisory infrastructure.

The SAFE Act provides that, with few exceptions, everyone who performs mortgage loan originator functions should be licensed. The law also requires federal banking regulators to "register" mortgage loan originators who work for federally regulated depository institutions – e.g., banks, S&Ls etc. – which will provide the "even playing field" for which mortgage broker industry groups have been calling. If states do not implement laws consistent with the SAFE Act by federally established deadlines,

mortgage loan originators in those states will fall under regulation to be provided by the federal Department of Housing and Urban Development (“HUD”).

Although the Department previously advocated regulatory reform of the State’s mortgage broker industry, a State sponsored initiative now appears untimely, arguably irrelevant, and a questionable use of State funds in the midst of a significant economic slowdown.

The stated purpose of the bill is to allow the Commissioner to regulate, license, and examine mortgage brokers and loan originators, to enforce laws pertaining to those professions, and to repeal Hawaii Revised Statutes (“HRS”) Chapter 454, which presently governs the licensing of Mortgage Brokers and Solicitors. The Department opposes the bill for the following five reasons:

Deadlines – Adopting a SAFE Act compliant State statute to address the issue would impose deadlines that can no longer be met. (Please see the attached “Mortgage Originators Timeline”.) During the 2008 legislative session, the Department pointed out that, in order to ensure timely State compliance if Hawaii wished to adopt a State program to regulate its mortgage loan originators, it was critical to take immediate steps to enact a State-sponsored mortgage loan originator program that conformed to the federal SAFE Act, then soon to be passed. As the 2008 Session Administration bills failed to obtain passage, neither the initial federally mandated deadlines for compliance with the SAFE Act nor the extended federal deadlines potentially available to those

states that can demonstrate that they are making a good faith effort to comply with the federal law, appear realistically achievable.

Initial Funding Expenses – While Department programs, once established, have historically been self sustaining, initial funds required to start a new program obviously need to come from sources outside the “to-be-established” program. (Please see the attached spreadsheet “Division of Financial Institutions – Mortgage Originator Program”.) Estimates show an initial cost of \$1,010,708 to mobilize for program implementation (e.g., hire initial staff, conduct training, purchase furniture, fixtures and equipment, establish the requisite administrative infrastructure, etc.). That \$1,010,708 does not include either the cost or the time required to join the Nationwide Mortgage Licensing System, both of which will be considerable, and may not run concurrently with the mobilization phase of program implementation. This bill fails to address these and related initial program implementation costs, for which provision across a 42 month period must be made since it only provides for a one-time nominal assessment of \$100 per mortgage broker and solicitor which would result in \$207,100 in initial revenues. In addition, it should be noted that a SAFE Act compliant State program, if established, would be expensive for the significantly diminished number of active mortgage loan originators that would be regulated by such a program. We note here that, according to records of the Department’s Professional and Vocational Licensing Division, of 688 licensed mortgage brokers eligible to renew their licenses by the December 31, 2008

year end renewal deadline under HRS Chapter 454, only 378 had actually renewed by year end, and of 5,987 mortgage solicitors eligible to renew their licenses at the same time, only 1,693 solicitors in fact renewed by the deadline.

Functionality – While Senate Bill No. 1218, S.D. 2, H.D. 1 has been touted as delivering a SAFE Act compliant State statute, it does not, for several critical reasons. First and foremost, it is not functional. States that have enacted and implemented SAFE Act compliant state statutes have done so by providing for the licensing of both mortgage brokers – that is, those entities that employ mortgage loan originators – as well as the mortgage loan originators themselves. The regulatory statute being proposed by Senate Bill No. 1218, S.D.2, H.D. 1 neglects that critical element and thus, if passed, would deliver a cumbersome, expensive, and possibly unworkable framework for regulating the mortgage brokerage industry in Hawaii. Other components of the bill do not comply with the language of federal Public Law 110-289, Title V – S.A.F.E. Mortgage Licensing Act and thus may arguably not pass HUD scrutiny when reviewed by that federal agency for SAFE Act compliance.

Staffing – In order to implement a SAFE Act compliant State statute, the Department would be required to hire up to five new staff members in order to administer the program in accordance with federal standards. The new staff would be particularly specialized and an extended schedule of selective outside recruitment would likely be needed to fill the majority of the positions. This staffing plan, while less

costly than that projected in the 2008 Administration bill which was based on 6,000+ licensees, will still necessitate higher fees to cover ongoing fixed costs for the diminished community of mortgage originators than the current HRS Chapter 454 fee schedule. We estimate ongoing annual costs for these new staff members would be approximately \$375,000.

Relevance – The issues addressed by the proposal are no longer immediate. Lenders, and thus brokers, no longer offer the dangerous “sub-prime”, “non-traditional”, pay option, teaser rate mortgage loans. In addition, mortgage lenders are now extremely cautious about accepting mortgage loans brokered to them from the marketplace and, in most instances, utilize a very discreet number of specific, pre-screened, pre-qualified, and closely supervised mortgage loan originators (either employed or independently contracted) to provide loans for their mortgage pipelines. The days of accepting brokered mortgage transactions from unvetted sources have ended for the foreseeable future.

Alternatives – Since the proposed measure clearly fails on multiple levels to make adequate provisions to establish a viable State mortgage loan originator regulatory and supervisory program that can comply with SAFE Act requirements within the timeframes permitted under federal law, under the provisions of the SAFE Act, a mortgage loan originator regulatory and supervisory program will be established and

administered for the State of Hawaii by HUD. The HUD federal mortgage loan originator regulatory and supervisory program will:

- end the protracted debate over what is or is not appropriate as far as a State mortgage broker statute is concerned;
- result in initial funding cost savings for the State, which already reportedly anticipates a budget shortfall of almost two billion dollars over the next several years; and
- provide a professionally staffed program that will benefit both regulated mortgage loan originators as well as Hawaii's consumers.

The Department therefore recommends that your committee hold this unnecessary measure, allowing Hawaii's consumers, mortgage brokers and mortgage lenders to benefit from a professionally staffed, federal regulatory and supervisory initiative, while at the same time saving Hawaii's taxpayers from initially funding a costly and potentially inadequate State administered program, which in the near term is arguably not needed to address problems that no longer exist in the marketplace and which diverts critical funding from more productive uses in these troubled times.

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

DIVISION OF FINANCIAL INSTITUTIONS - MORTGAGE ORIGINATOR PROGRAM													
DIRECT COSTS TOTALS ARE FOR BUDGET REQUEST PURPOSES							DIRECT AND INDIRECT COSTS NEEDED TO BE COVERED BY FEES						
(03/27/09)													
		FY 10		FY 11		FY 12		FY 13		FY 14		FY 15	
DESCRIPTION	COST	QTY	TOTAL COST	QTY	TOTAL COST	QTY	TOTAL COST	QTY	TOTAL COST	QTY	TOTAL COST	QTY	TOTAL COST
DIRECT COSTS - ONGOING													
PERSONNEL													
FIE III - Examination Branch - Exempt	1 60,024	0	-	0	-	2	120,048	2	120,048	2	120,048	2	120,048
FIE III - Licensing Branch - Exempt	2 60,024	2	40,016	2	120,048	2	120,048	2	120,048	2	120,048	2	120,048
Clerk-Typist II	3 25,668	1	8,556	1	25,668	1	25,668	1	25,668	1	25,668	1	25,668
Subtotal			48,572		145,716		265,764		265,764		265,764		265,764
Fringe @ 41.13%			19,978		59,933		109,309		109,309		109,309		109,309
Total Personnel			68,550		205,649		375,073		375,073		375,073		375,073
OTHER OPERATING COSTS													
Training Costs													
Out-of-state	3,650	0	-	2	7,300	4	14,600	4	14,600	6	21,900	6	21,900
Web based	500	2	1,000	1	500	4	2,000	4	2,000	6	3,000	6	3,000
Examination Travel Expenses													
Mileage									400		800		800
Neighbor island examinations	1,130		-		-		-	1	1,130	18	20,340	18	20,340
Dues and Subscriptions													
AARMR membership			800		800		800		800		800		800
Mortgage publications			500		500		500		500		500		500
Telephone	225	2	450	3	675	5	1,125	5	1,125	5	1,125	5	1,125
State of Hawaii Membership in NMLS	4 75,000		75,000										
Central svcs 5% of est'd revenues	5		-		-		2,414		48,278		37,666		37,666
Total Other Operating Costs			77,750		9,775		21,439		68,833		86,131		86,131
TOTAL DIRECT COSTS - ONGOING			146,300		215,424		396,512		443,906		461,203		461,203
DIRECT COSTS - ONE TIME EXPENSE													
Rules publication	6				3,200								
Laptop computer for field examiners	2,500		-	2	5,000		-		-		-		-
Computer for licensing examiners and clerk	1,300	2	2,600	1	1,300		-		-		-		-
Modular workstations for new employees	1,700	5	8,500		-		-		-		-		-
Chairs for new employees	400	5	2,000		-		-		-		-		-
Modify FIMS for MO Program	80,000		-		80,000		-		-		-		-
Filing cabinets for mortgage broker files	300		-		-	4	1,200		-		-		-
TOTAL DIRECT COSTS - ONE TIME			13,100		89,500		1,200		-		-		-
TOTAL DIRECT COSTS			159,400		304,924		397,712		443,906		461,203		461,203

DESCRIPTION	COST	QTY	FY 10	FY 11	FY 12	FY 13	FY 14	FY 15
			TOTAL COST	TOTAL COST	TOTAL COST	TOTAL COST	TOTAL COST	TOTAL COST
INDIRECT COSTS - ONGOING								
Administrative salaries	7 672,616	10%	67,262	10% 67,262	10% 67,262	10% 67,262	10% 67,262	10% 67,262
Fringe @ 41.13%	276,647	10%	27,665	10% 27,665	10% 27,665	10% 27,665	10% 27,665	10% 27,665
Other operating expenses - adjusted	8 92,100	10%	9,210	10% 9,210	10% 9,210	10% 9,210	10% 9,210	10% 9,210
DCCA Administrative overhead	591,730	10%	59,173	10% 59,173	10% 59,173	10% 59,173	10% 59,173	10% 59,173
TOTAL INDIRECT COSTS - ONGOING			163,309	163,309	163,309	163,309	163,309	163,309
TOTAL COSTS			322,709	468,233	561,021	607,215	624,513	624,513
REVENUE (Fees based on SB 1218 SD2 HD1)								
DFI Initial application, license fees-MOs	9 425	-	0	-	20 8,500	2100 892,500	10 4,250	10 4,250
DFI License renewals - MOs	10 325	-	-	-	20 6,500	20 6,500	2100 682,500	2100 682,500
DFI Field Examinations	11 33,280	-	-	-	2 33,280	2 66,560	2 66,560	2 66,560
TOTAL REVENUES			-	-	48,280	965,560	753,310	753,310
FY DIRECT COSTS SURPLS/(DEFICIT)	12		(159,400)	(304,924)	(349,432)	521,654	292,107	292,107
CUMULATIVE CASH FLOWS	13		(159,400)	(464,324)	(813,755)	(292,101)	6	15 292,112
CUMLTIVE FY PROG COSTS ALL IN	14		(322,709)	(790,942)	(1,303,683)	(945,338)	(816,541)	(687,743)
1	- Equivalent to SR-26, Step E on 10/1/08 salary schedule. Start in FY 12							
2	- Equivalent to SR-26, Step E on 10/1/08 salary schedule. 4 mos in FY 10							
3	- SR-08, Step A on 7/1/08 salary schedule. 4 mos in FY 10							
4	- Estimated initial cost for State of Hawaii to join Nationwide Mortgage Licensing System							
5	- Based on estimated revenues received in the FY							
6	- Doubled amount of MT rules publication since MB rules will be more extensive and thus cost more to publish notice							
7	- Commissioner, Deputy, 2 Br Mgrs, 1 FIE IV, 1 Reg Analyst, 1 Secretary, 3 Clerk-typists, 1 Specialist @ 50 hrs/mo. 12/07 est. incr'd by 4%							
8	- Operating expenses excludes advertising, mileage, travel, CSA which have been budgeted as direct costs of the mortgage broker program, and adj for dues, telephone and training. Used most recent 3 year average of these adjusted expenses							
9	- Estimate initial new MO licenses to be issued in FY13 (Sep-Dec 2012) based on 2008 MB/BS HRS 454 licence renewals							
10	- S.A.F.E. compliant MO program requires annual license renewal							
11	- Field examinations calculated at \$40 per hour over 832 billable hours per year x 2							
12	- Annual FY Surplus/Deficit of Total Revenues against Total Direct Costs only							
13	- Cumulative Total Revenues less Direct Costs only. Revenue receipts occur in December resulting in cash flow deficit in first 6 months of FY.							
14	- Cumulative Total Revenues less Direct Costs and Indirect Costs							
15	- Cumulative Cash Flows must stabilize at level to provide coverage for first 6 months of each FY plus repayment of Initial Funding from GF							

INITIAL FUNDING REQUIREMENTS
Initial funding to cover direct costs is required before fee income from regulated industry commences to flow. Based on projected cash flow shortfalls for first 42 months of operations, a \$1,085,708 General Fund appropriation is required to mobilize, staff and equip program for FY 10, FY 11, FY 12 and first 6 months of FY 13 (\$1,035,708 shortfall plus a \$50,000 contingency).



**SB 1218, SD2, HD 1 (HSCR 1267) Relating to Mortgage Loan
Originators**

House Committee on Finance

April 2, 2009
308

3:00 p.m.

Room

The Office of Hawaiian Affairs supports the purpose and intent of SB 1218, SD2, HD 1 (HSCR 1267).

Consumer protection laws benefit all of Hawaii's residents which include the beneficiaries of the Office of Hawaiian Affairs.

Mortgage Brokers and Loan Originators working with first time homebuyers need to be very unique individuals committed to doing more than expected for the benefit of the homebuyer. However, many are inexperienced and need laws to regulate their activities to the benefit of the homebuyer. The first time homebuyer is also inexperienced in the process of purchasing a home and these consumer protection laws benefit their education in this process as well.

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 like these consumer protection laws.

Mahalo nui loa for the opportunity to provide this testimony and we urge your support.

The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair
House Committee on Finance

Hearing : Thursday, April 2, 2009, 3:00 p.m.
State Capitol, Conference Room 308

IN SUPPORT OF SB 1218 SD 2 HD 1 WITH AMENDMENTS

Chair and Members of the Committee:

My name is Ryker Wada, representing the Legal Aid Society of Hawaii'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled and other low and moderate income families who are consumers. We are testifying in support of SB 1218 SD 2 HD 1 with amendments as it may strengthen protections for consumers in the State of Hawaii.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home and what to do if you are in danger of losing your home through foreclosure. In the past Fiscal Year we serviced more than 200 clients in our Project and more than 70 in the past 2 months.

SB 1218 SD 2 HD 1 seeks to regulate mortgage loan originators. Previous versions of this bill attempted to delete and make useless Chapter 454 of the HRS, the existing mortgage broker law, transferring regulation of the industry solely to the Department of Commerce and Consumer Affairs (DCCA) under a new Chapter. However, by placing the burden of enforcement entirely on DCCA, the previous versions eliminated significant tools for wronged persons and did not provide enough protection for consumers in the State of Hawaii. The current version of the bill makes significant headway in protecting consumers by keeping Chapter 454, however language to tie violations of the prohibited acts section of the bill to HRS 480, the unfair and deceptive acts and practices section of the HRS, are needed.

In light of the current bills weaknesses, The Legal Aid Society of Hawaii proposes the following amendments:

1. Include language cross-referencing HRS Chapter 480 clarifying that a violation of the chapter constitutes an unfair or deceptive act or practice. Clearly a violation of the prohibited acts of SB 1218 SD 2 HD 1 are both unfair and deceptive and thus should be actionable under HRS Chapter 480. Similar language is contained in related consumer protection statutes. Previous committees have amended the prohibited acts section of this measure to conform to existing law regarding unfair and deceptive trade practices. However, no specific language has been added to cross-reference HRS Chapter 480, which may create confusion in application of private enforcement of this Act. This language might look like:
 - a. Any violation of this section shall constitute unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2 and shall be subject to a civil penalty and damages as provided in section 480. Each violation of this section shall constitute a separate violation.

The Legal Aid Society of Hawaii supports the intent of SB 1218 SD 2 HD 1, would fully support the bill with the proposed amendments, and supports its efforts to protect the consumers in the State of Hawaii. The Legal Aid Society of Hawaii urges the Committees to consider the suggested language.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. SB 1218 SD 2 HD 1 attempts to strengthen protections for consumers by regulating the mortgage broker industry, however SB 1218 SD 2 HD 1 should be amended to make it a strong consumer protection statute. We support SB 1218 SD 2 HD 1 with amendments and its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.



HAWAII BANKERS ASSOCIATION

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Presentation to the House Committee on Finance
Thursday, April, 2, 2009 at 3:00 pm

Testimony for SB 1218, SD 2, HD 1 Relating to Mortgage Loan Originators

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

My name is Neal Okabayashi for the Hawaii Bankers Association in strong support of SB 1218, SD 2, HD 1. We believe that this bill is virtually complete and should be passed out unamended so it can go to conference for finalization.

The debate on state regulation of mortgage loan originators was settled by adoption of the SAFE Act on July 31, 2008. States were given until July 31, 2009 to adopt a state system compliant with the SAFE Act. Because states are required under the SAFE Act to pass a law compliant with the SAFE Act, to assist states, the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators drafted a model act which has been approved by HUD as compliant with the SAFE Act. This bill is based on the model act.

The SAFE Act requires all loan originators, including those who work for a bank, to obtain a unique identifier. Using the identifier, regulators, federal and state, will enter into a national registry the disciplinary history of an originator, and thus all regulators and the public may research the disciplinary history of an originator applying for a license or one a person is about to do business with.

There has been much misinformation about the SAFE Act.

Some think Congress drew a bright line between bank/credit union employees and exempted them from the SAFE Act. That is untrue. The bright line is based on whether you are regulated by a federal banking regulator, not whether you work for a bank/credit union. The rationale for that bright line is, as stated below, banks and credit unions that are regulated by a federal banking regulator and are already heavily regulated for consumer protection. One goal of the SAFE Act was to provide for the regulation of the previously unregulated: mortgage brokers and financial services loan companies better known as finance companies, especially given their significant role in the credit crisis that has led to the worse economic crisis since the Great Depression.

Given that employees of a bank/credit union are already regulated by a federal banking regulator, rather than piling on another layer of regulation and tinkering with an unbroken system, the regulation of loan originators who work for a bank/credit union regulated by a federal banking regulator remains with the federal banking regulators and thus such employees are to be registered, and regulated, by a federal banking regulator.

All other originators, including some who work for a bank/credit union, must be regulated by a state. Employees of a bank/credit union who work for a bank subsidiary that is not regulated by a federal banking regulator must be regulated by a state and thus fall within the purview of this bill. Subsidiaries of a bank are deemed to be part of the bank.

Thus, it is difficult to fathom the ever shifting position of the HFSA regarding bank employees and this bill. The initial position of HFSA was to exempt their employees from the prohibited practices section of the bill and another section of the bill which has been removed from the bill. When we objected to such exemption, in part, because it would make the bill non-compliant with the SAFE Act, HFSA reacted by strenuously arguing that bank/credit employees should also be subject to the prohibited practices of the bill, which would mean that such employees would be subject to the testing and licensing provisions of the bill because the prohibited practices require licensing and compliance with the new chapter. Since HFSA wanted to exempt itself from the consumer protection measures their newfound and professed concern over consumer protection should be regarded with skepticism. HFSA persists in their position notwithstanding the fact that bank employees are already subject to heavy federal banking supervisory oversight and financial services loan companies are not, despite the fact that banks have generally not been a major player in the credit crisis while financial services loan companies have been major players in predatory and subprime lending that has led to the economic conditions of today.

HFSA's request must be resisted because for one, it may render this bill noncompliant with the SAFE Act. States were given little leeway to deviate from the SAFE Act. States do have the ability to exceed SAFE Act standards on testing, licensing, background checks and educational requirements but only for state licensed originators, which, by definition, excludes bank/credit union employees except those who aren't regulated by a federal banking regulator. Federal banking regulators may exceed SAFE Act requirements as it relates to registration requirements for bank/credit union employees. According to the HUD policy statement, states may exceed the licensing and registration standards but may not enact legislation which "frustrates the objectives of the SAFE Act", one of which is "a comprehensive licensing and supervisory system with uniform application and reporting requirements." Emphasis added. HFSA seeks to make the supervisory system non-uniform by having employees of state banks subject to regulation on both the federal and state level, which dual level of regulation will not be endured by HFSA employees. Certainly, the HFSA proposal would lead to non-uniform application since only in Hawaii would bank/credit employees be potentially subject to a double layer of regulation. Of course, it would also be non-uniform because under case law interpreting the supremacy clause of the U.S. Constitution, also known as federal preemption rights, states may not require the licensing of employees of federally chartered financial institutions.

The rationale for subjecting nonbanks, such as financial services loan companies and mortgage brokers, to state regulation and leaving bank employees to federal regulation is clear cut. Finance companies and mortgage brokers are not federally regulated like banks. The Treasury Department issued a Blueprint for a Modernized Financial Regulatory Structure last March and wrote: "Federally regulated mortgage lenders and their employees are subject to an extensive

scheme of federal supervision of their lending practices and compliance with applicable law and regulations.” The Treasury thus recommended “subjecting” originators who “are not employees of federally regulated depository institutions (or their subsidiaries) to uniform licensing qualification standards.” That is precisely what the SAFE Act did.

Even CSBS recognizes the regulatory gap. Before Congress on March 4, 2008, CSBS testified that federal banking regulators had issued or proposed two guidances on nontraditional mortgage product risk and subprime lending not applicable to the state lenders they supervise, including HFSA members, and CSBS tried to fill the gap by drafting sample parallel guidance which a state could issue with respect to the nondepository lenders that it supervised. In fact, federal banking regulatory guidances on subprime and predatory lending dates back to 1997.

In the Blueprint for a Modernized Financial Regulatory Structure, the Treasury Department wrote: “Mortgage market participants (both brokers and lenders) with no federal supervision have been responsible for a substantial portion of the mortgages and over 50 percent of the subprime mortgages originated in the United States. These mortgage market participants are subject to uneven degrees of state level oversight (and in some cases limited or no oversight)”. The Treasury Department went on to write: “Brokers and lenders not subject to federal oversight have repeatedly been cited as the source of abusive subprime loans with adverse and profound consequences for consumers, the mortgage markets and the financial system as a whole.”

In a recent letter to Elizabeth Warren, chair of the Congressional Oversight Panel, John Dugan, the Comptroller of the Currency that regulates national banks, said that there are “many, many federal consumer protection laws, rules and supervisory guidance applicable to national banks” and pointed out that “the overwhelming preponderance of toxic subprime mortgages were originated by companies subject only to state regulation.” The OCC conducted a study of ten areas with the highest foreclosure rates in the period 2005-2007, and of the 21 firms comprising the worst ten, 12 firms which accounted for nearly 60% of the non-prime mortgage loans and foreclosures were exclusively regulated by a state. Mr. Dugan went on to write “the market leaders for these products were nonbank brokers and lenders regulated exclusively by the states.”

The three largest predatory lending settlements were made by nonbanks; two of them were finance companies. The largest predatory lending settlement was made by an HFSA member.

HFSA says the banks have no interest in the bill because our employees are not covered by the bill although they inconsistently advocate that our employees be covered. As stated, some bank employees may be covered by the bill but setting that aside, other than existing mortgage brokers and solicitors, no group has a greater vested interest in this bill than bankers and credit unions.

The economic crisis which resulted, in part, from the acts of mortgage brokers and state lenders like financial services loan companies has impacted banks. Banks do best in a booming economy which we don't have, and the economic downturn has directly contributed to costs which banks must bear. This economic crisis has reduced the monies in the FDIC deposit insurance fund which led the FDIC to propose a special assessment on banks (think of this as a tax increase) as well as an increased deposit insurance premium to pay for the increased FDIC deposit insurance coverage; an increased fee which finance companies do not have to pay.

Banks also have a direct interest in this bill for the simple reason that brokers may sell and arrange a loan but do not make loans; they take the loan to a lender, sometimes a bank, who actually makes the loan. So we have a vested interest that the broker who brings us a loan is a competent, qualified and honest professional. Jamie Dimon, CEO of JP Morgan Chase, said that the worst mistake of his professional life was not closing the bank's mortgage broker division which basically made the loans brought to Chase by a mortgage broker.

In fact, the number of loans made by banks as a result of brokered loans is greater than the loans made by HFSA's non-federally regulated members and thus, it can easily be said that banks have a greater vested interest in this bill than HFSA.

There are vast differences between the regulatory oversight of banks and finance companies. All banks, whether federal or state, are regulated by a federal banking regulator who is the bank's primary regulator. State banks also are regulated by a state regulator who plays a secondary role in examination matters. All banks are subject to annual examinations by a federal banking regulator but not finance companies.

The capital requirements for a finance company are different from a bank's capital requirements. HFSA members only need to have a certain dollar amount of capital, regardless of the size or the nature of their assets, even if they have risky assets. By contrast, all banks are required to have capital, the amount of which depends on the asset size of the bank and the nature of the assets the bank has. For banks, there are five capital categories: well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized, and critically undercapitalized. For HFSA members, there is nothing comparable. For banks, if you are not well capitalized, there are restrictions on your activities; but fortunately, over 90% of banks are well capitalized, including all the local banks. There are no similar restrictions on finance companies for capital deficiencies.

Legal Aid may request that any loan made in the name of an unlicensed originator be declared void so the borrower who received the monies does not have to repay the loan. They argue that this act of punishing the innocent lender while letting the unlicensed originator go free somehow promotes consumer protection. They premise their argument on the Beneficial Hawaii vs. Kida case.

Under the Beneficial Hawaii vs. Kida case, in the case of table funding, where the note and mortgage is made in the name of the originator although the funds are provided by a third party, if the originator happened to be unlicensed when the loan is made, the borrower does not have to repay the monies he received and the lender does not receive the monies it loaned. Just because an originator is unlicensed does not necessarily mean there was an act against consumer protection. The lack of license could be the result of a clerical error or administrative error such as not timely renewing a bond. More importantly, the innocent lender has no way of protecting itself because it cannot determine if the lender is licensed at recording of the loan, especially a lender who buys the loans ten years later or buys a lender ten years later.

The Beneficial Hawaii vs. Kida case also poses collusion possibility between the borrower and the loan originator. What if the borrower and the loan originator are romantically linked? The loan originator deliberately lets her license lapse and makes a loan to her boyfriend using the funds of the lender who will buy the loan. The boyfriend who received the loan proceeds can claim on the basis of the Beneficial Hawaii vs. Kida case he should not have to repay the loan.

The facts of the Beneficial Hawaii vs. Kida case are not far removed from my hypothetical as the unlicensed broker was the ex-girlfriend of the borrower.

In summary, HBA strongly believes SB 1218, SD 2, HD 1 should be adopted as is and sent to conference.

HAWAII FINANCIAL SERVICES ASSOCIATION

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April 2, 2009

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

Re: **Senate Bill 1218, SD 2, HD 1 (Mortgage Loan Originators)**
Hearing Date/Time: Thursday, April 2, 2009, 3:00 P.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 which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA supports the HD 1 version of this Bill.

The purpose of this Bill is to allow the Commissioner of Financial Institutions to regulate, license, examine, and enforce laws regulating mortgage loan originators. This Bill also exempts mortgage loan originators from Chapter 454 of the Hawaii Revised Statutes ("HRS"), relating to mortgage brokers and solicitors.

Background:

This Bill is an expansion of an effort that began a few years ago to regulate mortgage brokers. The most recent activity was during the 2008 legislative session with House Bill 2408, HD 1, SD 2 (Mortgage Brokers). Because of irreconcilable differences among the testifiers in 2008 regarding that 62 page mortgage broker bill, that bill did not move out of the Conference Committee.

After the 2008 Hawaii Legislative Session adjourned, Congress passed and President Bush later signed into law on July 30, 2008 the Housing and Economic Recovery Act of 2008 (Public Law 110-289). One component of that Act is the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act"). The SAFE Act establishes a uniform licensing and registration system for all loan originators, including mortgage brokers and loan officers. All loan originators at depository institutions will have to be registered (but not licensed) through the nationwide system. All other loan originators will be required to be licensed by a state or through a Housing and Urban Development ("HUD")-backup system if a state does not establish a licensing system.

Under the SAFE Act, a "loan originator" is an individual who for compensation or gain takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan. Loan originators are placed into two categories:

1. One category is an individual who, simply stated, is an employee of a depository institution (such as a bank or a credit union). That individual is called a "registered loan originator" and will need to be registered with the Nationwide Mortgage Licensing System ("NMLS").

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2. The other category is an individual who is a loan originator but is not an employee of a depository institution. That individual will need to be licensed by a state or by HUD and registered with the NMLS. This individual is called a "licensed loan originator". An example of a licensed loan originator is an individual who is a mortgage broker or mortgage solicitor. Mortgage brokers and solicitors are currently regulated in Hawaii under HRS Chapter 454.

Another example of a "licensed loan originator" is an employee of a non-depository financial services loan company. Financial services loan companies are Hawaii financial institutions under the Code of Financial Institutions (HRS Chapter 412). Financial services loan companies make mortgage loans and personal loans just like other Hawaii financial institutions under HRS Chapter 412. It should be noted that HRS Chapter 454, relating to mortgage brokers and solicitors, does not currently apply to employees of financial services loan companies which are exempt from HRS Chapter 454. However with the passage of the SAFE Act, an individual who is a loan originator and is an employee of a non-depository financial services loan company would be put in the same category as an individual who is a mortgage broker or mortgage solicitor. That individual would need to be licensed by the state or by HUD.

Within 12 months from the July 30, 2008 enactment of the SAFE Act, i.e. by July 31, 2009, Hawaii and other states can develop licensing requirements to ensure applicants meet minimum standards including educational requirements, background checks, and testing. However, if a state does not establish a licensing system that meets the minimum requirements, HUD is directed to establish a licensing system for loan originators in the state.

In conjunction with the passage of the SAFE Act, two organizations of regulators, the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR"), prepared model legislation for states to consider enacting ("CSBS/AARMR model state legislation").

Because the SAFE Act was enacted after Hawaii's 2008 Legislative Session adjourned in May 2008, perhaps it's fortunate that the Legislature had the foresight not to pass the 2008 Hawaii mortgage broker bill. If that 2008 bill had become law, a substantial portion of it would have to be changed and rewritten during this 2009 legislative session.

Comparison between this Bill and House Bill 1438:

H.B. 1438 (Mortgage Loan Originators) as introduced, is identical to this Bill as introduced. The basis of both bills as introduced was supposedly the CSBS/AARMR model state legislation. But there were about a half dozen substantive differences in both bills from the CSBS/AARMR model state legislation. The bills' drafter omitted substantive provisions which were in the CSBS/AARMR model state legislation. And the bills' drafter added substantive provisions which were not in the CSBS/AARMR model state legislation. There were also typographical errors in the bills.

In the interest of continued discussion, the House didn't change H.B. 1438 except to put in a "defective" effective date.

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On the other hand, when this Bill (S.B. 1218) was in the Senate, the Senate made revisions in Senate Draft 1 by putting in 5 provisions from the CSBS/AARMR model state legislation which had been omitted by the drafter of this Bill. But the Senate didn't remove certain additions ("add ons") made by this Bill's drafter which are not in the CSBS/AARMR model state legislation. Senate Draft 2 added a "defective" effective date.

The House Committee on Consumer Protection & Commerce ("House CPC Committee") amended this Bill on March 25, 2009 with a House Draft 1. The House CPC Committee's revisions included removing the "add on" provisions which are not in the CSBS/AARMR model state legislation.

Why we support the House Draft 1 version of this Bill :

Regarding the CSBS/AARMR model state legislation, HUD stated on January 5, 2009:

"HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Act. State legislation that follows the provisions of the model state law will not be determined by HUD to be noncompliant with SAFE Act."
(Emphasis added.)

The CSBS/AARMR model state legislation is generally contained in Section 1 of the House Draft 1 of this Bill, from pages 1 through 36. Section 1 generally follows the CSBS/AARMR model state legislation with the following 2 exceptions:

- a. Paragraph (15) of Sec. -17 (Prohibited Practices), on pages 32 to 33, is not in the CSBS/AARMR model state legislation.
- b. Sec. -21 (Fees and Costs), on page 36, is not in the CSBS/AARMR model state legislation.

Even though paragraph (15) of Sec. -17 is not in the model state legislation, we do not oppose including it in Section 1. A portion of paragraph (15) relating to misusing the name or trademark of a financial institution is already in an existing state law (HRS Sec. 412:2-606.5), and that law applies to any "person", not just to mortgage loan originators.

We do not oppose including Sec. -21 in Section 1 because application fees, license fees, and annual license renewal fees are necessary to fund and implement a state regulatory scheme.

Because the CSBS/AARMR model state legislation has been determined by HUD to meet the minimum requirements of the SAFE Act, and because Section 1 as drafted generally follows the CSBS/AARMR model state legislation, we support the existing wording in Section 1. If the legislature wants to have a state regulatory scheme approved by HUD, it's best to have Section 1 follow the CSBS/AARMR model state legislation. That's because if Section 1 follows the CSBS/AARMR model state legislation, it will be easier for HUD to make a determination that Section 1 is in compliance.

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Various "add on" provisions which were in the Senate Draft 2 were appropriately removed from Section 1 by the House CPC Committee in the House Draft 1. Those "add ons" are not in the CSBS/AARMR model state legislation, but they were put in by the drafter of this Bill when this Bill was introduced. We believe that those "add ons" can be dealt with in a future legislative session once the basic state regulatory system is in place this year. We are unaware of anything in the SAFE Act or in any HUD regulation that prevents amendments to the basic state law once it is in place. And, in a future session, the legislature can discuss the issue as to whether mortgage loan originators who are employed by depository institutions (such as banks and credit unions) should comply with the same prohibited practices provisions that all other mortgage loan originators need to comply with under this Bill.

For the above reasons, we would oppose any suggestions that the "add on" provisions which were removed by the House CPC Committee be put back into this Bill. Any such deviation from the CSBS/AARMR model state legislation should not be permitted.

We support the changes which were made by the House CPC Committee to Sections 2 through 10 of this Bill. Even though Sections 2 through 10 on pages 36 through 49 are not part of the CSBS/AARMR model state legislation, those provisions are needed to implement Section 1. The House CPC Committee made various changes to those Sections in the House Draft 1, including keeping in place (i.e. not repealing) HRS Chapter 454 relating to mortgage brokers and solicitors. The House CPC Committee appropriately exempted from HRS Chapter 454 any mortgage loan originators who are licensed under this Bill.

Accordingly, we ask that you not make any further changes to Sections 2 through 10 except to fill in the dollar amount in Section 8. The "defective" effective date in Section 10 can still stay in place so that this Bill can go into Conference.

Thank you for considering our testimony.



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

(MSCD/hfsa)



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

April 2, 2009

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

Re: Senate Bill 1218, SD 2, HD 1 Relating to Mortgage Loan Originators

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

I am Anders Hostelley, 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.

MBAH supports Senate Bill 1218, SD 2, HD 1 Relating to Mortgage Loan Originators. MBAH specifically concurs with and supports the amendments proposed by the Hawaii Bankers Association and opposes the amendments proposed by the Hawaii Financial Services Association.

Thank you for the opportunity to present this testimony.

Anders Hostelley,
MBAH Board Member and Co-chair, 2009 Legislative Committee



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Testimony to the Senate Committee on Commerce and Consumer Protection
Thursday, April 2, 2009 at 2:00 p.m.

Testimony in support of SB 1218, SD 2, HD 1 – Relating to Mortgage Loan Originators

To: The Honorable Marcus Oshiro, Chair
The Honorable Marilyn Lee, Vice-Chair
Members of the Committee on Finance

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for over 90 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We support SB 1218 SD2 HD1's intent to provide greater oversight over mortgage brokers and loan originators. This legislation is an important step in reducing the incidence of predatory lending in Hawaii.

Thank you for the opportunity to testify.



April 1, 2009

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

Re: SB 1218 SD2, HD1 – Relating to Mortgage Loan Originators

DATE: Thursday, April 02, 2009
TIME: 3:00 p.m.
PLACE: Conference Room 308
State Capitol
415 South Beretania Street

I am Greg Ravelo, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers (HAMB), a 200+ member organization, actively works to improve the mortgage broker industry since its charter in 1992.

HAMB supports SB 1218, SD2, HD1 as amended.

This version of the legislation largely conforms to the “Model Act” promoted by the Conference of State Banking Supervisors and the American Association of Mortgage Regulators. (CSBS/AAMR). These two associations are charged with overseeing the roll out of the federal Title V – SAFE Act enacted by Congress in the summer of 2008.

The HD1 accomplishes the primary objective of retaining regulatory oversight in Hawaii of the covered group of Mortgage Loan Originators. Failure to enact conforming state level legislation will require the U.S. Department of Housing and Urban Development (HUD) to take over Hawaii’s regulatory program. We believe both the professionals involved and the Hawaii public will best served through a state administered program.

The HD1 provides the benefit that similar language is likely to be adopted by many other state legislatures. It is desirable not to have “unique to Hawaii” mortgage legislation due to the national nature of the market place.

Sincerely,

Greg Ravelo
President
808 – 225-7846