

JAN 28 2009

A BILL FOR AN ACT

RELATING TO MORTGAGE LOAN ORIGINATORS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to title 22 to be appropriately designated
3 and to read as follows:

4 "CHAPTER

5 MORTGAGE BROKERS AND LOAN ORIGINATORS

6 § -1 **Definitions.** In this chapter, unless the context
7 or subject matter otherwise requires:

8 Advertisement" or "advertising" means:

- 9 (1) Issuing any card, sign, or device to any person;
- 10 (2) Causing, permitting, or allowing the placement of any
11 sign or marking on or in any building, vehicle, or
12 structure;
- 13 (3) Placing an advertisement in any newspaper, magazine,
14 or on the Internet;
- 15 (4) Listing or advertising in any directory under a
16 classification or heading that includes the words
17 "mortgage loan originator", or the like;



- 1 (5) Broadcasting commercials by airwave or internet
2 transmission; or
- 3 (6) Transmitting any written communication, including:
- 4 (A) A letter or a postcard that encourages a person
5 to borrow from or through a mortgage loan
6 originator; or
- 7 (B) A written communication that encourages a person
8 to refinance the person's existing residential
9 mortgage loan and mentions that a new residential
10 mortgage loan will reduce the monthly payment the
11 borrower will pay on the new residential mortgage
12 loan or reduce the interest rate on the
13 borrower's existing residential mortgage loan.

14 "Agent" means a person who acts with the consent and on
15 behalf of a mortgage loan originator, and is subject to the
16 mortgage loan originator's direct control.

17 "Applicant" means a person applying for the issuance of a
18 license or a renewal of a license under this chapter.

19 "Borrower" means a person who has applied for or obtained a
20 residential mortgage loan from or through a mortgage loan
21 originator, or from or through a person required to be licensed
22 as a mortgage loan originator under this chapter.



1 "Clerical or support duties" include subsequent to the
2 receipt of an application:

3 (1) The receipt, collection, distribution, and analysis of
4 information common for the processing or underwriting
5 of a residential mortgage loan; and

6 (2) Communicating with a borrower to obtain the
7 information necessary for the processing or
8 underwriting of a loan, to the extent that the
9 communication does not include offering or negotiating
10 loan rates or terms or counseling borrowers about
11 residential mortgage loan rates or terms.

12 "Commissioner" means the director of the department of
13 commerce and consumer affairs, or the director's designee.

14 "Federal banking agencies" means the Board of Governors of
15 the Federal Reserve System, the Comptroller of the Currency, the
16 Office of Thrift Supervision, the National Credit Union
17 Administration, and the Federal Deposit Insurance Corporation.

18 "Immediate family member" means a spouse, child, sibling,
19 parent, grandparent, grandchild, stepparent, stepchild,
20 stepsibling, and adoptive relationships.

21 "Insured depository institution" means the same as in 12
22 U.S.C. section 1813(c)(2); provided that it also includes any



1 credit union whose deposits are insured by the National Credit
2 Union Association.

3 "Loan processor or underwriter" means an individual who
4 performs clerical or support duties as an employee at the
5 direction, of and subject to the supervision and instruction of
6 a mortgage loan originator or a person who is exempt from
7 licensing as a mortgage loan originator under the this chapter.

8 "Mortgage loan origination agreement" means a written
9 agreement under which a mortgage loan originator agrees to
10 obtain a residential mortgage loan for the borrower or assist
11 the borrower in obtaining a residential mortgage loan and does
12 not include a promissory note and mortgage or any other document
13 or instrument evidencing or securing the residential mortgage
14 loan.

15 "Mortgage loan originator" means an individual who for
16 compensation or gain or in the expectation of compensation or
17 gain:

- 18 (1) Takes a residential mortgage loan application; or
19 (2) Offers or negotiates terms of a residential mortgage
20 loan.

21 "National mortgage licensing system and registry" means a
22 mortgage licensing system developed and maintained by the



1 Conference of State Bank Supervisors and the American
2 Association of Residential Mortgage Regulators for the licensing
3 and registration of licensed mortgage loan originators.

4 "Nontraditional mortgage product" means any mortgage
5 product other than a thirty-year fixed rate residential mortgage
6 loan where the interest rate is fixed for the thirty year term.

7 "Person" means an individual, sole proprietorship,
8 partnership, corporation, limited liability company, limited
9 liability partnership, or other association of individuals,
10 however organized.

11 "Real estate brokerage activity" means any activity that
12 involves offering or providing real estate brokerage services to
13 the public, including:

- 14 (1) Acting as a real estate agent or real estate broker
15 for a buyer, seller, lessor, or lessee of real
16 property;
- 17 (2) Bringing together parties interested in the sale,
18 purchase, lease, rental, or exchange of real property;
- 19 (3) Negotiating on behalf of any party, any portion of a
20 contract relating to the sale, purchase, lease,
21 rental, or exchange of real property (other than in



1 connection with providing financing with respect to
2 any such transaction);

3 (4) Engaging in any activity for which a person engaged in
4 the activity is required to be registered or licensed
5 as a real estate agent or real estate broker by the
6 State; and

7 (5) Offering to engage in any activity, or act in any
8 capacity, described in paragraphs (1), (2), (3), or
9 (4).

10 "Registered mortgage loan originator" means any individual
11 who:

12 (1) Meets the definition of mortgage loan originator and
13 is an employee of

14 (A) An insured depository institution;

15 (B) A subsidiary that is

16 (i) Owned and controlled by an insured
17 depository institution; and

18 (ii) Regulated by a federal banking agency; or

19 (C) An institution regulated by the Farm Credit
20 Administration; and



1 (2) Is registered with, and maintains a unique identifier
2 through, the Nationwide Mortgage Licensing System and
3 Registry.

4 "Residential mortgage loan" means any loan primarily for
5 personal, family, or household use that is secured by a
6 mortgage, deed of trust, or other equivalent consensual security
7 interest on a dwelling as defined in section 103(v) of the Truth
8 in Lending Act or residential real estate upon which is
9 constructed or intended to be constructed a dwelling.

10 "Residential real estate" means any real property located
11 in this State, upon which is constructed or intended to be
12 constructed a dwelling.

13 "Unique identifier" means a number or other identifier
14 assigned by protocols established by the nationwide mortgage
15 licensing system and registry.

16 § -2 Exemptions. This chapter shall not apply to the
17 following:

18 (1) A registered mortgage loan originator, when acting for
19 an insured depository institution, a subsidiary of an
20 insured depository institution regulated by a federal
21 banking agency, or an institution regulated by the
22 Farm Credit Association;



- 1 (2) Any individual who offers or negotiates terms of a
2 residential mortgage loan with, or on behalf of an
3 immediate family member of the individual;
- 4 (3) Any individual who offers or negotiates terms of a
5 residential mortgage loan secured by a dwelling that
6 served as the individual's residence;
- 7 (4) A licensed attorney who negotiates the terms of a
8 residential mortgage loan on behalf of a client as an
9 ancillary matter to the attorney's representation of
10 the client, unless the attorney is compensated by a
11 lender, a mortgage broker, or other mortgage loan
12 originator or by any agent of a lender, mortgage
13 broker, or other mortgage loan originator;
- 14 (5) An individual engaging solely in loan processor or
15 underwriter activities; provided that an independent
16 contractor who performs the services of a loan
17 processor or underwriter shall not represent to the
18 public, through advertising or other means of
19 communicating or providing information including the
20 use of business cards, stationery, brochures, signs,
21 rate lists, or other promotional items, that the
22 individual can or will perform any of the activities



1 of a mortgage loan originator, and any loan processor
2 or contractor who advertises that the individual can
3 or will perform any of the activities of a mortgage
4 loan originator shall not be exempt under this
5 chapter;

6 (6) A person or entity that only performs real estate
7 brokerage activities and is licensed or registered by
8 the State unless the person or entity is compensated
9 by a lender, a mortgage broker, or other mortgage loan
10 originator or by any agent of the lender, mortgage
11 broker, or other mortgage loan originator; and

12 (7) A person or entity solely involved in extensions of
13 credit relating to timeshare plans, as the term is
14 defined in section 101(53D) of title 11, United States
15 Code.

16 § -3 Requirement of licensure. An individual, unless
17 specifically exempted from this chapter shall not engage in the
18 business of a mortgage loan originator with respect to any
19 dwelling located in this State without first obtaining and
20 maintaining annually, a license under this chapter. Each
21 licensed mortgage loan originator shall register with, and
22 maintain a valid unique identifier issued by the nationwide



1 mortgage licensing system and registry, and submit to the
2 nationwide mortgage licensing system and registry reports that
3 shall be in a form and contain information as the nationwide
4 mortgage licensing system and registry may require.

5 § -4 License and registration; application; issuance.

6 (a) Applicants for a license shall apply in a form as
7 prescribed by the commissioner. Each form shall be prescribed
8 by rule, instruction, or procedure by the commissioner and may
9 be amended as necessary by the commissioner in order to carry
10 out the purposes of this chapter.

11 (b) To fulfill the purposes of this chapter, the
12 commissioner may establish relationships or contracts with the
13 nationwide mortgage licensing system and registry or other
14 entities designated by the nationwide mortgage licensing system
15 and registry to collect and maintain records and process
16 transaction fees or other fees related to licensees or other
17 persons subject to this chapter.

18 (c) For the purpose and the extent necessary to
19 participate in the nationwide mortgage licensing system and
20 registry, the commissioner may waive or modify, in whole or in
21 part, by rule or order, any or all of the requirements of this
22 chapter and to establish new requirements as reasonably



1 necessary to participate in the nationwide mortgage licensing
2 system and registry.

3 (d) In connection with an application for licensing as a
4 mortgage loan originator, the applicant, at a minimum, shall
5 furnish to the nationwide mortgage licensing system and registry
6 information concerning the applicant's identity, including:

7 (1) Fingerprints for submission to the Federal Bureau of
8 Investigation, and any governmental agency or entity
9 authorized to receive the fingerprints for a state,
10 national and international criminal history background
11 check; and

12 (2) Personal history and experience in a form prescribed
13 by the nationwide mortgage licensing system and
14 registry, including the submission of authorization
15 for the nationwide mortgage licensing system and
16 registry and the commissioner to obtain:

17 (A) An independent credit report obtained from a
18 consumer reporting agency described in section
19 603(p) of the Fair Credit Reporting Act; and

20 (B) Information related to any administrative, civil,
21 or criminal findings by any governmental
22 jurisdiction.



1 (e) The commissioner may use the nationwide mortgage
2 licensing system and registry as an agent for requesting
3 information from and distributing information to the Department
4 of Justice or any governmental agency.

5 (f) The commissioner may use the nationwide mortgage
6 licensing system and registry as an agent for requesting and
7 distributing information to and from any source directed by the
8 commissioner.

9 § -5 **Issuance of license.** The commissioner shall not
10 issue a mortgage loan originator license unless the commissioner
11 makes at a minimum the following finding:

12 (1) The applicant has never had a mortgage loan originator
13 license revoked in any governmental jurisdiction,
14 except that a subsequent formal vacation of a
15 revocation shall not be deemed a revocation;

16 (2) The applicant has not been convicted of, or pled
17 guilty, nolo contendere, or been granted a deferred
18 acceptance of a guilty plea under chapter 853 to a
19 felony in a domestic, foreign, or military court:

20 (A) During the seven year period preceding the date
21 of the application for licensing and
22 registration; or



1 (B) At any time preceding the date of application, if
2 the felony involved an act of fraud, dishonesty,
3 a breach of trust, or money laundering;

4 provided that any pardon of a conviction shall not be
5 a conviction for purposes of this section;

6 (3) The applicant has demonstrated financial
7 responsibility, character, and general fitness to
8 command the confidence of the community and to warrant
9 a determination that the mortgage loan originator
10 shall operate honestly, fairly, and efficiently
11 pursuant to this chapter.

12 For purposes of this section, a person is not
13 financially responsible when the person has shown a
14 disregard in the management of the person's financial
15 condition. A determination that an individual has not
16 shown financial responsibility may be based on:

17 (A) Current outstanding judgments, except judgments
18 solely as a result of medical expenses;

19 (B) Current outstanding tax liens or other government
20 liens and filings;

21 (C) Foreclosures within the past three years; and



- 1 (D) A pattern of seriously delinquent accounts within
- 2 the past three years;
- 3 (4) The applicant has completed the pre-licensing
- 4 education requirement described in section -6;
- 5 (5) The applicant has passed a written test that meets the
- 6 test requirements in section -7; and
- 7 (6) The applicant has met the surety bond requirement as
- 8 required in section -13.

9 § -6 Pre-licensing and re-licensing; education of
10 mortgage loan originators. (a) A person shall complete at
11 least twenty hours of pre-licensing education approved in
12 accordance with subsection (b) that includes:

- 13 (1) Three hours of federal law and regulations;
- 14 (2) Three hours of ethics, that shall include instruction
- 15 on fraud, consumer protection, and fair lending
- 16 issues; and
- 17 (3) Two hours of training related to lending standards for
- 18 the nontraditional mortgage product marketplace.

19 (b) Pre-licensing education courses shall be reviewed and
20 approved by the nationwide mortgage licensing system and
21 registry based upon reasonable standards. Review and approval



1 of a pre-licensing education course shall include review and
2 approval of the course provider.

3 (c) Nothing in this section shall prohibit the use of any
4 pre-licensing education course approved by the nationwide
5 mortgage licensing system and registry that is provided by the
6 employer of the applicant or an entity that is affiliated with
7 the applicant by an agency contract, or any subsidiary or
8 affiliate of the employer or entity.

9 (d) Pre-licensing education may be offered either in a
10 classroom, online, or by any other means approved by the
11 nationwide mortgage licensing system and registry.

12 (e) The pre-licensing education requirements approved by
13 the nationwide mortgage licensing system and registry in
14 subsection (a) for any state shall be accepted as credit towards
15 completion of pre-licensing education requirements in this
16 State.

17 (f) A person previously licensed under this chapter and
18 applying to be licensed under this chapter shall prove to the
19 satisfaction of the commissioner that the person has completed
20 all of the continuing education requirements for the year in
21 which the license was last held.



1 § -7 Testing of mortgage loan originators. (a) In order
2 to meet the written test requirement in section -5, an
3 applicant shall pass, in accordance with the standards
4 established under this section, a qualified written test
5 developed by the nationwide mortgage licensing system and
6 registry and administered by a test provider approved by the
7 nationwide mortgage licensing system and registry based upon
8 reasonable standards.

9 (b) A written test shall not be treated as a qualified
10 written test for purposes of subsection (a) unless the test
11 adequately measures the applicant's knowledge and comprehension
12 in appropriate subject areas, including:

- 13 (1) Ethics;
- 14 (2) Federal law and regulations pertaining to mortgage
15 origination;
- 16 (3) State law and regulations pertaining to mortgage
17 origination; and
- 18 (4) Federal and state law and regulations, including
19 instruction on fraud, consumer protection, the
20 nontraditional mortgage marketplace, and fair lending
21 issues.



1 (c) Nothing in this section shall prohibit a test provider
2 approved by the nationwide mortgage licensing system and
3 registry from providing a test at the location of the employer
4 of the applicant or the location of any subsidiary or affiliate
5 of the employer of the applicant, the location of any entity
6 with which the applicant holds an exclusive arrangement to
7 conduct the business of a mortgage loan originator.

8 (d) An individual shall have passed a qualified written
9 test if the individual achieves a test score of seventy-five per
10 cent or better. An individual may retake a test three
11 consecutive times with each consecutive taking occurring at
12 least thirty days after the preceding test. After failing three
13 consecutive tests, an individual shall wait at least six months
14 before taking the test again. A licensed mortgage loan
15 originator who fails to maintain a valid license for a period of
16 five years or longer shall retake the test, not taking into
17 account any time during which the individual is a registered
18 mortgage loan originator.

19 § -8 Standards for license renewal. (a) The minimum
20 standards for license renewal for mortgage loan originators
21 shall include the following:



1 (1) The mortgage loan originator continues to meet the
2 minimum standards for licensure under section -5;

3 (2) The mortgage loan originator has satisfied the annual
4 continuing education requirements in section -9;
5 and

6 (3) The mortgage loan originator has paid all required
7 fees for renewal of the license.

8 (b) The license of a mortgage loan originator failing to
9 satisfy the minimum standards for license renewal shall expire.
10 The commissioner may adopt procedures for the reinstatement of
11 expired licenses consistent with the standards established by
12 the nationwide mortgage licensing system and registry.

13 § -9 Continuing education; mortgage loan originators.

14 (a) A licensed mortgage loan originator shall complete at least
15 eight hours of education approved in accordance with subsection

16 (b) that shall include at least:

17 (1) Three hours of federal law and regulations;

18 (2) Two hours of ethics that shall include instruction on
19 fraud, consumer protection, and fair lending issues;
20 and

21 (3) Two hours of training related to lending standards for
22 the nontraditional mortgage product marketplace.



1 (b) For purposes of subsection (a), continuing education
2 courses shall be reviewed, and approved by the nationwide
3 mortgage licensing system and registry based upon reasonable
4 standards. Review and approval of a continuing education course
5 shall include review and approval of the course provider.

6 (c) Nothing in this section shall prohibit the use of any
7 education course that is approved by the nationwide mortgage
8 licensing system and registry and provided by the employer of
9 the mortgage loan originator or an entity that is affiliated
10 with the mortgage loan originator by an agency contract, or any
11 subsidiary or affiliate of the employer or entity.

12 (d) Continuing education may be offered either in a
13 classroom, online, or by any other means approved by the
14 nationwide mortgage licensing system and registry.

15 (e) A licensed mortgage loan originator:

16 (1) May only receive credit for a continuing education
17 course in the year in which the course is taken,
18 except for continuing education credits received
19 pursuant to this chapter; and

20 (2) May not take the same approved course in the same or
21 successive years to meet the annual requirements for
22 continuing education.



1 (f) A licensed mortgage loan originator who is an approved
2 instructor of an approved continuing education course may
3 receive credit for the course taught at the rate of two hours
4 credit for every one hour taught.

5 (g) Continuing education courses approved by the
6 nationwide mortgage licensing system and registry in subsection
7 (a) for any state, shall be accepted as credit towards
8 completion of continuing education requirements in this State.

9 (h) A licensed mortgage loan originator who subsequently
10 becomes unlicensed shall complete the continuing education
11 requirements for the last year in which the license was held
12 prior to issuance of a new or renewed license.

13 (i) A person meeting the requirements of section -
14 8(a)(1) and (3) may make up any deficiency in continuing
15 education as established by rule adopted by the commissioner.

16 § -10 Authority to require license. In addition to any
17 other duties imposed upon the commissioner, the commissioner
18 shall require mortgage loan originators to be licensed and
19 registered through the nationwide mortgage licensing system and
20 registry. The commissioner is authorized to participate in the
21 nationwide mortgage licensing system and registry. The



1 commissioner may establish by rule pursuant to chapter 91,
2 qualifications for mortgage loan organizations, including:

- 3 (1) Background checks of:
- 4 (A) Criminal history through fingerprint or other
 - 5 databases;
 - 6 (B) Civil or administrative records;
 - 7 (C) Credit history; or
 - 8 (D) Any other source deemed necessary by the
 - 9 nationwide mortgage licensing system and
 - 10 registry;
- 11 (2) The payment of fees to apply for, or renew licenses
- 12 through the nationwide mortgage licensing system and
- 13 registry;
- 14 (3) The setting or resetting as necessary of renewal or
- 15 reporting dates; and
- 16 (4) Requirements for amending or surrendering a license or
- 17 any other activity the commissioner deems necessary to
- 18 participate in the nationwide mortgage licensing
- 19 system and registry.

20 § -11 Nationwide mortgage licensing system; registry
21 information; challenge process. The commissioner shall
22 establish a process whereby mortgage loan originators may



1 challenge information entered into the nationwide mortgage
2 licensing system and registry by the commissioner.

3 § -12 Enforcement authorities; violations; penalties.

4 (a) In order to ensure the effective supervision and enforcement
5 of this chapter, the commissioner may, pursuant to chapter 91:

6 (1) Deny, suspend, revoke, condition, or decline to renew
7 a license for a violation of this chapter, rules,
8 order, or directive entered under this chapter;

9 (2) Deny, suspend, revoke, condition, or decline to renew
10 a license if an applicant or licensed mortgage loan
11 originator fails at any time to meet the requirements
12 of section -6 or section -8, or withholds
13 information or makes a material misstatement in an
14 application for a license or renewal of a license;

15 (3) Order restitution against persons subject to this
16 chapter for violations of this chapter;

17 (4) Impose fines on persons subject to this chapter
18 pursuant to this section; and

19 (5) Issue orders or directives under this chapter as
20 follows:

21 (A) Order or direct persons subject to this chapter
22 to cease and desist from conducting business,



1 including immediate temporary orders to cease and
2 desist;

3 (B) Order or direct persons subject to this chapter
4 to cease any harmful activities or violations of
5 this chapter, including immediate temporary
6 orders to cease and desist;

7 (C) Enter immediate temporary orders to cease
8 business under a license or interim license
9 issued pursuant to the authority granted under
10 this chapter if the commissioner determines that
11 the license was erroneously granted or the
12 licensee is currently in violation of this
13 chapter; or

14 (D) Order or direct any other affirmative action as
15 the commissioner deems necessary.

16 (b) The commissioner may impose a civil penalty on a
17 mortgage loan originator or person subject to this chapter, if
18 the commissioner finds on the record after notice and
19 opportunity for hearing that the mortgage loan originator or
20 person subject to this chapter has violated or failed to comply
21 with any requirement of this chapter or any regulation



1 prescribed by the commissioner under this chapter or order
2 issued under the authority of this chapter.

3 (c) The maximum penalty for each act or omission described
4 in subsection (b) shall be \$25,000.

5 (d) Each violation or failure to comply with any directive
6 or order of the commissioner is a separate and distinct
7 violation.

8 § -13 Surety bond; required. (a) Each mortgage loan
9 originator shall be covered by a surety bond in accordance with
10 this section. In the event that the mortgage loan originator is
11 an employee or exclusive agent of a person subject to this
12 chapter, the surety bond of the person may be used in lieu of
13 the mortgage loan originator's surety bond.

14 (b) The surety bond shall provide coverage for each
15 mortgage loan originator in an amount prescribed in subsection
16 (b). The surety bond shall be in a form as prescribed by the
17 commissioner. The commissioner may adopt rules with respect to
18 the requirements for the surety bonds necessary to accomplish
19 the purposes of this chapter.

20 (c) The penal sum of the surety bond shall be maintained
21 in an amount that reflects the dollar amount of loans originated
22 as determined by the commissioner.



1 (d) When an action is commenced on a licensee's bond the
2 commissioner may require the filing of a new bond.

3 (e) Immediately upon recovery of any action on the bond
4 the commissioner may require the filing of a new bond.

5 § -14 Confidentiality. (a) Except as otherwise
6 provided in Public Law 110-289, Section 1512, the requirements
7 under any federal law regarding the privacy or confidentiality
8 of any information or material provided to the Nationwide
9 Mortgage Licensing System and Registry, and any privilege
10 arising under federal or state law, including the rules of any
11 federal or state court, with respect to the information or
12 material, shall continue to apply to the information or material
13 after the information or material has been disclosed to the
14 nationwide mortgage licensing system and registry. The
15 information and material may be shared with all state and
16 federal regulatory officials with mortgage industry oversight
17 authority without the loss of privilege or the loss of
18 confidentiality protections provided by federal or state law.

19 (b) For these purposes, the commissioner is authorized to
20 enter into agreements or sharing arrangements with other
21 governmental agencies, the Conference of State Bank Supervisors,
22 the American Association of Residential Mortgage Regulators or



1 other associations representing governmental agencies as
2 established by rule or order of the commissioner.

3 (c) Information or material that is subject to a privilege
4 or confidentiality under subsection (a) shall not be subject to:

5 (1) Disclosure under any federal or state law governing
6 the disclosure to the public of information held by an
7 officer or an agency of the federal government or a
8 state; or

9 (2) Subpoena or discovery, or admission into evidence, in
10 any private civil action or administrative process,
11 unless with respect to any privilege held by the
12 nationwide mortgage licensing system and registry with
13 respect to the information or material, the person to
14 whom the information or material pertains waives, in
15 whole or in part, that privilege.

16 (d) Notwithstanding chapter 92F, the examination process
17 and related information and documents, including the reports of
18 examination, are confidential and are not subject to discovery
19 or disclosure in civil or criminal lawsuits.

20 (e) Notwithstanding any law to the contrary, the
21 disclosure of confidential supervisory information or any
22 information or material described in subsection (a) that is



1 inconsistent with subsection (a) shall be superseded by the
2 requirements of this section.

3 (f) This section shall not apply to information or
4 material relating to the employment history of, and publicly
5 adjudicated disciplinary and enforcement actions against,
6 mortgage loan originators that is included in the nationwide
7 mortgage licensing system and registry for access by the public.

8 § -15 Investigation and examination authority. (a) In
9 addition to any other authority under this chapter, the
10 commissioner shall have the authority to conduct investigations
11 and examinations, The commissioner may access, receive and use
12 any books, accounts, records, files, documents, information or
13 evidence including but not limited to:

- 14 (1) Criminal, civil, and administrative history
15 information, including nonconviction data as in
16 chapter 853;
- 17 (2) Personal history and experience information including
18 independent credit reports obtained from a consumer
19 reporting agency described in section 603(p) of the
20 Fair Credit Reporting Act; and
- 21 (3) Any other documents, information, or evidence the
22 commissioner deems relevant to the inquiry or



1 investigation regardless of the location, possession,
2 control or custody of the documents, information, or
3 evidence.

4 (b) For the purposes of investigating violations or
5 complaints arising under this chapter, or for the purposes of
6 examination, the commissioner may review, investigate, or
7 examine any licensed mortgage loan originator, individual, or
8 person subject to this chapter, as often as necessary in order
9 to carry out the purposes of this chapter. The commissioner may
10 direct, subpoena, or order the attendance of, and examine under
11 oath all persons whose testimony may be required about the loans
12 or the business or subject matter of any examination or
13 investigation, and may direct, subpoena, or order the person to
14 produce books, accounts, records, files, and any other documents
15 the commissioner deems relevant to the inquiry.

16 (c) Each licensed mortgage loan originator, individual or
17 person subject to this chapter shall provide to the commissioner
18 upon request, the books and records relating to the operations
19 of the licensee, individual, or person subject to this chapter.
20 The commissioner shall have access to the books and records and
21 interview the officers, principals, mortgage loan originators,
22 employees, independent contractors, agents, and customers of the



1 licensed mortgage loan originator, individual, or person subject
2 to this chapter concerning their business.

3 (d) Each licensed mortgage loan originator, individual, or
4 person subject to this chapter shall make or compile reports or
5 prepare other information as directed by the commissioner in
6 order to carry out the purposes of this section including but
7 not limited to:

8 (1) Accounting compilations;

9 (2) Information lists and data concerning loan
10 transactions in a format prescribed by the
11 commissioner; or

12 (3) Other information deemed necessary to carry out the
13 purposes of this section.

14 (e) The commissioner may charge an examination fee based
15 upon the cost per hour per examiner for all mortgage loan
16 originators examined by the commissioner or the commissioner's
17 staff. The hourly fee shall be \$40 or an amount as the
18 commissioner shall establish by rule pursuant to chapter 91.

19 § -16 Written agreements. For any transaction between
20 a mortgage loan originator and a borrower, the following
21 requirements shall apply:



1 (1) A mortgage loan originator shall comply with all
2 provisions of the Real Estate Settlement Procedures
3 Act, the Truth in Lending Act, and the Equal Credit
4 Opportunity Act, as those laws currently exist or as
5 they may be amended;

6 (2) Any written commitment letter to make a residential
7 mortgage loan with specified terms, including loan
8 amount, interest rate, points, and payment terms that
9 is issued by a mortgage loan originator and accepted
10 by a borrower, shall be honored by the mortgage loan
11 originator if the borrower has completely satisfied
12 all of the conditions of the commitment in a timely
13 manner and prior to the specified expiration date of
14 the commitment. A written commitment letter shall
15 specify the conditions precedent to closing the
16 residential mortgage loan and the lender that has the
17 ultimate authority to fund and close the residential
18 mortgage loan;

19 (3) Within three business days of receipt of a borrower's
20 completed residential mortgage loan application by the
21 licensee, and before the borrower gives the mortgage
22 loan originator any moneys except for an application



1 fee, the mortgage loan originator shall sign a
2 mortgage brokerage agreement with the borrower. The
3 mortgage brokerage agreement shall be with the person
4 employing the mortgage loan originator or the mortgage
5 loan originator if the mortgage loan originator is not
6 an employee. The mortgage brokerage agreement shall
7 be in writing and signed and dated by both the
8 borrower and the mortgage loan originator. The
9 mortgage brokerage agreement shall include a clear and
10 conspicuous statement:

- 11 (A) Explaining that a copy shall be made available
12 upon request, to the borrower or the borrower's
13 attorney for review prior to signing;
- 14 (B) Explaining whether the mortgage loan originator
15 is a fiduciary for the borrower;
- 16 (C) Explaining the nature of the mortgage loan
17 originator's compensation, and if the mortgage
18 loan originator is an employee, explaining the
19 compensation of the person that the mortgage loan
20 originator is employed by, and whether the
21 mortgage loan originator may receive compensation
22 from the borrower, the lender, or both;



- 1 (D) Describing the services the mortgage loan
- 2 originator will perform for the borrower;
- 3 (E) Setting forth the conditions under which the
- 4 borrower is obligated to pay fees to the mortgage
- 5 loan originator, the manner in which the borrower
- 6 may cancel the mortgage brokerage agreement, the
- 7 borrower's liabilities for fees and costs, and
- 8 the mortgage loan originator's contact
- 9 information for dispute resolution; and
- 10 (F) If the mortgage loan originator makes materially
- 11 false or misleading statements or omissions in
- 12 the mortgage brokerage agreement, the borrower,
- 13 upon written notice, may void the mortgage
- 14 brokerage agreement and recover moneys paid to
- 15 the mortgage loan originator by the borrower for
- 16 which no services have been performed.

17 A copy of the fully signed mortgage brokerage agreement
18 shall be given to the borrower by the mortgage loan originator
19 immediately after signing the mortgage brokerage agreement.

20 § -17 **Prohibited practices.** It shall be a violation of
21 this chapter for a mortgage loan originator to:



- 1 (1) Make a false promise likely to influence, defraud, or
2 mislead a borrower or lender, or to defraud any
3 person;
- 4 (2) Pursue a pattern or practice of making false promises
5 including through an agent, mortgage loan originator,
6 advertising, or otherwise;
- 7 (3) Misrepresent or conceal any material fact with respect
8 to any residential mortgage loan transaction resulting
9 in injury to any party;
- 10 (4) Fail to disburse funds in accordance with an
11 agreement, or fail to account or deliver to any person
12 any personal property including money, funds, a
13 deposit, a check or draft, a mortgage or other
14 document or thing of value that has come into the
15 mortgage loan originator's hands and that is not the
16 mortgage loan originator's property or that the
17 mortgage loan originator is not, at law or equity,
18 entitled to retain, and at the time that has been
19 agreed upon, or is required by law, or, in the absence
20 of a fixed time, upon demand by the person entitled to
21 the accounting or delivery;



- 1 (5) Fail to place in escrow, within a reasonable time upon
2 receipt, any money, fund, deposit, check, or draft,
3 entrusted to the mortgage loan originator by any
4 person dealing with the mortgage loan originator
5 pursuant to a written agreement, or to deposit the
6 funds in a bank account maintained by the mortgage
7 loan originator in a bank located, and doing business
8 in the State, wherein the funds are kept until
9 disbursement is authorized;
- 10 (6) Deliver a misleading or deceptive communication or
11 advertising, whether written, electronic, or oral,
12 when marketing or soliciting a residential mortgage
13 loan. A communication or advertisement that uses the
14 name or trademark of a financial institution, as
15 defined in section 412:1-109, or its affiliates or
16 subsidiaries, or infers that the communication or
17 advertisement is from, endorsed by, is related to, or
18 is the responsibility of the financial institution is
19 a misleading or deceptive communication. Advertising
20 that a specific interest rate, points or other
21 financial terms are available when either the rates,



1 points or financial terms are not actually available
2 is a misleading or deceptive communication;

3 (7) Solicit or arrange for a residential mortgage loan or
4 engage in the activity of a mortgage loan originator
5 as a direct result of arranging or soliciting a
6 residential mortgage loan at the dwelling of a
7 borrower without a prearranged appointment initiated
8 by and at the invitation of the borrower;

9 (8) Fill in or complete, without the consent of the
10 borrower, any blank on a residential mortgage loan
11 application that requests material information,
12 including financial information;

13 (9) Fill in or complete, without the consent of the
14 borrower, any blank on any instrument evidencing or
15 securing the residential mortgage loan, which blank
16 relates to the amount, interest rate, or monthly
17 payment of the residential mortgage loan;

18 (10) Make a payment, directly or indirectly, of any kind,
19 to any appraiser licensed or certified under chapter
20 466K to influence the valuation of the residential
21 real property that will secure a residential mortgage
22 loan;



1 (11) Condition compensation of an appraiser on establishing
2 a certain value for a residential real property; or

3 (12) Fail to comply with this chapter or any order or rule
4 made under the authority of this chapter.

5 § -18 Powers of commissioner. The commissioner may
6 adopt rules pursuant to chapter 91 as the commissioner deems
7 necessary for the administration of this chapter.

8 In addition to any other powers provided by law, the
9 commissioner shall have the authority to:

10 (1) Administer and enforce the provisions and requirements
11 of this chapter;

12 (2) Adopt, amend, or repeal rules and issue declaratory
13 rulings or informal nonbinding interpretations;

14 (3) Develop requirements for licensure through rules,
15 including establishing the content of the written
16 tests required under section -7;

17 (4) Investigate and conduct hearings regarding any
18 violation of this chapter or any rule or order of, or
19 agreement with, the commissioner;

20 (5) Create fact-finding committees that may make
21 recommendations to the commissioner for the
22 commissioner's deliberations;



- 1 (6) Require an applicant or any of its officers,
2 directors, employees, partners, members, managers, and
3 agents to disclose their relevant criminal history and
4 request a criminal history record check in accordance
5 with chapter 846;
- 6 (7) Contract with qualified persons, including
7 investigators who may be exempt from chapter 76 and
8 who shall assist the commissioner in exercising the
9 commissioner's powers and duties;
- 10 (8) Require that all fees, fines, and charges collected by
11 the commissioner under this chapter be deposited into
12 the compliance resolution fund established pursuant to
13 section 26-9(o);
- 14 (9) Subpoena witnesses and documents, administer oaths,
15 and receive affidavits and oral testimony, including
16 telephonic communications, and do any and all things
17 necessary or incidental to the exercise of the
18 commissioner's power and duties, including the
19 authority to conduct contested case proceedings under
20 chapter 91; and
- 21 (10) Require a mortgage loan originator to comply with any
22 rule, guidance, guideline, statement, supervisory



1 policy or any similar proclamation issued is adopted
2 by the Federal Deposit Insurance Corporation to the
3 same extent and in the same manner as a bank chartered
4 by the State or in the alternative, any policy
5 position of the Conference of State Bank Supervisors.

6 § -19 Fees and costs. (a) Each application for a
7 mortgage originator license shall be accompanied by an
8 application fee of \$, or an amount as the commissioner
9 shall establish by rule pursuant to chapter 91.

10 (b) Upon obtaining approval for a license, an initial
11 license fee shall be paid to the commissioner in the amount of \$
12 or such other amount as the commissioner shall establish by rule
13 pursuant to chapter 91.

14 (c) By December 31 of each year, every mortgage broker and
15 loan originator licensed under this chapter shall pay an annual
16 license renewal fee of \$, or other amount as the
17 commissioner shall establish by rule pursuant to chapter 91.

18 § -20 Elders. (a) Any person who, in the course of
19 engaging in conduct that requires a license under this chapter,
20 commits a violation of this chapter or the rules adopted
21 pursuant to this chapter, and the violation includes conduct
22 that is directed towards, targets, or is committed against an



1 elder, may be fined an amount not to exceed \$10,000 for each
2 violation in addition to any other fine or penalty assessed
3 against that person.

4 (b) As used in this section, "elder" means a consumer who
5 is sixty-two years of age or older."

6 SECTION 2. Section 412:3-502, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§412:3-502 Foreign financial institution. No foreign
9 financial institution shall receive deposits, lend money, or pay
10 checks, negotiate orders of withdrawal or share drafts from any
11 principal office, branch, agency, automatic teller machine, or
12 other location in this State, unless expressly authorized by
13 this chapter, other laws of this State, or federal law; provided
14 that nothing in this section shall prohibit any foreign
15 financial institution from participating in the disbursement of
16 cash through an automatic teller machine network or from
17 operating from any location in this State as a mortgage broker
18 licensed under chapter [454-7] , or as a real estate
19 collection servicing agent."

20 SECTION 3. Section 454-3, Hawaii Revised Statutes, is
21 amended by amending subsection (e) to read as follows:



1 "(e) All fees shall be established and adopted by the
2 director in accordance with chapter 91 and shall be deposited
3 into the compliance resolution fund established pursuant to
4 section 26-9(o) [-]; provided that, in order to establish
5 regulatory practices for residential mortgage lending, a
6 surcharge of \$400 shall be charged to every mortgage broker that
7 shall be due on December 31, 2009 and a surcharge of \$100 shall
8 be charged to every mortgage solicitor that shall be due on
9 December 31, 2009. Failure of any mortgage broker or mortgage
10 solicitor to pay the biennial renewal fee on or before December
11 31 of an even-numbered year or the surcharge shall constitute an
12 automatic forfeiture of the license. The forfeited license may
13 be restored; provided that application for restoration is made
14 within six months of the forfeiture and a penalty fee is paid in
15 addition to the delinquent license fee. A licensee who fails to
16 restore a license as provided in this subsection shall apply as
17 a new applicant."

18 SECTION 4. Section 477E-2, Hawaii Revised Statutes, is
19 amended by amending the definition of "creditor" to read as
20 follows:

21 "Creditor" means any bank; savings and loan association;
22 trust company; financial services loan company; credit union;



1 mortgage banker, [~~broker, or solicitor,~~] mortgage loan
2 originator; pawnbroker; mutual benefit society or fraternal
3 benefit society; debt adjuster; the issuer of a credit card as
4 defined in section 708-800; any person who initiates, extends,
5 renews, or continues loans of money or credit; any person who
6 regularly arranges for the initiation, extension, renewal, or
7 continuation of a loan of money or credit; or any assignee of an
8 original creditor who participates in the decision to grant,
9 extend, renew, or to continue [~~such~~] a loan of money or credit.

10 SECTION 5. Section 667-21, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) As used in this part:

13 "Borrower" means the borrower, maker, cosigner, or
14 guarantor under a mortgage agreement.

15 "Foreclosing mortgagee" means the mortgagee that intends to
16 conduct a power of sale foreclosure; provided that the mortgagee
17 is a federally insured bank, a federally insured savings and
18 loan association, a federally insured savings bank, a depository
19 financial services loan company, a nondepository financial
20 services loan company, a credit union insured by the National
21 Credit Union Administration, a bank holding company, a foreign



1 lender as defined in section 207-11, or an institutional
2 investor [~~as defined in section 454-1~~].

3 "Mailed" means to be sent by regular mail, postage prepaid,
4 and by certified, registered, or express mail, postage prepaid
5 and return receipt requested.

6 "Mortgage" means a mortgage, security agreement, or other
7 document under which property is mortgaged, encumbered, pledged,
8 or otherwise rendered subject to a lien for the purpose of
9 securing the payment of money or the performance of an
10 obligation.

11 "Mortgage agreement" includes the mortgage, the note or
12 debt document, or any document amending any of the foregoing.

13 "Mortgaged property" means the property that is subject to
14 the lien of the mortgage.

15 "Mortgagee" means the current holder of record of the
16 mortgagee's or the lender's interest under the mortgage, or the
17 current mortgagee's or lender's duly authorized agent.

18 "Mortgagor" means the mortgagor or borrower named in the
19 mortgage and, unless the context otherwise indicates, includes
20 the current owner of record of the mortgaged property whose
21 interest is subject to the mortgage.



1 "Open house" means a public showing of the mortgaged
2 property during a scheduled time period.

3 "Power of sale" or "power of sale foreclosure" means a
4 nonjudicial foreclosure under this part when the mortgage
5 contains, authorizes, permits, or provides for a power of sale,
6 a power of sale foreclosure, a power of sale remedy, or a
7 nonjudicial foreclosure.

8 "Property" means property, [+]real, personal, or mixed[+],
9 an interest in property, [+]including fee simple, leasehold,
10 life estate, reversionary interest, and any other estate under
11 applicable law[+], or other interests that can be subject to the
12 lien of a mortgage.

13 "Record" or "recorded" means a document is recorded or
14 filed with the office of the assistant registrar of the land
15 court under chapter 501 or recorded with the registrar of
16 conveyances under chapter 502, or both, as applicable.

17 "Served" means to have service of the notice of default
18 made in accordance with the service of process or the service of
19 summons under the Hawaii rules of civil procedure, and under
20 sections 634-35 and 634-36."

21 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:



1 "(b) Criminal history record checks may be conducted by:

2 (1) The department of health on operators of adult foster

3 homes or developmental disabilities domiciliary homes

4 and their employees, as provided by section 333F-22;

5 (2) The department of health on prospective employees,

6 persons seeking to serve as providers, or

7 subcontractors in positions that place them in direct

8 contact with clients when providing non-witnessed

9 direct mental health services as provided by section

10 321-171.5;

11 (3) The department of health on all applicants for

12 licensure for, operators for, and prospective

13 employees, and volunteers at one or more of the

14 following: skilled nursing facility, intermediate

15 care facility, adult residential care home, expanded

16 adult residential care home, assisted living facility,

17 home health agency, hospice, adult day health center,

18 special treatment facility, therapeutic living

19 program, intermediate care facility for the mentally

20 retarded, hospital, rural health center and

21 rehabilitation agency, and, in the case of any of the

22 above-related facilities operating in a private

1 residence, on any adult living in the facility other
2 than the client as provided by section 321-15.2;

3 (4) The department of education on employees, prospective
4 employees, and teacher trainees in any public school
5 in positions that necessitate close proximity to
6 children as provided by section 302A-601.5;

7 (5) The counties on employees and prospective employees
8 who may be in positions that place them in close
9 proximity to children in recreation or child care
10 programs and services;

11 (6) The county liquor commissions on applicants for liquor
12 licenses as provided by section 281-53.5;

13 (7) The department of human services on operators and
14 employees of child caring institutions, child placing
15 organizations, and foster boarding homes as provided
16 by section 346-17;

17 (8) The department of human services on prospective
18 adoptive parents as established under section 346-
19 19.7;

20 (9) The department of human services on applicants to
21 operate child care facilities, prospective employees
22 of the applicant, and new employees of the provider



1 after registration or licensure as provided by section
2 346-154;

3 (10) The department of human services on persons exempt
4 pursuant to section 346-152 to be eligible to provide
5 child care and receive child care subsidies as
6 provided by section 346-152.5;

7 (11) The department of human services on operators and
8 employees of home and community-based case management
9 agencies and operators and other adults, except for
10 adults in care, residing in foster family homes as
11 provided by section 346-335;

12 (12) The department of human services on staff members of
13 the Hawaii youth correctional facility as provided by
14 section 352-5.5;

15 (13) The department of human services on employees,
16 prospective employees, and volunteers of contracted
17 providers and subcontractors in positions that place
18 them in close proximity to youth when providing
19 services on behalf of the office or the Hawaii youth
20 correctional facility as provided by section 352D-4.3;

21 (14) The judiciary on employees and applicants at detention
22 and shelter facilities as provided by section 571-34;



1 (15) The department of public safety on employees and
2 prospective employees who are directly involved with
3 the treatment and care of persons committed to a
4 correctional facility or who possess police powers
5 including the power of arrest as provided by section
6 353C-5;

7 (16) The department of commerce and consumer affairs on
8 applicants for private detective or private guard
9 licensure as provided by section 463-9;

10 (17) Private schools and designated organizations on
11 employees and prospective employees who may be in
12 positions that necessitate close proximity to
13 children; provided that private schools and designated
14 organizations receive only indications of the states
15 from which the national criminal history record
16 information was provided as provided by section 302C-
17 1;

18 (18) The public library system on employees and prospective
19 employees whose positions place them in close
20 proximity to children as provided by section 302A-
21 601.5;



- 1 (19) The State or any of its branches, political
2 subdivisions, or agencies on applicants and employees
3 holding a position that has the same type of contact
4 with children, vulnerable adults, or persons committed
5 to a correctional facility as other public employees
6 who hold positions that are authorized by law to
7 require criminal history record checks as a condition
8 of employment as provided by section 78-2.7;
- 9 (20) The department of human services on licensed adult day
10 care center operators, employees, new employees,
11 subcontracted service providers and their employees,
12 and adult volunteers as provided by section 346-97;
- 13 (21) The department of human services on purchase of
14 service contracted and subcontracted service providers
15 and their employees serving clients of the adult and
16 community care services branch, as provided by section
17 346-97;
- 18 (22) The department of human services on foster grandparent
19 program, retired and senior volunteer program, senior
20 companion program, and respite companion program
21 participants as provided by section 346-97;



- 1 (23) The department of human services on contracted and
2 subcontracted service providers and their current and
3 prospective employees that provide home and community-
4 based services under Section 1915(c) of the Social
5 Security Act (Title 42 United States Code Section
6 1396n(c)), or under any other applicable section or
7 sections of the Social Security Act for the purposes
8 of providing home and community-based services, as
9 provided by section 346-97;
- 10 (24) The department of commerce and consumer affairs on
11 proposed directors and executive officers of a bank,
12 savings bank, savings and loan association, trust
13 company, and depository financial services loan
14 company as provided by section 412:3-201;
- 15 (25) The department of commerce and consumer affairs on
16 proposed directors and executive officers of a
17 nondepository financial services loan company as
18 provided by section 412:3-301;
- 19 (26) The department of commerce and consumer affairs on the
20 original chartering applicants and proposed executive
21 officers of a credit union as provided by section
22 412:10-103;



1 ~~[(27)]~~ The department of commerce and consumer affairs
2 on:

3 (A) Each principal of every non-corporate applicant
4 for a money transmitter license; and

5 (B) The executive officers, key shareholders, and
6 managers in charge of a money transmitter's
7 activities of every corporate applicant for a
8 money transmitter license,

9 as provided by section 489D-9; ~~[and]~~ ;

10 ~~(28)~~ The department of commerce and consumer affairs on the
11 applicant for a mortgage loan originator's license as
12 provided by section -10 or the applicant's officers,
13 directors, partners, members, managers, employees, or
14 agents;

15 ~~[(28)]~~ ~~(29)~~ Any other organization, entity, or the State, its
16 branches, political subdivisions, or agencies as may
17 be authorized by state law."

18 SECTION 7. Chapter 454, Hawaii Revised Statutes, is
19 repealed.

20 SECTION 8. A mortgage broker or mortgage solicitor
21 licensed under chapter 454, Hawaii Revised Statutes, on July 1,
22 2009, shall not be required to be re-licensed under this Act.



1 until such later date approved by the Secretary of the United
2 States Department of Housing and Urban Development, pursuant to
3 the authority granted under Public Law 110-289, Section 1508(a).

4 SECTION 9. There is appropriated out of the compliance
5 resolution fund of the under section 26-9(D) the sum of
6 \$ or so much thereof as may be necessary for fiscal
7 year 2009-2010 to carry out the purposes of this Act.

8 The sum appropriated shall be expended by the department of
9 commerce and consumer affairs for the purposes of this Act.

10 SECTION 10. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 11. This Act shall take effect on July 1, 2009.

13

INTRODUCED BY: *Rosslyn H. Baker*
By Request



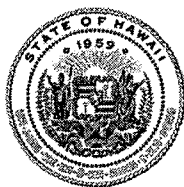
Report Title:

Mortgage Brokers

Description:

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws regulating mortgage brokers and loan originators. Repeals chapter 454.





LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

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DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Thursday, February 12, 2009
8:30 a.m.

TESTIMONY ON S.B. NO. 1218 - RELATING TO MORTGAGE LOAN ORIGINATORS

THE HONORABLE ROSALYN H. BAKER, 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. 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 to this committee 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 (promoted largely by mortgage brokers) lost their value, and the United States housing and financial markets spiraled downward.

Mortgage brokers no longer play a 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 that 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 is untimely, arguably irrelevant, and an inappropriate use of State funds in the midst of a significant economic slowdown.

The stated purpose of the bill is to allow the Commissioner of Financial Institutions to regulate, license, examine and enforce laws regulating mortgage brokers and loan originators, 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:

Relevance – The issues addressed by the proposal are no longer pressing. Lenders no longer offer the dangerous "sub-prime", "non-traditional", pay option, teaser rate mortgage loans which were the products that needed to be addressed. 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.

Expense – Parallel State/federal programs would be costly for both the State and the significantly diminished number of active mortgage loan originators that would be regulated by such a program. Based on December, 2008 mortgage broker/solicitor renewals under HRS Chapter 454, as tracked by the Professional and Vocational Licensing Division, we now estimate that approximately 2,100 individuals may be likely to apply to be licensed as MLOs with the repeal of HRS Chapter 454 and the implementation of this proposed new law in its place. Estimates made during the 2008 session for the first four years of operation of the new program showed a projected cost of \$1,804,467 to mobilize for program implementation (i.e., hire initial staff, conduct training, purchase furniture, fixtures and equipment, establish the requisite administrative infrastructure, etc.). Prorated among 2,100 licensees, and rounding up for unforeseen expenses, we estimate that each licensed MLO carried over from the existing mortgage broker/solicitor program would therefore have to shoulder approximately \$1,000 in program implementation costs during the first 4 years, i.e., \$250 per MLO per year. Thereafter, we presently estimate on-going program operating costs, without adjustment for inflation, of approximately \$815,846 per year (the program's "run rate"). Once again, prorating this amount among the 2,100 initial MLO licensees, and rounding that figure up for unforeseen expenses, we estimate that each of the initial 2,100 MLOs would cost the Department approximately \$500 per year in program operating costs. These estimates do not include the cost to the State to join

and participate in the Nationwide Mortgage Licensing System, which, while not yet precisely quantified, is currently foreseen by the Conference of State Bank Supervisors as likely to be a significant additional amount. This bill fails to address all such program implementation costs. In fact, a proposed surcharge in Section 3 of the bill, on all existing mortgage brokers and solicitors as of December 31, 2009, not only would fall far short of the projected program mobilization costs that I have just described, but is also fatally flawed in that the measure, as drafted, would repeal HRS Chapter 454 before the proposed December 31, 2009 date when the surcharge would become due and payable, thereby rendering the proposed surcharge null and void.

Incidentally, the bill also fails to take into account the time that is likely to be required for the State to join the NMLS. The State will need time to prepare to join the NMLS, since that process will necessarily involve transitioning to new, more complex application procedures with the related staff training required to do so. Moreover, there are likely to be additional delays associated with the inability of the NMLS to phase in all participating States at the same time. Hawaii would not be "at the head of the list" of States joining the NMLS and will therefore have to "wait its turn" in line to join. As drafted, the measure would implement some licensing requirements as early as July 1, 2009, which makes no provision for these necessary and unavoidable delays.

Staffing – In order to implement a parallel state statute, the Department would hire up to seven staff members in order to administer the program in accordance with

federal standards. The new staff would be particularly specialized and outside recruitment would likely be needed to fill the majority of the positions.

Deadlines – Adopting a parallel State statute to address the issue would impose deadlines that can no longer be met. 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, can be met, making the proposed bill moot.

Alternatives – Since the proposed measure clearly fails 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 automatically 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 and essentially unproductive debates over what is or is not appropriate as far as a State mortgage broker statute is concerned;
- result in significant 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, up-and-running program that will immediately benefit both regulated mortgage loan originators as well as Hawaii's consumers.

The Department also opposes this measure because it would adversely impact the priorities set forth in the Executive Biennium Budget for Fiscal Years 2009-2010.

The Department therefore recommends that your committee defer this unnecessary measure, allowing Hawaii's consumers, mortgage brokers and mortgage lenders to immediately benefit from a professionally staffed, up-and-running federal regulatory and supervisory initiative, while at the same time saving Hawaii's taxpayers from 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 in the long term 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.



SB 1218 Relating to Mortgage Loan Originators
Senate Committee on Commerce and Consumer Protection

February 12, 2009
Room 229

8:30 a.m.

The Office of Hawaiian Affairs supports the purpose and intent of SB 1218.

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.



HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203
PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the Senate Committee on
Commerce and Consumer Protection
Thursday, February 12, 2009, at 8:30AM

Testimony for SB 1218 Relating to Mortgage Loan Originators

TO: The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Members of the Senate Committee on Commerce and Consumer Protection

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association in support of SB 1218. I have worked with certain mortgage brokers for some time on repeated efforts to reform the present licensing system, which efforts included my participation on a task force put together by the Division of Financial Institutions.

On a national level, there has been concern over the lack of regulatory oversight of mortgage brokers, whether reflected in the HUD-Treasury report or the report of the President's Working Group of March 2008. No doubt hastened by the economic crisis visited upon us, last summer, the US Congress passed and the President signed the SAFE Act (Secure and Fair Enforcement for Mortgage Licensing Act of 2008). The purpose of the SAFE Act was not to relieve Hawaii of the costs of implementing a testing, licensing and regulatory oversight framework for mortgage brokers. Quite to the contrary, the purpose of the SAFE Act, in its own words, was "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry . . ."

Passage of the bill will not impact the State's treasury at all for the simple reason as stated in the report of DCCA to this legislature: "Because the Department is specially funded, it has no access to general funds. Revenue is program specific, and arrives throughout the year." In fact, one of the major stumbling blocks to passage of last year's bill was a dispute over the fees necessary to make the program self-sustaining and thus it cannot be credibly argued that the State's economic situation should justify non-passage of this bill.

I will point out that last year, the administration bill on mortgage brokers specifically requested an appropriation of \$140,000 from the Compliance Resolution Fund for its start up costs and thus any argument that general funds must be used for startup costs is undercut by last year's request.

Under the SAFE Act, states have until July 31, 2009 (unless a state's legislature meets every other year) to adopt legislation implementing the SAFE Act unless such state already has a

law that complies with SAFE. Accordingly, to date, 25 other states (including Washington D.C.) have introduced legislation to adopt a regulatory scheme to comply with SAFE.

The consequence of not adopting this legislation is that Hawaii will forfeit its right to regulate mortgage brokers in Hawaii. Under the SAFE Act, if a state does not enact a law (or regulation) by July 31, 2009 implementing SAFE, the Housing and Urban Development (“HUD”) was granted backup authority to implement a regulatory scheme for that state. The SAFE Act specifically refers to HUD’s authority as backup authority, signifying the intent of Congress that each and every state live up to its responsibility to enact such legislation.

The consequences of failure to act would mean that Hawaii would lose control of laws regulating mortgage brokers when it was the specific intent of Congress that regulation of brokers should be done by the states and federal intervention is necessary only if a state fails to do so.

If Hawaii fails to pass a measure compliant with SAFE, then the mortgage brokers in Hawaii will be faced with two competing regulatory schemes – the existing Chapter 454 and whatever scheme HUD drafts. Clearly, the brokers will have to comply with the testing and licensing rules of HUD but that leaves great ambiguity whether a broker would be subject to the limited consumer protections in Chapter 454 and other provisions of Chapter 454. I should also note that under the SAFE Act, there is only one category of a broker, now called mortgage loan originator, which flies in the face of Chapter 454 which has two categories: mortgage broker and solicitor. We can avoid this confusion by simply passing this bill and rescinding Chapter 454.

The Conference of State Bank Supervisors (the accrediting agency of DFI) and American Association of Residential Mortgage Regulators have prepared a model act which is compliant with SAFE. Large parts of this bill are taken verbatim from the model act.

To argue that the bill is irrelevant because there are no subprime mortgage loans or nontraditional mortgage loans being made is, in realty, an irrelevant argument. The purpose of the SAFE Act was to test and license mortgage brokers and raise the level of regulatory oversight of them regardless of whether the broker dealt in subprime loans or nontraditional mortgage loans. I will point out the administration’s previous efforts to test and license mortgage brokers was at a time when the word “subprime” or “stated income” or “100% financing” was not in the headlights of the public. Thus, it is clear that the motivation for a bill such as this exceeds concerns about subprime.

Brokers are still active. Many mainland lenders operate in Hawaii through brokers so it cannot be said that just because local lenders are cautious about brokers that brokers have disappeared from the horizon.

While granted, the number of brokers have declined (probably because a lot of part-timers have left the industry), the number will actually grow because many who were once exempt from chapter 454 will now have to be tested and licensed as mortgage brokers because of the SAFE Act.

It is not until section 16 of the bill that this bill supplements the model act by requiring that a written agreement should be executed between the mortgage loan originator and a borrower. This provision was in last year’s bill.

Both the model act and this bill do have a section on prohibited practices. The drafted words may differ but conceptually, they address the same issues: fraud, dishonesty, theft, and undue appraiser influence. However this bill goes further to address two areas of local concerns

based on past and current untoward practices: misleading advertisement and door-to-door sales of mortgages.

The bill also includes a section on preventing elder abuse, which is in existing law because of the efforts by DFI, a protection which may disappear if we abdicate to HUD the right to control mortgage brokering in this State.

I note that HB 31 seeks to prohibit using credit reports to make employment decisions. This bill will shortly be before this committee. The SAFE Act, and thus the model act, specifically envisions the use of credit reports by the licensing authority and care should be taken to insure that HB 31 does not detract from the ability of the State to comply with the SAFE Act.

We recognize that the bill is a work in progress and technical amendments may be made.

For these reasons, we strongly support this bill.

**SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

February 12, 2009

Senate Bill 1218 Relating to Mortgage Loan Originators

Chair Baker and members of the Senate Committee on Commerce and Consumer Protection, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm has the following comments to Senate Bill 1218 Relating to Mortgage Loan Originators.

First we believe the reference and definition “National mortgage licensing system and registry” should be revised to read “Nationwide Mortgage Licensing System and Registry,” to conform to the HUD approved model act, and to conform all references thereto in the bill, since the reference in some instances are inconsistent.

Second, we believe an additional definition, “Individual” should be included which also conforms to the definition in the model act. The definition would read: “Individual” means a natural person.

On page 7, line 6, the word “dead” should be “deed”.

On page 9, line 11, the “and” at the end of subsection (6) should be an “or”.

We believe a new subsection (b) should be added to section 3 on page 10, following the text of subsection (a) which would clarify that loan processors or underwriters who are independent contractors must also obtain a license as contained under the model act. The subsection would read as follows:

“(b) A loan processor or underwriter who is an independent contractor may not engage in the activities of loan processor or underwriter unless such independent contractor loan processor or underwriter obtains or maintains a license under this chapter. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.”

On page 17, lines 9-10, the phrase should be reworded to read as follows:

“...if the individual achieves a test score of seventy-five percent of the correct answers to questions or better.”

On page 20, lines 5-8, subsection (g) should be amended by adding the following phrase after the word “state” on line 7:

“..., which are successfully completed by a licensed mortgage loan originator...”

On page 21, line 22, the phrase, “by rule pursuant to chapter 91” should be inserted between the words “process” and “whereby”.

Beginning on page 32 and continuing through page 36 certain enumerated “prohibited practices” are listed. This language is different from the language in the model bill, although conceptually much of the enumerated practices would arguably fall within both lists. We have attached the list from the model act.

There are also certain provisions from the model act which were not contained in the bill. Specifically, the requirement to report to the Nationwide Mortgage Licensing System and Registry by both licensees and the commissioner; the requirement for the prominent display of the unique identifier; and the prohibition against a loan processor or underwriter from representing to the public that such an individual can perform the activities of a mortgage loan originator. We have also attached these sections.

We appreciate the opportunity to present testimony on this bill.

Prohibited Practices

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Act may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this Act without holding a valid license as required under this Act, or assist or aide and abet any person in the conduct of business under this Act without a valid license as required under this Act ;
- (7) Fail to make disclosures as required by this Act and any other applicable state or federal law including regulations thereunder;
- (8) Fail to comply with this Act or rules or regulations promulgated under this Act, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;
- (9) Make, in any manner, any false or deceptive statement or representation [optional add on: including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising];
- (10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;
- (11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- (12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Act;
- (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
- (14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

Model Act Sections which were not included:

MSL XX.XXX.180 MORTGAGE CALL REPORTS—Each [mortgage licensee] shall submit to the Nationwide Mortgage Licensing System and Registry reports of condition, which shall be in such form and shall contain such information as the Nationwide Mortgage Licensing System and Registry may require.

MSL XX.XXX.190 REPORT TO NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY—[Notwithstanding or Subject to state privacy law] the Commissioner is required to report regularly violations of this act, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry subject to the provisions contained in [MSL XX.XXX.150].

MSL XX.XXX.210 UNIQUE IDENTIFIER SHOWN—The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations or advertisements, including business cards or websites, and any other documents as established by rule, regulation or order of the Commissioner.

MSL XX.XXX.220 SEVERABILITY—If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.



February 10, 2009

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

Re: SB 1218 – Relating to Mortgage Loan Originators
Thursday, February 12, 2009 - 8:30 am

I am Gregory D. 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.

After the close of the 2008 Hawaii legislative session, the US Congress passed legislation known as the Title V – the SAFE Act, which when fully implemented will register all mortgage loan originators in the United States. It establishes a national registry of mortgage loan originators (MLOs) and will issue a permanent ID that will remain with individual MLOs through out their working careers. For MLOs not employed by government supervised depositories (e.g. Banks and S & Ls), the legislation requires background checks, pre-licensing education, testing and ongoing continuing education. This program will be will be administered by state regulators in most cases, however the federal Department of Housing and Urban Development (HUD) is required to implement the program in any state that does not adopt the federal program.

BILL SB 1218 provides the legislative authority and direction to allow the Hawaii DCCA to modify the existing state program dealing with Mortgage Brokers (HRS Chap. 454) and expand it to include other covered MLOs while meeting the standards of the SAFE Act.

In addition to meeting the standards of SAFE, the legislation codifies certain actions by MLOs that represent good business practices, including a requirement for a MLO Agreement that sets expectations in regard to the lending process for the consumer when dealing with a covered MLO.

We believe it is in the interest of the consumers of Hawaii to have the program operated by the state, rather than a federal agency.

Sincerely,

Greg Ravelo
President

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

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February 12, 2009

Senator Rosalyn H. Baker, Chair
and members of the Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 1218 (Mortgage Loan Originators)**
Hearing Date/Time: Thursday, February 12, 2009, 8:30 A.M.

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

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

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 110-239). 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 fall 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 and Registry ("NMLSR").

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

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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 NMLSR. 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 Chapter 454, Hawaii Revised Statutes.

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, 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, Hawaii and other states should 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. Other groups such as the American Financial Services Association, of which the Hawaii Financial Services Association is a member, have proposed various amendments to the 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.

Concerns about this Bill:

This Bill before you consists of 51 pages. The first 29 pages up through Sec. -15 are nearly identical to the CSBS/AARMR model state legislation. However, there are some minor variations in those first 29 pages from the CSBS/AARMR model state legislation and also some typographical errors.

But this Bill contains more than just the CSBS/AARMR model state legislation provisions. The remaining 22 pages of this Bill beginning with Sec. -16 on page 29 appears to be a recycling of selected provisions from the 2008 mortgage broker legislation.

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

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There are some people who are advocating the passage of this Bill as drafted even though their employees are exempt from this Bill under Sec. -2. On the other hand, non-depository financial services loan companies (the members of the Hawaii Financial Services Association) have a sincere and genuine interest in this Bill because any of their employees who are loan originators are covered by this Bill.

We oppose the approach taken in this Bill as drafted. Instead, here are three preferred alternate approaches that your Committee should consider taking:

Alternative 1. This Bill should be redrafted. This Bill generally tracks the CSBS/AARMR model state legislation up to page 29. To that extent, this Bill is generally acceptable. However this Bill can be improved with the addition of amendments that the American Financial Services Association is nationally proposing.

As stated above, non-depository financial services loan companies are Hawaii financial institutions under the Code of Financial Institutions (HRS Chapter 412). They make mortgage loans and personal loans just like other Hawaii financial institutions under HRS Chapter 412. The companies are required to comply with certain capital requirements. They are regulated and examined by the Commissioner of Financial Institutions. And, they are directly responsible and accountable for the actions of their employees, including any of their employees who are mortgage loan originators. As such, financial services loan companies are different from mortgage brokerage companies which are licensed under the mortgage broker statute and not under the Code of Financial Institutions. For this reason, the employees of non-depository financial services loan companies should be treated differently from mortgage brokers or solicitors for the purposes of the written agreements and prohibited practices.

Accordingly, Sec. -2 (Exemptions) beginning on page 7 should be amended for mortgage loan originators who are employees of non-depository financial services loan companies. Under this approach, we are not asking that they be exempt from the portions of this Bill that track the CSBS/AARMR model state legislation. We are simply asking that these employees be exempt from Sec. -16 (written agreements) and Sec. -17 (prohibited practices) just as employees of some other Hawaii financial institutions are exempt.

The written agreements provision (Sec. -16) and the prohibited practices provision (Sec. -17) are not from the CSBS/AARMR model state legislation. Parts of these provisions are from the existing mortgage broker law (HRS Chapter 454) from which financial services loan companies are exempt. But many other parts of these provisions are taken from last year's mortgage broker bill.

Under this approach, to exempt employees of non-depository financial services loan companies from Sec. -16 and Sec. -17, your Committee should amend this Bill as follows:

“§ -2 Exemptions.

(A) This chapter shall not apply to the following:

- (1) A registered mortgage loan originator, when acting for an insured depository institution, a subsidiary of an insured depository institution

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

February 12, 2009

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regulated by a federal banking agency, or an institution regulated by the Farm Credit Association;

- (2) Any individual who offers or negotiates terms of a residential mortgage loan with, or on behalf of an immediate family member of the individual;
- (3) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence;
- (4) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator;
- (5) An individual engaging solely in loan processor or underwriter activities; provided that an independent contractor who performs the services of a loan processor or underwriter shall not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator, and any loan processor or contractor who advertises that the individual can or will perform any of the activities of a mortgage loan originator shall not be exempt under this chapter;
- (6) A person or entity that only performs real estate brokerage activities and is licensed or registered by the State unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of the lender, mortgage broker, or other mortgage loan originator; and
- (7) A person or entity solely involved in extensions of credit relating to timeshare plans, as the term is defined in section 101(53D) of title 11, United States Code.

(B) Sections -16 and -17 of this chapter shall not apply to employees of non-depository financial services loan companies regulated under chapter 412."

Alternative 2. This Bill should be redrafted. This Bill generally tracks the CSBS/AARMR model state legislation up to page 29. To that extent, this Bill is generally acceptable. However this Bill can be improved with the addition of amendments that the American Financial Services Association is nationally proposing.

However, beginning with page 29, this Committee should redraft the written agreements provision (Sec. -16) and the prohibited practices provision (Sec. -17). Those are not worded from

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

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the CSBS/AARMR model state legislation. Parts of those provisions are from the existing mortgage broker law (HRS Chapter 454), but many other parts are taken from last year's mortgage broker bill.

In this regard, your Committee should revise Sec. -16 (written agreements) to mirror HRS Sec. 454-3.1(written agreements) of the mortgage broker law. Your Committee should delete provision (3), which is not in HRS Sec. 454-3.1, and reword provision (2). This way, Sec. -16 will be identical to the existing HRS Sec. 454-3.1. Nothing more. Nothing less.

Similarly, your Committee should revise Sec. -17 (prohibited practices) to be identical to what is in HRS Sec. 454-4 (a) of the existing mortgage broker law. Your Committee should delete the following provisions in Sec. -17 which are not in the existing law: (6), (7), (8), (9), (10), and (11). This way, Sec. -17 will be identical to the existing HRS Sec. 454-4. Again, nothing more, nothing less.

Alternative 3. This approach is to not pass this Bill and instead let loan originators be licensed through the HUD-backup system as permitted by the SAFE Act. We understand that the Hawaii Department of Commerce & Consumer Affairs, which would license loan originators under this Bill, opposes this Bill as drafted and prefers to have licensing through the HUD-backup system. Until the HUD-backup system starts, mortgage brokers and solicitors will still be regulated under Chapter 454.

We want to point out that even as your Committee is deliberating this Bill, CSBS/AARMR is asking HUD to delay the licensing date for loss mitigation specialists employed by servicers. See the attached February 5, 2009 letter from CSBS/AARMR. The CSBS/AARMR model state legislation, and any Hawaii legislation, would have to be revised to address this recent development. Conceivably there could be other national developments which could impact any state legislation.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

Enclosure



February 5, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

Dear Secretary Donovan:

The S.A.F.E. Mortgage Licensing Act of 2008 (SAFE), signed into law on July 30, 2008, establishes federal minimum standards of licensing or registration for individuals meeting the definition of loan originator or registered loan originator. SAFE provided that States have a period of time to update their laws to meet the new federal standards, and allocated responsibility to HUD to determine if a state meets the minimum requirements.

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) supported the passage of SAFE and shared Congress' desire to set minimum standards that would apply nationwide. CSBS and AARMR developed a model state act to provide states with a template to update their mortgage legislation as soon as possible in a uniform fashion and in a manner consistent with SAFE. CSBS and AARMR have appreciated HUD's rapid consideration of the CSBS/AARMR model state law and HUD's December 24, 2008 interpretation of SAFE as it would apply to the model state law. This collaboration has enabled states to begin legislative efforts to update their laws and implement SAFE requirements.

CSBS and AARMR are committed to meaningful loss mitigation efforts to assist homeowners in modifying the terms of their existing mortgages. States have been leading advocates in the area of home loss prevention, calling for aggressive action by servicers, and more focused attention by regulators at both the state and federal level.

Concerns have been raised that immediate application of SAFE licensing requirements to servicer loss mitigation specialists assisting homeowners experiencing problems might seriously curtail such activity at a time of unprecedented numbers of mortgage delinquencies and defaults. In response, some states are finding it necessary to address this situation through their SAFE legislation. CSBS and AARMR are concerned that in these attempts, state exemptions from SAFE may inadvertently violate SAFE requirements and put states in non-compliance with the federal law. Therefore, we request greater clarification of your interpretation of SAFE and request a reasonable delay in the licensing requirements for certain individuals.

The passage of SAFE was made possible under the Housing and Economic Recovery Act of 2008 (HERA). SAFE and HERA together were designed to provide consumer protection while fostering recovery of the nation's housing market. These goals are not mutually exclusive, however full implementation of all SAFE requirements on loss mitigation specialists in the midst of a significant need for loan modifications could delay assistance to homeowners who are in trouble.

The consumer protection gains achieved through licensing or registering loan originators specializing in foreclosure mitigation efforts would be offset in this time of crisis by the potential loss of capacity of servicers to conduct loan workouts. The need to resolve this conflict presents itself to not only State licensing agencies, but Federal registering agencies as well.

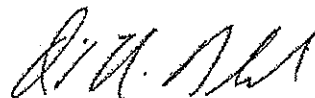
Pursuant to HUD's December 24, 2008 interpretive letter, Section D. Delayed Effective Date of Requirement to Obtain and Maintain a License, "HUD may approve a later date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act to be in the state legislation and in obtaining state licenses within one year." Based on this interpretation, CSBS and AARMR propose an effective licensing date of July 31, 2011, or such later date as approved by the Secretary of HUD, for loss mitigation specialists employed by servicers.

CSBS and AARMR appreciate HUD's efforts to date in providing guidance for states in implementing the SAFE Act. We thank you for your consideration of this request and look forward to working with HUD in the coming year to further the goals of consumer protection and improved supervision.

Sincerely,



Neil Milner
President and CEO
Conference of State Bank Supervisors



David Bleicken
President
American Association of Residential
Mortgage Regulators

The Honorable Rosalyn H. Baker, Chair
The Honorable David Y. Ige, Vice Chair
Senate Committee on Commerce and Consumer Protection

Hearing : Thursday, February 12, 2009, 8:30 a.m.
State Capitol, Conference Room 229

IN SUPPORT OF SB 1218 WITH AMENDMENTS

Chair and Members of the Committee:

My name is Ryker Wada, representing the Legal Aid Society of Hawai'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 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 seeks 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, SB 1218, eliminates significant tools for wronged persons and does not provide enough protection for consumers in the State of Hawaii. SB 1218 also seeks to regulate mortgage loan originators.

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

1. Delete Sections 7 and 8 of the bill thus retaining the current consumer protections enumerated in the current law, HRS Section 454-8. Section 454 declares that contracts made by unlicensed mortgage brokers or solicitors are void and unenforceable. The

protections were upheld by the Supreme Court in Beneficial Hawaii v. Kida. If this section is eliminated as described in SB 1218, an important protection for consumers will have been eliminated.

2. 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 are both unfair and deceptive and thus should be actionable under HRS Chapter 480. Similar language is contained in related consumer protection statutes.

The Legal Aid Society of Hawaii supports the intent of SB 1218, 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 attempts to strengthen protections for consumers by regulating the mortgage broker industry, however SB 1218 needs to be amended as it would eliminate one of the strongest protections for consumers. We support SB 1218 with amendments and its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.