

**SB 2254**



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TO THE  
SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2010

Wednesday, February 17, 2010  
9:15 a.m.

TESTIMONY ON S.B. NO. 2254 - 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, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify in opposition to Senate Bill No. 2254 relating to mortgage loan originators.

The Department opposes this bill, which we feel is both unnecessary and potentially in conflict with the federal legislation to which it relates, namely the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act").

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The purpose of the bill is to exempt nonprofit organizations whose primary activity is construction, remodeling, or rehabilitation of homes for use by low-income families. Under the bill, the exemption would apply to nonprofit organizations that make no-profit loans to low income families and do not accrue fees directly to the nonprofit organization.

The Department wishes to note that it is not conceptually opposed to the stated purpose of this bill. However, because there is presently no exemption for nonprofit entities under the SAFE Act, this provision would appear to conflict with that Act and would, therefore, most likely be deemed by the U.S. Department of Housing and Urban Development ("HUD"), which was charged with the implementation of the SAFE Act, to be non-compliant and in conflict with the federal law. To determine the extent and probability of such a conflict, the Department requested a review of S.B. No. 2254 by the Conference of State Bank Supervisors ("CSBS"), which drafted the Model State Law for the implementation of the Safe Act by all fifty states, and is currently working with HUD to expedite that implementation. CSBS has informed us that, at this time, if the subject exemption were added to Chapter 454F, Hawaii Revised Statutes ("HRS"), HUD would most likely conclude that our statute is not SAFE Act compliant.

Furthermore, we believe, and both HUD and CSBS concur, that the proposed exemption is unnecessary since the SAFE Act and Chapter 454F, HRS leave room for state regulators to determine, on a case by case basis, which nonprofit organizations are, in reality, not acting as mortgage loan originators, as that term is defined in our statute at

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Section 454F-2, HRS, when they perform mortgage loan origination activities without "compensation or gain." It is believed that both CSBS and HUD will recommend that states take this approach, rather than enact specific legislation that may be too broad.

Therefore, while the intent of Senate Bill No. 2254 may be commendable, the measure appears to be both unnecessary and in conflict with federal law on the subject matter that it addresses.

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



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Presentation to the Senate Committee on Commerce and Consumer Protection

Wednesday, February 17, 2010, at 9:15 am, Conf Rm 229

Testimony for SB 2254 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 of First Hawaiian Bank testifying for the Hawaii Bankers Association. We oppose SB 2254 because it violates the SAFE Act.

If the intent is to exempt individuals who work for a non-profit, that cannot be done. Our present state law on mortgage loan originators, like the SAFE Act, addresses individuals, not companies, whether for profit or not, and it is clear that employees of nonprofit companies must be licensed at the state level.

On the HUD website, in its section on FAQ, HUD wrote:

**“7. Exemption for Non-profit Organizations:**

QUESTION: May a state provide an exemption for non-profit organizations?

ANSWER: No. Individuals, not organizations, are subject to the SAFE Act’s licensing requirements. Accordingly, whether an organization has a non-profit status is not determinative as to whether individuals working for or on behalf of such an organization engage in the business of a loan originator and, accordingly, must be licensed. A state may not exempt individuals whose activities constitute “engaging in the business of a loan originator.”

However, the State may, if it chooses, exempt a nonprofit corporation from the requirements for a mortgage loan origination company since that is not governed by the SAFE Act.

Thank you for this opportunity to testify, and I would be happy to answer any questions the Committee may have.



# Habitat for Humanity®

West Hawaii

## *Building houses, building hope*

Tom Whittemore  
Board President

Diane Quitiquit  
1<sup>st</sup> Vice President

Rodney Ito  
2<sup>nd</sup> Vice President

Brenda Lam  
Secretary

Amy Bircher  
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Laura Aquino

Pete Hendricks

Gene (Bucky) Leslie

Bob Lindsey

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SB2254: Relating to Mortgage Loan Originators  
Senate Committee on Commerce and Consumer Protection  
Wednesday, February 17, 2010 9:45 a.m.  
Conference Room 229

### TESTIMONY IN SUPPORT

On behalf of the Board of Directors at Habitat for Humanity West Hawaii, I would like to request that Habitat for Humanity be exempt from the provisions of Chapter 454F of the Hawaii Revised Statutes.

In the last three years we have helped eight (8) low income families achieve the dream of owning a simple, decent home in West Hawaii. Habitat writes zero (0) percent interest loans, and no profit goes to Habitat. The average monthly mortgage payment for our partner families is \$350.00. Habitat needs to be exempt from Chapter 454F Hawaii Revised Statutes.

We are a small non-profit organization. If we are not exempted from Act 32 which was passed by the legislature last year we will not be able to extend mortgages to families that want to be Habitat homeowners.

Please exempt Habitat for Humanity from the provisions of Chapter 454F of the Hawaii Revised Statutes.

Thank you.

Tom Whittemore  
President  
Board of Directors





# Habitat for Humanity®

## West Hawaii

*Building houses,  
building hope*

SB2254: Relating to Mortgage Loan Originators  
Senate Committee on Commerce and Consumer Protection  
Wednesday, February 17, 2010 9:45 a.m.  
Conference Room 229

Tom Whittemore  
*Board President*

### TESTIMONY IN SUPPORT

Diane Quittiquit  
*1<sup>st</sup> Vice President*

My name is Patrick Hurney. I am the executive director Habitat for Humanity West Hawaii. In the last three years we have helped eight (8) low income families achieve the dream of owning a simple, decent home on the Hawaii Island.

Rodney Ito  
*2<sup>nd</sup> Vice President*

Habitat writes zero (0) percent interest loans, and no profit goes to Habitat. The average monthly mortgage payment for our partner families is \$350.00. Habitat needs to be exempt from Chapter 454F Hawaii Revised Statutes.

Brenda Lam  
*Secretary*

Amy Bircher  
*Treasurer*

We are a small non-profit organization. If we are not exempted from Act 32 which was passed by the legislature last year we will not be able to extend mortgages to families that want to be Habitat homeowners.

Laura Aquino

Pete Hendricks

Please exempt Habitat for Humanity from the provisions of Chapter 454F of the Hawaii Revised Statutes.

Gene (Bucky) Leslie

Bob Lindsey

Thank you.

Ronette Obrey

Randy Botti

Patrick F. Hurney  
Executive Director

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*Building Houses, Changing Lives*

February 16, 2010

Reference: SB2254: Relating to Mortgage Loan Originator  
Senate Committee on Commerce and Consumer Protection  
Wednesday, February 17, 2010 9:45 a.m.  
Conference Room 229

#### TESTIMONY IN SUPPORT

My name is Jean Han and I am the Executive Director of Molokai Habitat for Humanity. During the last 12 years we have built 16 of simple, decent, and affordable homes for very low income families on the island of Molokai. These Habitat partner families put hundred of hours of "sweat equity" into their houses and those of others as well as investing themselves in the building process, homeowners gain self-reliance, self-esteem, and new skills. We have partnered with local businesses, churches and individuals who have contributed hours, money and meals for volunteers to make the builds possible.

Molokai Habitat is currently building its 17<sup>th</sup> home and we plan to build 4 more homes within the next twelve months. We sell the homes at zero interest mortgage loan for 20 years and all payments will be put back into our Fund for Humanity to be used to build more homes.

Molokai Habitat is a small non-profit organization. If we are not exempted from Act 32, which was passed by the legislature last year, we will not be able to extend mortgages to families that want to be Habitat homeowners.

Please exempt Habitat for Humanity from the provisions of Chapter 454F of the Hawaii Revised Statutes.

Thank you.

Jean Han  
Executive Director  
Molokai Habitat for Humanity