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TO THE
HOUSE COMMITTEE ON FINANCE

THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2010

Friday, March 26, 2010
12:00 p.m.

TESTIMONY ON S.B. NO. 2603, S.D. 2, H.D. 1 - RELATING TO THE SECURE AND
FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT

THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lynne Himeda, Deputy Commissioner of Financial Institutions,
testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").
We appreciate the opportunity to submit testimony in support of Senate Bill No. 2603,
S.D.2, H.D.1, with the changes we are requesting.

The Department has long endorsed the appropriate regulation and supervision of
mortgage loan originators (MLO), and has worked for some years attempting to implement
such a program. This bill, which now contains the necessary amendments to Hawaii
Revised Statutes Chapter 454F such that it is compliant with the federal S.A.F.E. Act,

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would essentially appear to accomplish the Department's objectives in this regard since it also essentially provides the requisite appropriation and staffing necessary for the Division of Financial Institutions ("DFI") to implement this industry-funded program.

At a joint hearing of this bill by the House Committees on Consumer Protection & Commerce and Judiciary, those committees amended the bill by blanking out all amounts for various licensing and other application fees set forth in proposed new Section 454F-N, for further consideration by your Committee on Finance.

Each of the fee amounts set out in Section 454F-N of Senate Draft 2 of the bill was carefully calculated by DFI based on its projections of revenues that will be required to operate a self-sustaining, fully S.A.F.E Act -compliant program for the supervision and regulation of MLOs. The Department therefore respectfully requests that all fee amounts blanked out in House Draft 1 be restored without further changes to the amounts that were provided in Section 454F-N of Senate Draft 2. For your convenience, a copy of Section 454F-N as it appeared in Senate Draft 2, containing the fee amounts that DFI has determined to be necessary, is attached hereto as Attachment "A".

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

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Attachment "A"

§454F-N Mortgage loan originator and mortgage loan

originator company fees. (a) A mortgage loan originator shall pay the following fees to obtain and maintain a valid mortgage loan originator license:

- (1) Initial application fee of \$600;
- (2) Annual license renewal fee of \$375;
- (3) Reinstatement fee of \$100;
- (4) Late fee of \$25 per day; and
- (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91.

(b) A mortgage loan originator company shall pay the following fees to maintain a valid mortgage loan originator company license or branch license:

- (1) Fees payable for a principal office of a mortgage loan originator company:
 - (A) Initial application fee of \$990;
 - (B) Annual license renewal fee of \$650;
 - (C) Reinstatement fee of \$100;

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(D) Late fee of \$25 per day; and

(E) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule pursuant to chapter 91, for each control person, executive officer, director, general partner, and manager; and

(2) Fees payable for each branch office of a mortgage loan originator company:

(A) Initial application fee of \$250;

(B) Annual license renewal fee of \$125;

(C) Reinstatement fee of \$100; and

(D) Late fee of \$25 per day.

(c) In addition to fees charged by the National Mortgage Licensing System, a licensee shall pay to the commissioner a fee of \$50 for each of the following amendments to information provided to the National Mortgage Licensing System that require the review of the commissioner:

(1) Change of physical location, including address change for branch or principal place of business;

(2) Addition or deletion of a "d/b/a" assignment;

(3) Change of manager; or

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(4) Change of legal name;

The commissioner, upon a showing of good cause, may waive any fee set forth in this subsection.

(d) The fees established by this section are non-refundable and are in addition to any fees established and charged by the Nationwide Mortgage Licensing System, an approved educational course provider, an approved educational testing provider, a law enforcement agency for fingerprints and background checks, or by a credit reporting agency used by the Nationwide Mortgage Licensing System.

(e) The commissioner may establish, by rule pursuant to chapter 91, any other fees or charges necessary for the administration of this chapter.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2603, S.D. 2, H.D. 1

March 26, 2010

RELATING TO THE SECURE AND FAIR ENFORCEMENT FOR MORTGAGE
LICENSING ACT

Senate Bill No. 2603, S.D. 2, H.D. 1, amends the application, licensing, and regulatory requirements of the Secure and Fair Mortgage Licensing Act. Among other amendments, the bill also authorizes the Commissioner of Financial Institutions to hire temporary and permanent staff and creates the Mortgage Loan Recovery special fund. The purpose of the fund is to reimburse individuals awarded actual damages up to \$25,000 from mortgage loan companies or licensed mortgage loan originators. Revenue comes from fees charged for applications made by mortgage loan companies or licensed mortgage loan originators.

As a matter of general policy, this department does not support the creation of any special or revolving fund which does not meet the requirements of Sections 37-52.3 and 37-52.4 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. It is difficult to determine whether the fund will be self-sustaining.



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Scott Coffman
President
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Testimony to the House of Representatives
COMMITTEE ON FINANCE
Rep. Marcus R. Oshiro, Chair

Friday, March 26, 2010 12:00 p.m.
Conference Room 308

To: Representative Marcus R. Oshiro, Chair,
Members of the House Committee on Finance

Re: SB 2603, SD2, HD1 – Relating To The Secure And Fair Enforcement For Mortgage Licensing Act (the SAFE Act)

The Hawaii Association of Mortgage Brokers supports passage of this bill.

My name is Scott Coffman, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers ("HAMB") is a 250+ member of mortgage professionals. The bill will enable the DCCA to implement a program that will meet the requirements for participation in the Nationwide Mortgage Licensing System (NMLS) program regulating Mortgage Loan Originators (MLOs). NMLS participation is required for individuals who originate residential mortgage loans effective January 2011.

Recognizing that the new Hawaii program will be self-funding by the collective MLO industry participants, we propose a reduction in permanent staffing to one supervisor, two examiners and one assistant, and the following fee structure:

Mortgage Loan Originator License:

- (1.) Initial application fee of \$400;
- (2.) Annual license renewal fee of \$200;

Mortgage Loan Originator Company License, principal office:

- (A) Initial application fee of \$600;
- (B) Annual license renewal fee of \$400;

Mortgage Loan Originator Company License, branch office:

- (A) Initial application fee of \$400;
- (B) Annual license renewal fee of \$200;

Based on the rounded figures of approximately 1500 MLO and 300 MLOC current licensees in 2010, after the \$100 surcharge per MLO and per MLOC which generated about \$180,000 in cash to start the program, our proposed initial fees would

generate \$180,000 more from MLOCs and \$600,000 more from MLOs for a 2010 total revenue of \$960,000, well in excess of the \$894,077 mentioned in Section 32 of the current HD1 bill, page 80, line 1. This amount should be sufficient to get the program off the ground this year and continue to support it in subsequent years.

Fees charged should be reasonably priced for the licensees, because most MLOCs are one to two person companies, small businesses which make up the backbone of the Hawaii and National economy. If the fees are priced unreasonably, MLOs and MLOCs have no incentive to continue business. Please give this issue serious consideration.

We are more than willing to discuss this further with any and all concerned.

Sincerely,



Scott Coffman
President
Hawaii Association of Mortgage Brokers



HAWAII FINANCIAL SERVICES ASSOCIATION

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March 26, 2010

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

Re: **Senate Bill 2603, SD 2, HD 1 (Secure and Fair Enforcement for Mortgage Licensing Act)**
Hearing Date/Time: Friday, March 26, 2010, 12:00 P.M.

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is the trade association for Hawaii's financial services loan companies, which are regulated by the Hawaii Commissioner of Financial Institutions. Financial services loan companies make mortgage loans and other loans.

The HFSA supports the intent of this Bill, and proposes an amendment.

The purposes of this Bill are to: (a) make amendments to the application, licensing, and regulatory requirements of the Secure and Fair Enforcement for Mortgage Licensing Act; (b) establish the mortgage recovery fund to protect consumers injured by violations of HRS Chapter 454F; (c) include mortgage loan originator companies in the regulatory system established by HRS Chapter 454F; and (d) authorize the Commissioner of Financial Institutions to hire temporary and permanent staff to effectuate the purposes of HRS Chapter 454F.

HRS Chapter 454F is the Secure and Fair Enforcement for Mortgage Licensing Act (Hawaii SAFE Act). It was enacted in 2009 pursuant to the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (federal SAFE Act) and is based on the model state law of the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

This Bill is still a "work in progress" as to certain issues, such as the dollar amount of the fees that need to be paid by applicants and licensees.

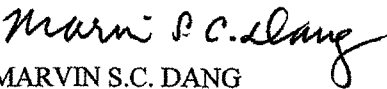
Another issue relates to nondepository financial services loan companies. One intent of the current draft is that a "nondepository financial services loan company" licensed under Article 9 of HRS Chapter 412 is exempt from being licensed under HRS Chapter 454F as a "mortgage loan originator company". However, its employees are not exempt from being licensed as "mortgage loan originators" if they perform mortgage loan originator functions. Another intent of this Bill is that a loan processor or underwriter who is an "employee" of a nondepository financial services loan company shall not be required to be licensed under HRS Chapter 454F as a "mortgage loan originator".

To clarify the intent, we propose that Section 2 of this Bill be revised on page 3, line 19 (HRS Sec. 412:9-_(c)) to read as follows:

"(c) This section does not exempt an employee of a nondepository financial services loan company who originates mortgage loans, or an independent contractor providing mortgage loan originating, processing, or underwriting services to [of a nondepository financial services loan company who acts as a mortgage loan originator or a loan processor or underwriter as defined in section 454F-1 for] a nondepository financial services loan company, from licensure under chapter 454F."

We understand that the Commissioner of Financial Institutions does not object to this revision.

Thank you for considering our testimony.


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

(MSCD/hfsa)