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PRESENTATION OF THE  
DIVISION OF FINANCIAL INSTITUTIONS

TO THE  
HOUSE COMMITTEES ON  
CONSUMER PROTECTION & COMMERCE  
AND  
JUDICIARY

THE TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION OF 2011

Wednesday, March 16, 2011  
2:00 p.m.

TESTIMONY ON S.B. NO. 1519, S.D.3  
RELATING TO MORTGAGE LOAN ORIGINATORS

THE HONORABLE ROBERT N. HERKES, CHAIR,  
THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR  
AND MEMBERS OF THE COMMITTEES:

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o support.  
Comments

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner") testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). The Department respectfully requests your committees' consideration of Senate Bill No. 1519, S.D.3, Proposed H.D.1.

The Department has a long history of supporting the appropriate regulation and supervision of mortgage loan originators, and this bill contains important amendments to

Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act, Chapter 454F, Hawaii Revised Statutes ("HRS"), that are necessary to meet regulatory objectives.

The Department became aware of the need for certain amendments to Chapter 454F, HRS, in late 2010, when the Nationwide Mortgage Licensing System ("NMLS") became operational for Hawaii licensees. For the most part, the requested amendments do not make large, substantive changes, but instead, focus on making the licensing determination process more expedient and efficient, and making Hawaii's law consistent with the language and purposes of the NMLS. The few substantive changes that are being proposed arose out of concepts that were discussed with the mortgage loan originator industry, in response to the realization that the current statute fails to address important prohibited mortgage loan originator practices.

After meeting with industry representatives and discussing the provisions in S.D. 2, we reached a definitive agreement with those industry representatives on a package of amendments to Chapter 454F, HRS, and that package of agreed amendments was presented in testimony to the Senate Ways and Means Committee at a hearing on S.D. 2 on February 24, 2011. However, probably due to the time constraints, that committee did not adopt the agreed package of amendments and instead made only technical nonsubstantive amendments for the purposes of clarity and style, which passed Third Reading in the Senate as S.D. 3.

Consequently, after further consultation with the industry's representatives, they and the Department have now produced the Proposed H.D.1, which incorporates the agreed package of amendments that the Senate Ways and Means Committee did not adopt.

We reiterate that these amendments not only have the industry's support, but are deemed essential to the effective implementation of Chapter 454F, HRS, which, as you may know, is a relatively new law that was implemented to replace Hawaii's now repealed law on Mortgage Brokers and Solicitors, Chapter 454, HRS, and to ensure this State's full compliance with the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (also known as the federal S.A.F.E. Mortgage Licensing Act of 2008).

The amendments that we have agreed upon with industry representatives, and which are reflected in Proposed H.D.1, make the following changes to S.D.3:

1. Page 2, §454F-D Tangible net benefits – delete this section, as the industry said they self-police themselves and legitimate mortgage loan originators make loans to borrowers with the borrowers best interest in mind.
2. Page 6, §454F-F Restrictions on loan terms – delete this section, as the Federal Reserve Board will be regulating this section effective April 1, 2011.
3. Page 11, §454F-H Fees, commissions, and charges payable to mortgage loan originators and mortgage loan originator companies – delete this section, as the Federal Reserve Board will be regulating this section effective April 1, 2011.
4. Page 26, Section 12 §454F-14 – delete the provisions for confidentiality as the Office of Information Protection assures the Department that the licensees confidential information will be protected by state law.
5. Page 32, Section 13 of the bill, §454F-17 Prohibited practices
  - a. (15) add the word "final" between the words "a" and "residential" on line 3, to read as follows: "Fill in or complete any blank on a final residential mortgage loan application that requests material information including

financial information without adequate supporting documentation provided by the borrower;"

- b. (16) replace the word "instrument" with the words "mortgage or note" on line 8 to read as follows: "Fill in or complete any blank on any mortgage or note evidencing or securing the residential mortgage loan which relates to the amount, interest rate, term, or monthly payment of the residential mortgage loan;"

6. Page 32 and 33, Section 13 of the bill, §454F-17 Prohibited practices

- a. (17), (18) and (19) delete sections as we suggested deleting sections above related to tangible net benefits, costs and fees, and borrowers ability to pay pursuant to an upcoming Federal Reserve Board regulation of these provisions effective April 1, 2011.

7. Page 34, Section 13 of the bill, §454F-17 Prohibited practices

- a. (20) replacing "foreclosure or liquidation" with "current market value" on line 6 and adding language to allow the sale to a bona fide buyer on line 8, to read as follows: "Originate a residential mortgage loan based primarily on the current market value of the borrower's collateral rather than on the borrower's ability to repay the loan according to its terms, provided the sale of the property is made to a bona fide buyer;"

8. Page 34, Section 13 of the bill, §454F-17 Prohibited practices

- a. (21) Advertising – Substitute the following language:

Advertise terms of a residential mortgage loan, including loan amount, annual percentage rate (APR), monthly payment, interest rates, margins, discount points, fees, commissions, limitations, or other material facts unless

the licensee is able to make the advertised loan and terms available to well qualified applicants, and provided that advertisements including any loan term, must also include other loan terms including loan amount, interest rate, annual percentage rate (APR), and monthly payment, all in the same size font as every other loan term; or

- b. (22) Misrepresent a borrower's credit rating – delete this prohibition, as lenders also request a credit report on residential mortgage loan applicants.
- c. (23) delete the words "Misrepresent, inflate or fabricate, or" on line 16 so that paragraph (23) shall read as follows: "Encourage a borrower to misrepresent, inflate, or fabricate the source or amount of a borrower's actual income or assets in the application or underwriting process for a residential mortgage loan."

Accordingly, the Department respectfully requests your committees to adopt Proposed H.D.1, with the full support of the Department and the industry representatives who have collaborated with the Department to resolve our initial differences and reach accord on the package of amendments contained in Proposed H.D.1.

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



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LIEUTENANT GOVERNOR

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CATHY L. TAKASE  
ACTING DIRECTOR

To: House Committee on Consumer Protection & Commerce  
House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: Wednesday, March 16, 2011, 2 p.m.  
State Capitol, Room 325

Re: Testimony on S.B. No. 1519, S.D. 3  
Relating to Mortgage Loan Originators

*Comments*

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The Office of Information Practices (OIP), which administers the State's public records law, the Uniform Information Practices Act (Modified), HRS chapter 92F (the UIPA), takes no position on the purpose of this bill, but offers the following comment on a proposed confidentiality provision.

The bill amends section 454F-14, HRS, by amending subsection (a) (page 27-28) to provide that "no material contained in any application or record shall be made available to the public if it is determined by the commissioner of financial institutions to be confidential" under criteria set forth. The subsection then sets forth standards for confidentiality that are nearly identical or very similar to exceptions to required disclosure under the UIPA. The proposed confidentiality statute thus provides special treatment for the licensure records of mortgage loan originators distinct from the treatment given to similar licensure records maintained by the Department of Commerce and Consumer Affairs (DCCA) and all other government agencies, which ordinarily withhold such information in accordance with the UIPA's existing standards for this type of information.

Whether to provide the confidentiality provision proposed for the records covered by this bill is a policy decision for the Legislature. However, OIP notes that it would be a departure from the underlying intent of the UIPA to provide a uniform standard for records disclosure.

OIP also has concerns about the wording of the provision, which gives the commissioner full discretion to determine whether information is confidential under the criteria provided, because it would make that determination generally unreviewable. OIP understands that, in response to its concerns, the DCCA is recommending an amended provision that would simply make records confidential based upon standards provided without giving the commissioner the discretion to make the determination. If the legislature determines that a specific confidentiality provisions should be provided, OIP strongly recommends that the amended language be adopted to allow appeal to and meaningful review by the courts or OIP where records are withheld.

Thank you for the opportunity to testify on this bill.



To the Committee On Consumer Protection & Commerce and the Committee on Judiciary  
The Twenty-Sixth Legislature Regular Session of 2011  
Hearing for March 16, 2011 2pm Conference Room 325  
Written comments on SB 1519, SD3

The Honorable Committee Chairs, Vice-Chairs and Members of the Committees: OPPOSED

I am Anthony Behm, presently a branch manager of Flagship Financial Group, LLC. I have been involved in originating mortgage loans in Hawaii since 1982. My comments today represent only myself as a concerned member of a profession which would be severely damaged by this proposed legislation as presently written. The industry groups have offered comments on a more general basis and engaged in negotiations with the Commissioner during which time they were able to offer industry insight into these proposals.

DFI Commissioner Iris Ikeda Catalani issued comments on SB 1519 SD2 which were not incorporated into SB1519 SB3. I hope she will be offering the same recommendations and amendments to this hearing. Most of my concerns are addressed in her document.

- P2 454D I concur with the deletion of the tangible net benefits test and the reasons for the deletion.
- P6 454F-D I concur with the elimination of the restrictions on loan terms and the reasons for the deletion.
- P11 454F-H I strongly concur with the elimination of this section dealing with the manner in which MLOCs and MLOs are compensated. Even if the FED action is blocked in court, this section is so bad in so many ways it should be eliminated.
- P26 Section 12 454F-14 I concur with the deletion of the confidentiality section due to overlapping law.
- P31 Section 13 Prohibited practices I concur with the restricting language which helps eliminate unintended consequences.
- P32 – 33 Section 13. I concur with eliminating prohibited practices 17, 18 and 19 to allow the federal law and regulation to handle the practices.
- P33 Section 13 prohibited practices 20 The change in the language is helpful, but I disagree with the intent of this clause. While I acknowledge it is “politically correct” to insist a loan is approved only if we can prove an applicant’s ability to repay, I do not agree with this thought. You are cutting off an opportunity to a great many people just because their income does not meet what are basically arbitrary documentation standards. The assumptions underlying this prohibition have not been proved. This is legislation by sound bite rather than by sound reasoning. By eliminating potential real estate buyers you are undermining the value of real estate. Be very careful of the unintended consequences here. I strongly recommend this entire clause be eliminated. The bad guys are gone. The bad lenders are also gone. This is not necessary or desirable.
- P34 Section 13 clause 21 I do not concur with this advertising prohibited act. The wording suggested by Scott Coffman does help, but all this is handled in extensive federal law and regulations. The logic for eliminating clauses 17, 18 and 19 should be applied here and the clause deleted
- P34 Section 13 clause 22. I concur this is not necessary for the reason given.
- P34 Section 13 clause 23 I concur in the elimination of the duplicate phrase.

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My remaining concerns are:

- P8 (c) starting on line 12
  - 1. The new HUD regulations have pretty well done away with any need for client trust accounts. P31 line 5-6 protects the consumer in a much more realistic manner.
  - 2. Record keeping is a function performed within any company, but the responsibility varies widely depending on the size and design of each company. Why address it here?
  - 3. Again my comments from #2 above apply. Am I to understand I am also responsible for what my MLO does with his personal copy of the personnel paperwork?
  - 6. The individual MLO has this responsibility for continuing education and cannot renew his / her license if he / she fails to do so. Why is this clause necessary, or even desirable?
  - 7. Basically the same as #6 above. They have to stay licensed and pay their fees. If they do not they cannot originate loans. A MLOC has to ensure the MLOs are properly licensed.
  - 8. Training to company standards is a basic business practice in terms of internal needs. The training or education required by NMLS has to be provided by NMLS certified courses and educators. The MLO has the responsibility to get licensed and stay licensed.
  - 9. Same as #8.
  - 11. There are other laws relating to record retention. Is this necessary?
- How can a MLO ever be considered to be an independent contractor without having to be a MLOC? If a processor or underwriter wants to be an independent contractor they are required under 454F-4 to be a MLOC. Why is an independent MLO held to a lower standard?
- I contend the authority and control a branch manager is required to exert under the SAFE act and HRS 454F renders MLOs under their jurisdiction incapable of being considered an independent contractor. They are simply tax cheats. Why accommodate this fiction in this legislation? Why legislate an economic advantage to a bunch of tax cheaters? Extend the MLOC requirement to any MLO who contends he is an independent contractor.

Now some numbers to give some perspective. According to a DCCA-PVL report on 4-1-09 there were licenses issued under Act 454 to 701 Mortgage Brokers, 115 Mortgage Broker Branches and 5,873 Mortgage Solicitors for a total of 6,689 licenses. In addition to these licensees there were an unknown number of loans originated by foreign lenders acting under an exemption contained in HRS Act 206. As of 3-13-11 there were a total of 363 licenses issued under Act 454F. I believe these are pretty much apple to apple numbers, but I am sure DFI could elaborate on these numbers. My point here is there are now far fewer loan originators than there were in the past. We have good reason to believe that those who were able to improperly originate mortgage loans in Hawaii in the past are no longer able to do so. Let's show some legislative restraint and see if the present set up works before we start messing with it.

Sincerely,

*Anthony J. Behm*

Anthony J. Behm  
Hawaii Division Manager  
Mortgage Loan Originator NMLS#354464



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

March 15, 2011

The Honorable Robert Herkes, Chair and  
Members of the House Committee on  
Consumer Protection and Commerce  
State Capitol, Room 325  
Honolulu, Hawaii 96813

The Honorable Gilbert Keith-Agaran, Chair and  
Members of the House Committee on Judiciary  
State Capitol, Room 325  
Honolulu, Hawaii 96813

Re: Senate Bill 1519, SD 3 Relating to Mortgage Loan Originators

Chair Herkes, Chair Keith-Agaran, Members of the House Committee on Consumer Protection and Commerce and Members of the House Committee on Judiciary:

I am Rick Tsujimura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH SUPPORTS Senate Bill 1519, SD 3 Relating to Mortgage Loan Originators. We also agree with the amendments suggested by DFI Commissioner Catalani and the Hawaii Association of Mortgage Brokers. The proposed amendments are as follows:

- §454F-D Tangible net benefit – delete this section, as the industry said they self-police themselves and legitimate mortgage loan originators make loans to borrowers with the borrower's best interests in mind.
- §454F-F Restrictions on loan terms – delete this section, as the Federal Reserve Board will be regulating this section effective April 1, 2011.
- §454F-H Fees, commissions, and charges payable to mortgage loan originators and mortgage loan originator companies – delete this section, as the Federal Reserve Board will be regulating this section effective April 1, 2011.
- Section 12 of the bill, §454F-14 – delete the provisions for confidentiality as the Office of Information Protection assures the Department that the licensee's confidential information will be protected by state law.

- Section 13 of the bill, §454F-17 Prohibited practices:
  - (15) add the word “final” between the words “a” and “residential” on line 3, to read as follows: “Fill in or complete any blank on a FINAL residential mortgage loan application that requests material information including financial information without adequate supporting documentation provided by the borrower;”
  - (16) replace the word “instrument” with the words “mortgage or note” on line 8 to read as follows: “Fill in or complete any blank on any MORTGAGE OR NOTE evidencing or securing the residential mortgage loan which relates to the amount, interest rate, term or monthly payment of the residential mortgage loan.”
- Section 13 of the bill, §454F-17 Prohibited practices – delete sections (17), (18) and (19) as we suggested deleting sections above related to tangible net benefits, costs and fees, and borrower’s ability to pay pursuant to an upcoming Federal Reserve Board regulation of these provisions effective April 1, 2011.
- Section 13 of the bill, §454F-17 Prohibited practices:
  - (20) replacing “foreclosure or liquidation” with “current market” on line 6 and adding language to allow the sale to a bona fide buyer on line 8, to read as follows: “Originate a residential mortgage loan based primarily on the CURRENT MARKET value of the borrower’s collateral rather than on the borrower’s ability to repay the loan according to its terms, PROVIDED THE SALE OF THE PROPERTY IS MADE TO A BONA FIDE BUYER.”
- Section 13 of the bill, §454F-17 Prohibited practices:
  - (21) Advertising - add "loan amount, annual percentage rate (APR), monthly payment" after "including" on line 10. Add the word "well" and delete the words "a reasonable number of" on lines 13 and 14. At the end of the section, add "Advertisements including any loan term, must also include other loan terms including loan amount, interest rate, annual percentage rate (APR), and monthly payment, all in the same size font as every other loan term."
  - (22) Misrepresent a borrower’s credit rating – delete this prohibition, as lenders also request a credit report on residential mortgage loan applicants.
  - (23) delete the phrase “misrepresent, inflate or fabricate, or” on line 16 to read as follows: “Encourage a borrower to misrepresent, inflate, or fabricate the source or amount of a borrower’s actual income or assets in the application or underwriting process for a residential mortgage loan.”

MBAH strongly supports this bill with the proposed amendments and asks for your favorable consideration.

Thank you for the opportunity to present this testimony.

# HAWAII FINANCIAL SERVICES ASSOCIATION

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March 16, 2011

Rep. Robert N. Herkes, Chair  
and members of the House Committee on Consumer Protection & Commerce  
Rep. Gilbert S.C. Keith-Agaran, Chair  
and members of the House Committee on Judiciary  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 1519, SD 3 (Mortgage Loan Originators)**  
**Hearing Date/Time: Wednesday, March 16, 2011, 2:00 P.M.**

I am the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions. The companies employ mortgage loan originators.

The HFSA opposes this Bill as drafted, but supports proposed revisions.

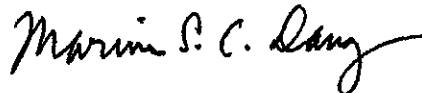
The purpose of this Bill is to: (1) amend the secure and fair enforcement for mortgage licensing act to require all mortgage loan originators to work under the sponsorship of a registered entity; (2) specify standards for processing denied, abandoned, and withdrawn applications; (3) specify additional prohibited practices and prohibited loan terms; (4) specify duties and qualifications for supervisory staff of sponsoring entities; (5) restrict fees payable to a licensee; (6) clarify confidentiality provisions for applications; (7) establish licensing fees for sponsoring entities; and (8) make conforming amendments.

There are a number of problematic provisions in this Bill as drafted. However, the HFSA and other organizations have been working with the Commissioner of Financial Institutions on acceptable revisions to this Bill.

All parties have agreed to a proposed House Draft 1 which we understand is contained in the Commissioner's testimony on this Bill. We ask that you please revise this Bill as recommended in the proposed House Draft 1, except for one item.

In the proposed House Draft 1 in Section 17, the effective date is "upon its approval". We recommend that the effective date be "on July 1, 2011" to give mortgage loan originators and others advance notice of any changes.

Thank you for considering our testimony.



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

(MSCD/hfsa)



P.O. Box 1074  
Honolulu, Hawaii 96808

Cathy Lee  
President  
808-306-8885

Testimony to the House Committee on Consumer Protection  
and Commerce and the Committee on Judiciary

Wednesday, March 16, 2011, 2:00 p.m.  
Conference Room 229

To: Representative Robert Herkes, Chair, CPC  
Representative Gilbert S.C. Keith-Agaran, Chair, JUD  
Members of the House Committees

**Re: S.B. 1519 SD3 – Relating To Mortgage Loan Originators**

My name is Cathy Lee, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers ("HAMB"), a 200+ member of mortgage professionals, can support enactment of SB1519 assuming an HD1 can be developed that incorporates the modifications recommended by the Department of Financial Institutions (DFI) to the SD3. The modifications are recommended by the Commissioner in her testimony to the Senate WAM for the hearing on February 24, 2011. The modifications represent a concerted effort by the industry and the DFI to produce a statute that provides tangible public benefit. The SD3 does not reflect these recommendations due to time deadlines associated with the WAM hearings, and the availability of key personnel

A copy of the Commissioner's testimony is attached.

Additional a modification to (SD3) Prohibited Act (20) is strongly recommended. It should state it is prohibited to:

**Originate a residential mortgage loan based primarily on the current market value of the borrower's collateral rather than on the borrower's ability to repay the loan according to its terms, unless the sale of the property to a bona fide buyer is specified in the mortgage instrument as a valid exit strategy to satisfy the obligation;**

Also we are recommending a change that will assure that loan originator activity on 1-4 unit residential rental property are covered by Chap 454F as it is on owner occupied-second home 1-4 unit residential property.

This would entail editing in Chap. 454F the definition of residential mortgage transaction as a loan

"...primarily made for personal, family, ~~or~~ household, or investment use"

on property identified by the Truth in Lending Act (USC 1602) as residential housing (and not commercial or farm).

If we can provide additional information please let us know.

Sincerely,

Cathy Lee, President HAMB

Claude Phillips, Director HAMB  
808 220-1504

Attach: IIC to Sen. Ige (5 pg)