

SB 1519, SD1

Measure Title: RELATING TO MORTGAGE LOAN ORIGINATORS.

Report Title: Mortgage Loan Originators

Description: Amends the secure and fair enforcement for mortgage licensing act to require all mortgage loan originators to work under the sponsorship of a registered entity; specifies standards for processing denied, abandoned, and withdrawn applications; specifies additional prohibited practices and prohibited loan terms; specifies duties and qualifications for supervisory staff of sponsoring entities; restricts fees payable to a licensee; clarifies confidentiality provisions for applications; establishes licensing fees for sponsoring entities; makes conforming amendments. (SD1)

Companion:

Package: None

Current Referral: CPN, WAM



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

335 MERCHANT STREET, ROOM 310
P.O. Box 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

www.hawaii.gov/dcca

KEALI'S. LOPEZ
INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Tuesday, February 15, 2011
9:00 a.m.

TESTIMONY ON S.B. NO. 1519, S.D.1 RELATING TO MORTGAGE LOAN
ORIGINATORS

THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), 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. 1519, S.D.1.

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

amendments to the 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 these amendments to Chapter 454F, HRS, in late 2010, when the Nationwide Mortgage Licensing System ("NMLS") became operational for Hawaii licensees. For the most part, these 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.

The efficiency of the licensing system will be improved with the following amendments. In Section 2 of the bill, a new definition is added for "exempt *sponsoring* mortgage loan originator company, which will replace the definition of "exempt *registered* mortgage loan originator company." A new definition for "sponsor" is also included. Using these new definitions, Section 1 includes an amendment allowing for exempt sponsoring mortgage loan originator companies to register under the NMLS system and Section 14 adds fees for their registration. Section 1 of this bill also makes it mandatory for mortgage loan originators who are not exempt to be sponsored by mortgage loan originator companies. These

amendments serve to make statutory language, including definitions in Chapter 454F, HRS, consistent with the language used by the NMLS, and to prevent potential confusion with certain other entities, such as insured depositories, whose employees are not subject to Chapter 454F, HRS, but are subject to registration requirements with NMLS under federal law. These amendments will greatly improve the efficiency of the licensing process through the NMLS.

Section 1 also contains several amendments relating to licensing procedures. An amendment specifying the number of days for applicants to petition for an administrative hearing is added, along with an amendment relating to the process for abandoning applications that are not acted upon. While Section 2 adds definitions for "qualified individuals" and "branch managers," Section 1 contains an amendment describing their duties, all in an effort to add consistency with the language used by the NMLS. A process for automatic secondary review of applications is contained in Section 6.

The bill makes several other amendments that merely add specificity to the language. Amendments proposed to (i) the definitions of "licensee" and "mortgage loan originator company" in Section 2; (ii) to exemptions in Section 4; (iii) to the criminal history background check procedures in Section 5 and Section 7; and (iv) to the change of control provisions in Section 11 are all for purposes of clarification. Amendments relating to qualified individuals in Sections 8 and 10 add these individuals to the licensing process, and Section 10 also clarifies the requirements

for applicants with out-of-state headquarters. Amendments to Section 15 take out unnecessary language as it relates to the mortgage loan recovery fund.

Finally, the Department strongly supports the substantive provisions of this bill, which we have found to be necessary subsequent to the implementation of Chapter 454F, HRS. Amendments adding restrictions on loan terms, amendments restricting the fees that may be paid to a licensee by a borrower, and amendments adding substantive prohibited acts, as contained in Section 1, will ensure that consumers are fully protected.

While the Department strongly supports this bill and asks for your favorable consideration, attached please find a list of recommended additions and deletions that will aid the Department in the full implementation of this legislation. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

ATTACHMENT TO TESTIMONY

SUGGESTED ADDITIONS AND DELETIONS TO S.B. 1519, S.D. 1

SECTION 1 Revisions

- Section 454A should include the following addition: "Any person exempt from and not subject to the licensing provisions . . ." This addition was suggested by the Conference of State Bank Supervisors, which is the entity that manages the NMLS, to ensure that insured depositories, who are currently not subject to the Chapter, could voluntarily register. In addition, this registration should be made to be voluntary, as these entities are made exempt from this Chapter and there is therefore no jurisdiction over them to *require* that they register.
- Section 454B should include a provision giving licensees a safe harbor period, such as 30 days, to switch from one sponsoring mortgage loan originator company to another. As sponsorship is to be made mandatory, not providing a safe harbor period would require DFI to suspend or otherwise act on a license any time the sponsorship withdrawal and approval is not simultaneous.

SECTION 3 Revisions

- Section 454F-1.5 should be repealed, as this section is too broad and poses a possible federal preemption problem. This section *requires* registration with the NMLS of all entities originating loans in this state,

which would include some federally regulated entities. Such entities are subject to registration requirements through federal law, and requiring them to register may violate federal law.

SECTION 12 Revisions

- Section 454F-14, subsections (b), (c), (d), (e), (f), and (g) should not be deleted or amended as these arise from the Model Law and have previously been approved by HUD as bringing our state into compliance with federal law.

ADDITIONAL DELETIONS

- The definition of "exempt registered mortgage loan originator company" in Section 2 should be deleted in its entirety and any reference to this definition throughout the bill should be removed. These entities have been renamed as "exempt sponsoring mortgage loan originator companies" in section 454F-A, and the way these entities have been defined has been simplified in the new section and made consistent with other state law.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oip@hawaii.gov
www.hawaii.gov/oip

CATHY L. TAKASE
ACTING DIRECTOR

To: Senate Committee on Commerce and Consumer Protection

From: Cathy L. Takase, Acting Director

Hearing: Tuesday, February 15, 2011, 9 a.m.
State Capitol, Room 229

Re: Testimony on S.B. No. 1519, S.D. 1
Relating to Mortgage Loan Originators

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 26-27) 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 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 UIPA provides a uniform scheme to address public disclosure and protection of government records. The proposed confidentiality statute appears to afford slightly different treatment to licensure records for mortgage loan originators than is 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 standards adopted for this type of information under the UIPA.

For uniform treatment of similar records, OIP suggests that, if a confidentiality provision is desired, that it be worded to require DCCA to keep confidential licensure applications and records to the extent that this information falls within an exception to disclosure under chapter 92F.

Thank you for the opportunity to testify on this bill.



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

February 14, 2011

The Honorable Rosalyn H. Baker, Chair and
Members of the Senate Committee on
Commerce and Consumer Protection
State Capitol, Room 229
Honolulu, Hawaii 96813

Re: Senate Bill 1519, SD 1 Relating to Mortgage Loan Originators

Chair Baker and Members of the Senate Committee on Commerce and Consumer
Protection:

I am Mark James 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 OPPOSES the following portions of SB 1519, SD 1 Relating to Mortgage Loan Originators for the following reasons:

1) Objection to Net Tangible Benefit test.

This is already addressed in the Federal SAFE act, as well as in HRS Chapter 454F. There are also numerous investor overlays that require proof that the refi was to the benefit of the applicant. There is no need for a further State law in this area.

2) Require DFI to set maximum loan commissions and fees.

Effective April 1, 2011, the Truth in Lending Act will cap originator compensation and prohibits steering by loan product. Additionally, Dodd-Frank rulemaking and Federal Reserve Board of Governors rules published September 24, 2010, addresses these same issues. ALL lenders nationwide must comply. This just adds unneeded regulation.

3) Prohibited practices.

These are already addressed in HRS Chapter 454F as well as numerous portions of the SAFE Act and other Federal overlays.

The Honorable Rosalyn Baker, Chair
Members of the Senate Committee on
Commerce and Consumer Protection

4) Administrative appeal of license denial.

A two week window is too short a time for a proper appeal of a denied license. The national NMLS which is repeated in HRS Chapter 454F is a 4-5 month process. We recommend a 45 day appeal timeframe from the notification of denial to appeal.

In general, we need to not add more levels of laws that contradict existing State and Federal laws. Also, HRS Chapter 454F already covers many of these issues.

We support the “house keeping issues” in Senate Bill 1519, SD 1, regarding definitions and responsibilities of MLOC managers and the steps for operating branch offices in Hawaii.

Thank you for the opportunity to present this testimony.

Mark James
President, Mortgage Bankers Association of Hawaii

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

Fax No.: (808) 521-8522

February 15, 2011

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

Re: **Senate Bill 1519; SD 1 (Mortgage Loan Originators)**
Hearing Date/Time: Tuesday, February 15, 2011, 9:00 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. Financial services loan companies make mortgage loans and other loans. The companies employ mortgage loan originators.

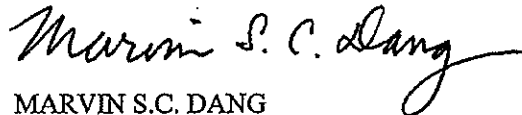
The HFSA wants to comment on this Bill.

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.

We believe that one intent of the current draft is that a "nondepository financial services loan company" licensed under Article 9 of HRS Chapter 412 remains 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. We support that intent.

We take no position at this time on the other provisions, some of which appear to be problematic.

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 Senate Committee on
Commerce and Consumer Protection
Tuesday, February 15, 2011, 9:00 a.m.
Conference Room 229

To: Senator Roslyn Baker, Chair,
Senator Brian T. Taniguchi, Vice Chair
Members of the Senate Committee

Re: S.B. 1519 SD1 – Relating To Mortgage Loan Originators

Hawaii Association of Mortgage Brokers stands in opposition to S.B. 1519 SD1

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, opposes SB 1519 SD 1. The Bill contains a number of new barriers that we think are bad for the Hawaii consumer and bad for the industry. In turn they are likely to further reduce the availability of mortgage financing in Hawaii with negative impact on the Hawaii Mortgage Broker Industry and the Hawaii economy.

Key features in the Bill:

A Net Tangible Benefit test for refinancing loans. While it is intuitively logical that there needs to be a benefit associated before it is worth both the costs and the time investment of pursuing a refinance, we believe borrowers are capable of examining the new RESPA Good Faith Estimate and Truth in Lending documents to compare the clearly isolated loan costs with the benefits. SB 1519 prohibits originating a mortgage loan that does not return the loan costs in 3 years or less. That would be in excess of a 30 % ROI. Certainly not a bad goal. However, prohibiting the offering of options that would save more money per year but only have a 20% or 25% ROI is a bad idea.

Requiring DFI to set maximum loan commissions and fees and to base them on the actual amount of money made available to the borrower, over and above the indebtedness of prior mortgages. This is not the way any normal compensation plan operates. Taken literally, it would remove state Mortgage Loan Originators (MLOs) and Mortgage Loan Originator Companies (MLOCs) from the refinance business as there is often no tangible extra funds made available to the borrower. The new Good Faith Estimate (GFE) in effect since January 2010 makes it very easy to see all of the consolidated fees associated with a mortgage loan, while strongly encouraging the

borrower to shop the transaction for alternate pricing options. Additionally with few exceptions, the GFE does not allow for fee increases. We believe that commission and fee caps are likely to result in the unintended consequence of MLOs declining to make loan proposals on capped transactions they consider to be unprofitable.

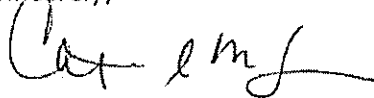
Prohibited Practices (PPs) - SB1519 adds 10 new PPs less than 2 months since the original 15 PPs became effective (Jan 1, 2011). There cannot be any actual history in that time frame on which to base the proposed additions. Previous testimony has shown that national lenders do not like customized lending standards that vary by state. Hawaii is a small piece of the national market and should exercise serious caution in adopting custom prohibitions.

Administrative Appeal of License denial The bill grants a two week window to appeal the decision following "notification" of a license denial. As such a denial effectively bars an applicant from remaining in or entering the business; this is insufficient time to respond. A certified notification process and instructions on how to prepare an appeal should also be a part of this system. The NMLS license system is an expensive and 4 to 5 month process. We would like 45 days from certified notification.

We support the "house keeping issues" in the Bill regarding definitions and responsibilities of MLOC managers, and the steps for operating branch offices in Hawaii.

While we cannot support SB 1519 as written, we are available to discuss the modifications that we believe must be made to assure no unintended damage to mortgage lending is incurred.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cathy Lee', written in a cursive style.

Cathy Lee



TESTIMONY FOR SB-1915 SD-1

Committee Members:

I can not support this bill in its current form for the following reasons:

1) Amendments to 454F-D (Tangible Net Benefit):

This amendment does not take into account several factors as to why someone would enter into a refinance transaction. The methodology used by this amendment is flawed. This section of SB-1519 should be stricken.

2) Amendments to 454F-F (Loan Terms):

As this amendment reads, it would prevent reverse mortgages for those 62 and older. It also would prohibit Prepayment Penalties. While Prepayment Penalties for most are a bad idea, it does offer a consumer a choice to get a lower interest rate if they plan on not paying off their mortgage for a few years. Prohibiting this type of loan will only reduce the choices consumers have.

3) Amendments to 454F-H (Fees):

Paragraph "C" allowing the commissioner of DFI to set compensation for loan transactions is fundamentally wrong. Federal rules, a long with rules established by lenders already restrict the amount of income an originator can receive. The worst portion of this paragraph is that it states that income on a refinance transaction can only be earned on the portion of the new loan above the existing indebtedness. This provision is completely wrong. The work performed by a mortgage originator is in the totality of whole loan amount, and not just a portion. Most importantly, if enacted, it will surely put an end to consumers being able to refinance their homes.

Except for the above, I do support the rest of SB-1519.

Sincerely,

Alan Zukerkorn
President

443 Portlock Road
Honolulu, Hawaii 96825

Tel (808) 988-6622
Fax (808) 988-7722
Toll Free (888) 632-6622
Toll Free Fax (888) 371-9702
Email mfc@hmc.net

NMLS # 232562