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TO THE  
HOUSE COMMITTEE ON  
FINANCE

THE TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION OF 2012

Wednesday, February 29, 2012  
10:00 a.m.

TESTIMONY ON H.B. NO. 2501  
RELATING TO MORTGAGE LOAN ORIGINATION

THE HONORABLE MARCUS OSHIRO, 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 ("DCCA") in strong support of administrative bill, House Bill No. 2501.

**Overview of Division of Financial Institutions Budget**

The Division of Financial Institutions ("DFI") bases its budget requests on the amount of revenue generated from programs plus the \$2.0 million from the franchise tax.

DFI's financial plan detailing our revenues and expenditure patterns from fiscal year 2002 to projected fiscal year 2014 is attached as Exhibit A.

For each year, we calculate the amount of revenues less the expenditures to determine the initial amount of the funds available. That calculation is further reduced by the adjustments which include the division's pro-rata share of the Department's administrative overhead costs to fund programs that do not generate revenues (including the director's office, fiscal office, IT office, personnel office). The Net is the actual amount of funds carried over to the following year. As you can see, DFI is running a deficit and is not bringing in adequate revenue to cover all expenses and adjustments.

Although the franchise tax revenue for a fiscal year is credited to DFI's fund as of June 30, the actual revenue is not deposited into our fund until the July of the next fiscal year. In other words, for fiscal year 2011's budget that ends June 30, 2011, DFI did not receive the franchise tax deposit for the fiscal year ending June 30, 2011 until July 2011. Thus, in order to cover monthly expenses, DFI needs cash reserves equivalent to at least 13 months of its annual budget plus overhead in order to meet its total operational needs for the fiscal year.

We are asking for the increase in fees for this and other programs as we need to show a stable source of income for the upcoming accreditation review of DFI by CSBS (Conference of State Bank Supervisors). As our current source of funding has been in

jeopardy in the last few years, there are indications that if we do not have a stable source of funding, this will weigh heavily against being accredited for another five years. Please note that the prior administration did not seek accreditation and this administration was able to get an extension to be re-accredited. Our accreditation review will occur in May 2012.

In order to be self-sustaining, DFI must seek additional fees (1) to keep pace with costs to DFI, as the time spent on this licensee increased due to the increased regulatory oversight required by recent federal regulations and (2) to attempt to replace and expand the funding source should DFI not receive its share of the franchise tax. You will note from Exhibit A, the franchise tax revenue is the bulk of the revenues. The remainder of the revenues is generated from the fees charged by DFI.

**Mortgage Loan Originator Program Costs**

The Mortgage Loan Originator ("MLO") program began in 2010 with the first licenses issued in December 2010, and the rest of the licenses issued in 2011. The end of calendar year 2011 marks the first full year of the MLO program for DFI. In anticipation of budgeting for the program in fiscal year 2010, DFI knew that there were approximately 6,500 mortgage brokers and solicitors registered with DCCA's Professional and Vocational Licensing branch. DFI estimated that with the new requirements of licensure, it would license approximately 3,000 MLOs and Mortgage Loan Originator Companies ("MLOC") combined. At the end of 2011, DFI had

approximately 840 MLOs and approximately 240 MLOCs. Because the initial projections for the budget were based on 3,000 licensees and we have less than half of the number of expected licensees, the fees collected have not comported to the expenses of the MLO program. In addition, when the MLO program began, DFI had about 600 inquiries a month from people who wanted to understand how to get a license, and what the requirements were for licensure, even though DFI posted FAQs on our webpage. Currently, the MLO program receives about 200 inquiries a month, and receives numerous anonymous complaints about companies or individuals who may be engaging in unlicensed activity. We have commenced investigations on many of these complaints and have begun enforcement proceedings.

Going forward, we anticipate the following:

		<b>Current Fee</b>
<b>2011</b>		<b>(x) \$500</b>
<b>New Applications</b>	1062	\$531,000.00
		<b>(x) \$300</b>
<b>Renewals</b>	751	\$225,300.00

		<b>Current Fee</b>	<b>Proposed Fee</b>	
<b>2012</b>		<b>(x) \$500</b>	<b>(x) \$600</b>	<b>Difference</b>
<b>Projected New Applications</b>	240	\$120,000.00	\$144,000.00	\$24,000.00
		<b>(x) \$300</b>	<b>(x) \$350</b>	<b>Difference</b>
<b>Projected Renewals</b>	840	\$252,000.00	\$294,000.00	\$42,000.00

Currently the MLO program has 842 active individual licensees and if we add the 842 and the 240 projected licenses (20 new licensees a month) we will have 1,082 licensees. We also anticipate that 40 people will apply between 11/1 - 12/31/2012, and these 40 people will ask to be licensed during the renewal period so that they will not have to pay the renewal fees on top of the initial application fees, it would bring the total to 1,042. In 2011, 252 or 24% of licensees either withdrew, were abandoned, or terminated as they failed to renew. We anticipate losing about 20% of the 1,042 licensees, leaving approximately 840 that will apply for renewal in 2012.

The additional anticipated revenues of approximately \$66,000 will be used to pay for the expenses of investigations (including subpoenas, and interisland travel, sheriff costs, locksmith costs), and we anticipate the need for an additional person in fiscal year 2013-14 to permanently conduct investigations.

The MLO team staff hours for various reviews:

Type of review	Staff hours (@\$60/h r)	Current fee	Proposed fee
MLO Initial application	10-12	\$500	\$550
MLO Renewal	8-10	\$300	\$400
MLOC initial application	20	\$900	
MLOC Renewal	10-12	\$600	
Branch application	4	\$250	
Branch relocation	3	\$50	\$100
Change in control	3	\$500	
Change in sponsor	3	\$50	\$100

The DFI has found that because the MLOCs are required to have a branch office physically located in Hawaii, and that they must have a branch manager located at the branch office, the MLOs who are branch managers are relocating frequently. MLOCs have been recruiting MLO branch managers from other MLOCs and have caused an increased number of filings by MLOCs and MLOs.

When DFI did unannounced site visits in December 2011, it caused MLOCs to file relocation requests through DFI. About 75% of the relocation applications are done after the fact, and the DFI has been following up with each MLOC to determine why it did not seek prior approval for the relocation. The location of the branch is important to track as consumers are using the Nationwide Mortgage Licensing System ("NMLS") consumer access to determine whether the MLO is licensed and where the branch office is located. Since many of the branches are in private homes, consumers have been requesting verification that the MLO is licensed in our state. After the relocation is approved by the Commissioner, NMLS and the consumer access page is updated.

#### **Sole Proprietors**

DFI licensed 28 sole proprietors during 2011. Every state in the country uses the NMLS to allow applicants to apply online for both initial applications and renewal applications. NMLS collects all fees for each state based on set parameters of MLOs, MLOCs, branches, and exempt MLOCs. NMLS cannot easily program special fees for states to charge for specialized licensees. The only way to adjust the fees for sole

proprietors is for them to pay all fees through NMLS and request that the State reimburse the fees we may choose to waive. The reimbursement process may take up to 120 days during the renewal period, and we would complete the renewals before starting the reimbursements as all staff persons work on the renewal applications. The reimbursement process is a manual one for DFI, DCCA fiscal office and DAGS fiscal office.

To avoid the extra costs both to the sole proprietors and to DCCA, we request an amendment to the bill to exempt sole proprietors from the initial application and annual license renewal fees. We suggest the following language be added to section 1 of the bill as a third new section:

**§454F- Sole proprietorships; exemption.** Every mortgage loan originator company that consists of a single individual not exempt under section 454F-2 who engages in the business of a mortgage loan originator as a sole proprietorship shall be exempt from state mortgage loan originator initial application and annual license renewal fees."

Based on the number of licenses issued to sole proprietors (MLOC and MLO), we project 15 new applicants for 2012. Using the proposed fees and if we waive the MLO fees, the projected loss of revenue would be \$12,000, which includes the recovery fund fee. At renewal, using the proposed fees and estimating that there will be 40 sole

proprietors applying for renewal, waiving the same fee (MLO), the projected loss of revenue would be \$18,000 which also includes the recovery fund fee.

Projected total loss of revenue, if waiving the MLO fees would be \$23,000.

	SOLE PROPS MLOC/MLO	MLOC Current Fees	MLOC Recovery Fund Fee	Proposed MLO Fees	MLO Recovery Fund Fee
<b>2012</b>		<b>(x) \$900</b>	<b>(x) \$300</b>	<b>(x) \$600</b>	<b>(x) \$200</b>
<b>New Applications</b>	15	\$13,500.00	\$4,500.00	\$9,000.00	\$3,000.00
		<b>(x) \$600</b>	<b>(x) \$200</b>	<b>(x) \$350</b>	<b>(x) \$100</b>
<b>Renewals</b>	40	\$24,000.00	\$8,000.00	\$14,000.00	\$4,000.00

Taking into account all the adjustments, including the waiving of the MLO fees for sole proprietors, the net amount projected to be collected with the new fee structure is **\$43,000** (\$66,000 – \$23,000).

For these reasons, DFI strongly supports this administration bill, House Bill No. 2501, and respectfully asks that the measure be passed with the proposed amendments.

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



Exhibit A

FINANCIAL  
 PLAN - DFI

	FY02 <i>act</i>	FY03 <i>act</i>	FY04 <i>act</i>	FY05 <i>act</i>	FY06 <i>act</i>	FY07 <i>act</i>	FY08 <i>act</i>	FY09 <i>act</i>	FY10 <i>act</i>	FY11 <i>act</i>	FY12 <i>est</i>	FY13 <i>est</i>	FY14 <i>est</i>
Revenues:	2,745,917	1,888,789	2,239,073	2,175,645	2,180,745	2,798,163	2,620,852	2,599,918	2,822,798	3,429,771	3,146,015	3,108,440	3,101,965
Expenditure	(1,439,447)	(1,533,551)	(1,739,489)	(1,928,179)	(1,944,171)	(1,881,023)	(2,104,693)	(2,421,699)	(2,185,440)	(2,456,854)	(2,631,432)	(3,384,920)	(3,384,920)
Rev Over/Under Exp	1,306,470	355,238	499,584	247,466	236,574	917,140	516,159	178,219	637,358	972,918	514,583	(276,480)	(282,955)
Adjustments	(475,416)	(2,569,185)	(300,314)	(311,093)	(266,812)	(497,749)	(509,619)	(520,108)	(398,804)	(586,818)	(528,368)	(528,368)	(528,368)
Net (Rev+Exp+ Adj)	831,054	(2,213,947)	199,270	(63,628)	(30,238)	419,391	6,540	(341,889)	238,554	386,100	(13,785)	(804,848)	(811,323)
Carryover Begin Bal	5,121,434	5,952,488	3,738,540	3,937,811	3,874,183	3,843,945	4,263,336	4,269,876	3,927,987	4,166,540	4,552,640	4,538,855	3,734,007
Ending Bal (\$)	5,952,488	3,738,540	3,937,811	3,874,183	3,843,945	4,263,336	4,269,876	3,927,987	4,166,540	4,552,640	4,538,855	3,734,007	2,922,684
Ending Bal(mo.)	25.2	16.9	18.4	17.2	16.8	16.6	15.8	13.0	15.2	13.2	14.2	11.7	9.2