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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. 2502, H.D. 1
RELATING TO MORTGAGE SERVICERS

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 administration bill House Bill No. 2502, H.D. 1.

Following the failure of the nation's mortgage loan systems, every state and the federal government are reevaluating their efforts to close loopholes and provide the protection the public needs and expects. This bill continues efforts to tighten up the mortgage loan system in Hawaii.

Persons acting as mortgage servicers provide a variety of services including some mortgage loan modification services that could be considered to be mortgage loan originator activities. These include services such as taking a residential mortgage loan application or offering or negotiating the terms of a residential mortgage loan. Any licensed mortgage servicer providing such services must also be licensed as a mortgage loan originator. However, this is not always evident to those who hold mortgage servicer licenses. This bill clarifies these distinctions and ensures that anyone providing mortgage loan origination services will need to be licensed to do so, even those already licensed as mortgage servicers. A license as a mortgage servicer cannot take the place of a mortgage loan originator's license if the person is providing mortgage loan originator services.

In addition, there has been national discussion about the possibility that mortgage servicers may be required to register with the Nationwide Mortgage Licensing System ("NMLS"). If that occurs, it is imperative that the Commissioner has the ability to work with NMLS and establish a program similar to the recently established program for mortgage loan originators and mortgage loan originator companies. This bill will provide the Commissioner the needed authority to do so when and if this becomes necessary. Without the authority to enter into any agreement to make the process of licensing mortgage servicers more efficient, there may be a risk that companies will leave Hawaii's marketplace. This after the industry went from 54 to 68 licensees in the last year. We

believe we have been successful in encouraging the industry to provide mortgage servicing for loans made in Hawaii.

The original bill will also provide more discretion for the Commissioner by removing the lower threshold for administrative fines of \$1,000, allowing the Commissioner to provide for a fine of less than \$1,000 for each violation. Fines are computed based on several factors including the severity of the violation, harm to consumers, mitigating actions taken by the company, the company's understanding of the laws, and if the company had been warned of the violation and continued to engage in the prohibited or unlawful activity. For instance, there were a few cases where new companies did not know they had to be licensed in Hawaii as a mortgage servicer in 2010. The discovery occurred after I was a speaker at an industry event. The new companies (unlicensed) contacted DFI soon after the event and applied to be licensed. The fine imposed was the minimum penalty allowable by statute and could have put one local business out of business as the minimum penalty is \$2,000 per violation (\$1,000 for the compliance violation and \$1,000 to be collected for the mortgage dispute resolution program) as the penalty was calculated as \$2 million. Without the discretion to adjust any monetary penalty, the state runs the risk of closing any business, including one owned and operated in Hawaii. We request an amendment to have the language in the original bill to allow the Commissioner to compute the fines based on the various factors identified above.

The original bill also allowed the Commissioner to engage in rulemaking. Although the rulemaking process has not been used to set fees, rulemaking also allows the Commissioner to clarify and identify the process to apply for licensure or renewals. Without any rulemaking authority, the Commissioner would not be able to add more fees as the industry changes or provide guidance to licensees as they apply for licensure or renewal. We would request that the Commissioner retain the rulemaking authority as identified in the original bill.

For these reasons, DFI strongly supports this administration bill, House Bill No. 2502, H.D. 1, 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.