

SB 1178

Measure Title: RELATING TO MORTGAGE LENDERS.

Report Title: Mortgage Servicers; Commissioner of Financial Institutions

Description: Requires financial institutions otherwise exempt from regulation as mortgage servicers or licensing by the commissioner of financial institutions to register with the commissioner of financial institutions and be subject to the commissioner's regulatory authority.

Companion:

Package: None

Current Referral: CPN



NEIL ABERCROMBIE
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TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Wednesday, February 23, 2011
8:30 a.m.

TESTIMONY ON S.B. NO. 1178 RELATING TO MORTGAGE LENDERS

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") in opposition to Senate Bill No. 1178. The Department respectfully opposes this measure for the following several reasons:

1. The underlying intent of the amendments proposed in this measure would appear to be to make persons that engage in mortgage servicing in Hawaii, but are currently exempt from licensure under Chapter 454M,

Hawaii Revised Statutes ("HRS"), more accountable to Hawaii borrowers, by requiring their physical presence in the State, and by making them subject to State regulatory supervision. If that is indeed the goal of the measure, we would point out that, as a result of the recent enactment of Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act, Chapter 454F, HRS, many mortgage servicers, both in-State and out-of-State, who engage in loan modification activities, are now required to be licensed by the Division of Financial Institutions ("DFI") as a Hawaii mortgage loan originator company under Chapter 454F, HRS.

Consequently, the Department believes that many perceived foreclosure abuses, among them the admitted abuses by some mortgage servicers who have failed to adequately and timely assist distressed borrowers in averting foreclosures, can and will now be captured and addressed by DFI as the supervisory authority regulating mortgage loan originator companies under Chapter 454F, HRS, which does require the in-State physical presence of mortgage loan originator companies.

2. Section 1 of the measure would extend the application of proposed new requirements under Chapter 454M, HRS, to persons that have been and remain expressly exempted from the statute at Section 454M-3, HRS. The legal validity of subjecting persons that have been expressly exempted from the entire statute to a particular provision of that statute appears

questionable in our view, and may well invite litigation by interested parties seeking to render these new requirements unenforceable with respect to them, if the measure should be enacted in its present form.

3. Also problematic, in our view, is that the same provision would subject to the regulatory jurisdiction of the Commissioner all persons chartered or authorized under the laws of any state or federal law to engage in the activity of an insured depository institution as defined under the Federal Deposit Insurance Act. Pursuant to the proposed amendment of Section 454M-3, HRS, all such persons would now be subject to all provisions of Article II of Hawaii's Code of Financial Institutions, Chapter 412, HRS, including financial institution examinations, enforcement actions, conservatorship and supervised acquisition provisions for financially troubled institutions, as well as provisions pertaining to penalties, fines, and prohibited acts. These sweeping new powers under Chapter 412, HRS, would be granted to the Commissioner without a single amendment to the Code of Financial Institutions itself, and seemingly without regard to the preemptive authority of federal banking regulators to ignore and invalidate such provisions with regard to federally chartered depository institutions, and without regard, as well, to provisions in Hawaii's Code of Financial Institutions which were enacted for the purpose of carefully restricting the right of out-of-state depository institutions to maintain a physical presence in this State.

TESTIMONY ON SENATE BILL NO. 1178

February 23, 2011, 8:30 a.m.

Page 4

4. Furthermore, if this amendment is enacted, persons that are currently exempt under Paragraph 1 of Section 454M-3, HRS, would seemingly now be subject to all of the new requirements proposed in this measure whether or not they are engaged in mortgage servicing activity in Hawaii.

For all of these reasons, the Division opposes Senate Bill No. 1178, and respectfully asks that the measure be held.

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

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February 23, 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 1178 (Mortgage Lenders)**
Hearing Date/Time: Wednesday, February 23, 2011, 8:30 A.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 HFSA opposes this Bill.

The purpose of this Bill is to require financial institutions otherwise exempt from regulation as mortgage servicers or licensing by the commissioner of financial institutions to register with the Commissioner of Financial Institutions and be subject to the Commissioner's regulatory authority.

The HFSA opposes this Bill for two reasons. First, we want to point out that the requirement in this Bill for mortgage servicers to maintain a physical presence in Hawaii is problematic and perhaps unnecessary. Loan customers with servicing questions may find it more convenient to call a toll free number than to visit an office, especially if the office is on a different island from the customers or if getting to the office involves a long commute.

Second, the opposition is based, in part, on my perspective as the Vice Chairperson of the Hawaii Mortgage Foreclosure Task Force ("Task Force"). I served as a member of the Task Force as the designee of the HFSA.

The Task Force, which was created by Act 162 of the 2010 Session Laws of Hawaii, issued its 2011 Preliminary Report to the Legislature. As stated in the Report, the issue covered by this Bill, i.e. mortgage servicers under HRS Chapter 454M, was addressed at the Task Force meeting on December 15, 2010. The Task Force members adopted a motion stating:

"The task force is in the process of reviewing and considering amendments to chapter 454M, on mortgage servicers, in more depth, but did not have sufficient time to consider and make specific recommendations, and is therefore making no statements on the merits of this matter. Furthermore, the task force will address this issue as part of its report to the 2012 Legislature and requests that the Legislature defer action on this and related matters until the 2012 regular session."

The HFSA believes that only the recommendations of the Task Force should be adopted by the legislature at this time. Any other issues, such the issue covered by this Bill, can continue to be reviewed by the Task Force over the remainder of this year as the Task Force considers other recommendations for the 2012 Legislature.

Thank you for considering our testimony.


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Presentation of the Committee on Commerce and Consumer Protection
Wednesday, February 23, 2011 at 8:30 a.m.
Testimony on SB 1178 Relating to Mortgage Lenders

In Support of the Intent

TO: The Honorable Chair Rosalyn H. Baker
The Honorable Vice Chair Brian T. Taniguchi
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying in support of the intent of SB 1178. HBA is the trade organization that represents all FDIC insured depository institutions doing business in Hawaii.

The purpose of this bill is to require financial institutions otherwise exempt from regulation as mortgage servicers or licensing by the commissioner of financial institutions to register with the commissioner of financial institutions, maintain a physical presence in Hawaii and be subject to the Division of Financial Institution Commissioner's regulatory authority.

It would be helpful for troubled borrowers to be able to deal face to face or over the phone with a servicer representative in the same time zone. Hopefully, a Hawaii based representative will be able to relate to the community and its residents. However, it may not be viable for a servicer with only a nominal number of mortgages to justify such an investment. If the intent is to get servicers that have an inordinate amount of Hawaii foreclosures, then there should be some metric used, like the number of Hawaii foreclosures, before requiring a physical presence in Hawaii.

Most of the major servicers are nationally chartered and federally regulated. So we are unsure if the Hawaii Division of Financial Institutions will be able to regulate these nationally chartered entities based on federal preemption law. Further, it is highly likely, according to an article in the February 17, 2011 American Banker, the weekday daily newspaper for bankers and financial executives, regulators will take enforcement actions against the major services. See a partial quote from the article as follows:

"Alarmed by significant deficiencies uncovered as part of a regulatory review of mortgage servicer practices, the federal banking agencies are preparing formal enforcement actions against the largest servicing companies, hoping the actions will set de facto industry standards, according to sources familiar with the situation.

The enforcement orders are expected to hit most, and possibly all, of the 14 mortgage servicers reviewed by regulators after foreclosure problems surfaced in the press last year, but the largest companies — including Bank of America Corp., JPMorgan Chase & Co., Wells Fargo & Co. and Ally Financial Inc. — are likely to face the toughest requirements due to the sheer number of issues that must be addressed, sources said.

The orders are expected to accompany a global settlement with other government entities investigating the servicing industry that is almost certain to include civil money penalties. Regulators are still discussing the terms with state attorneys general, the Justice Department, the Department of Housing and Urban Development, the Treasury Department and the Consumer Financial Protection Bureau.

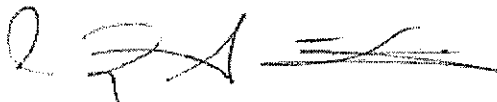
"The OCC and the other federal banking agencies with relevant jurisdiction are in the process of finalizing actions that will incorporate appropriate remedial requirements and sanctions with respect to the servicers within their respective jurisdictions," said Acting Comptroller of the Currency John Walsh, according to testimony obtained by American Banker that is due to be delivered Thursday to the Senate Banking Committee.

"We expect that our actions will comprehensively address servicers' identified deficiencies," Walsh is to say, "and will hold servicers to standards that require effective and proactive risk management of servicing operations and appropriate remediation for customers who have been financially harmed by defects in servicers' standards and procedures. We also intend to leverage our findings and lessons learned in this examination of enforcement process to contribute to the development of national servicing standards."

Regulators are hoping the enforcement orders will send a message to the rest of the servicing industry. Though details of the orders remain under discussion, sources said they are likely to include requirements that servicers beef up staffing establish a single point of contact for borrowers and take a comprehensive look back at their servicing portfolios to detect and correct problems."

Consequently, it would appear that federal regulators will take more drastic actions against servicers in order to penalize and improve servicer handling of troubled mortgage loans.

Thank you for the opportunity to provide our testimony.



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Testimony to the Senate Committee on Commerce and Consumer Protection
Wednesday, February 16, 2011, at 8:30 a.m.

Testimony in opposition to SB 1178, Relating to Mortgage Lenders

To: The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice-Chair
Members of the Committee on Commerce and Consumer Protection

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 85 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We are in opposition to SB 1178, Relating to Mortgage Lenders. This bill would require mortgage lenders that are employees of financial institutions to register with the commissioner of financial institutions. Although credit unions are not included in the definition of "insured depository institution", we are concerned that this measure lacks clarity. As a matter of federal law, employees of federally-insured credit unions are not subject to state law, therefore, would not be required to be registered under this chapter. Further, there are no longer any state-chartered credit unions in the State of Hawaii; all 85 credit unions in the state are now federally-chartered.

Thank you for the opportunity to testify.