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KEALI'I S. LOPEZ
DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012

Wednesday, March 21, 2012
2:11 p.m.

TESTIMONY ON SENATE BILL NO. 2394, S.D. 1, H.D. 1 - RELATING TO CONSUMER PROTECTION.

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
TO THE HONORABLE RYAN I. YAMANE, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on S.B. No. 2394, S.D. 1, H.D. 1. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP supports S.B. No. 2394, S.D. 1, H.D. 1. OCP takes no position on the new provisions contained in Part II of the proposed H.D. 2.

Members of our armed forces and their dependents face many significant challenges. Multiple overseas deployments and coping with a spouse's prolonged absence from home can lead to a great deal of emotional and financial stress. Our service members and their families may be particularly vulnerable to unscrupulous

lenders who may charge excessive fees and interest rates, make loans without regard to the borrower's ability to repay, refinance a borrower's loans repeatedly over a short period of time without any gain for the borrower, or in worst cases, commit outright fraud or deception.

When Department of Defense ("DOD") representatives contacted OCP and asked for assistance on this measure, they made a convincing case that Hawaii needed to consider such legislation to help the DOD enforce these important consumer protection regulations for our service members and their dependents.

Hawaii's payday lending law, Chap. 480F, already affords significant protections to consumers. However 32 CFR 232, "Limitations on Terms of Consumer Credit Extended to Service Members and Dependents", has protections specific to service members and their families which are not found in Chap. 480F. These additional protections would provide OCP with additional enforcement avenues in pursuing unscrupulous payday lenders who try and take advantage of an unsuspecting service member or his or her dependent. Since local payday lenders are already subject to the John Warner National Defense Authorization Act for Fiscal Year 2007 (Public Law No. 109-364) ("Act") and 32 CFR Part 232, providing OCP with authority to enforce these measures is an important step in the right direction. It would be another arrow in OCP's enforcement quiver against unscrupulous payday lenders in Hawaii.

H.D. 1 is a common sense reasonable measure allowing the DCCA through OCP to enforce these important consumer protections for our service members and their dependents. It further authorizes the DCCA through OCP to enter into an agreement to access the Military Sentinel Network maintained by the Federal Trade Commission ("FTC"). OCP would greatly benefit if it was allowed access to this important FTC database.

OCP therefore strongly supports passage of S.B. No. 2394, S.D. 1, H.D. 1.

As for the newly proposed H.D. 2, OCP takes no position. OCP does agree that the foreclosure crisis has been particularly devastating for many homeowners and their families here in our State. OCP expects that between the actual implementation of the servicing reforms and distressed mortgage loan mitigation remedies under the national mortgage settlement and the adoption of the 2011 Mortgage Foreclosure Task Force's recommendations, many Hawaii homeowners facing foreclosure will be able to get the help they need.

I appreciate the opportunity to testify on behalf of this bill today and would be happy to answer any questions the Committee may have.



STATE OF HAWAII

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
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FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of
Karen Seddon
Hawaii Housing Finance and Development Corporation
Before the

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

March 21, 2012 at 2:11 p.m.
Room 325, State Capitol

In consideration of
S.B. 2394, Proposed H.D. 2,
RELATING TO CONSUMER PROTECTION.

The HHFDC believes that S.B. 2394, Proposed H.D. 2, has the potential to assist distressed homeowners and stabilize communities. Our ***specific concerns*** with the proposed distressed residential properties program set forth in Part II of the Proposed H.D. 2 follow:

1. Properties subject to legislative approval of sale or gift of land in accordance with section 171-64.7, HRS, are not eligible to participate in the program. This proviso shuts the door on the program because HHFDC acquires the property in fee simple and re-sell it to the homeowner in fee simple under the program's terms, and all real property owned by HHFDC is subject to that provision, except for certain lands "subject to resale restrictions as set forth in section 201H-47 and that were acquired by the Hawaii housing finance and development corporation either at a foreclosure sale or under a buyback as authorized in section 201H-47." We suggest amending the new section 201H-___C(f) to read as follows:

(f) If the property owner defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on the loan and may take all action allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property. **Notwithstanding any other provision of law, sales of property pursuant to this section shall not require legislative approval.**

2. Within 45 days from receipt of an application, the HHFDC would review the application and determine whether the property should be accepted for further evaluation. The proposed H.D. 2 lists various items that should be included in the homeowner's application. We suggest that a credit report be added to that list.
3. A determination to accept a property for further evaluation will be based on many factors including an appraisal. We are concerned that the 45-day timeframe may be inadequate for completion of the appraisal. A 60-day review period may be more reasonable.
4. An assessment by an approved housing counselor or budget and credit counselor should be a prerequisite to the application, and therefore, provided for in the bill. HHFDC has partnered with nonprofit housing and credit counseling agencies in our administration of federally-funded foreclosure mitigation programs since 2009. These nonprofit agencies have helped distressed homeowners in assessing their financial situation and preparing action plans to address their mortgage default.
5. The distressed residential property loans may require considerably more collection follow-up with the homeowners. As such, the mortgage servicing fee of one-half of one percent may not be sufficient for HHFDC or commercial banks and other lending institutions to service the mortgage loans.

We defer to the Department of Commerce and Consumer Affairs on Part I of the Proposed H.D. 2. We also defer to the appropriate agencies with respect to the new special fund created to fund the program, and the new fees imposed to provide revenue for it. We also specifically defer to DCCA and the Department of the Attorney General as to use of the proposed sources of funding for the program, as set forth in sections 9, 10 and 11 of the proposed H.D. 2.

Thank you for the opportunity to testify.



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March 21, 2012

The Honorable Robert N. Herkes, Chair
House Committee on Consumer Protection & Commerce
State Capitol, Room 325
Honolulu, HI 96813

RE: S.B. 2394, S.D.1, Proposed H.D.2, Relating to Consumer Protection

HEARING: Wednesday, March 21, 2011, at 2:11 p.m.

Aloha Chair Herkes, Vice-Chair Yamane, and Members of the Committee:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **strongly opposes** S.B. 2394, S.D.1, Proposed H.D.2, which authorizes the Director of Commerce and Consumer Affairs to enforce certain federal laws to protect military members and their families from abusive lending practices.

HAR has serious concerns with several provisions of S.B. 2394, S.D.1, Proposed H.D.2 – in particular – Part II of the bill, which establishes a distressed residential properties program.

We are concerned about the impact this measure will have on Hawaii's bond rating. Specifically, the provision that the Hawai'i Housing Finance and Development Corporation (HHFDC) issue \$25 million in revenue bonds, which is exempt from the debt ceiling and taxes, may impact Hawaii's bond rating and needs to be carefully considered.

Moreover, this bill makes the assumption that the downturn of the housing market and the general economy in Hawai'i will continue for many more years. The economy and housing are very cyclical. As such, while this measure may be intended to address the current economic downturn, it imposes substantial responsibilities and budgetary obligations on the State that may not be beneficial in the long term.

HAR further opposes the Special Mortgage Recording Fee (SMRF). The SMRF fee will require all new homeowners to bailout distressed properties.

Furthermore, HAR believes that there are sufficient avenues available to address distressed properties through loan modifications and refinancing. REALTORS® regularly work to successfully complete short sales and loan modifications for distressed homeowners.





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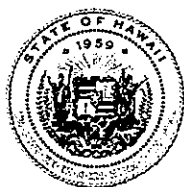
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Ultimately, we believe that if the Legislature is inclined to continue pursuing this concept, that a Task Force be convened to thoroughly study these issues and the impacts it may have on the State and real estate industry.

Mahalo for the opportunity to testify.

REALTOR® is a registered collective membership mark which may be used only by real estate professionals who are members of the NATIONAL ASSOCIATION OF REALTORS® and subscribe to its strict Code of Ethics.





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KEALI'I S. LOPEZ
DIRECTOR

TO THE HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Wednesday, March 21, 2012
2:11 p.m.

TESTIMONY ON S.B. 2394, Proposed H.D. 2
RELATING TO CONSUMER PROTECTION

TO THE HONORABLE ROBERT N. HERKES, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"). I appreciate the opportunity to provide comments on behalf of the Department of Commerce and Consumer Affairs ("Department") on S.B. 2394, Proposed H.D. 2, relating to the proposed distressed residential properties program.

The Department supports efforts to provide relief to homeowners impacted by the mortgage crisis. The Proposed H.D.2, among other things, establishes the Distressed Residential Properties Program, creates the Distressed Residential Properties Program special fund, establishes special recording fees, creates an assessment on financial

institutions under Haw. Rev. Stat. section 412:2-105, establishes other sources or revenue, provides criteria for program eligibility, authorizes the Hawaii Housing Finance and Development Corporation to administer the program.

The Department's comments relate to section 9 of the bill that relates to fees and assessments on financial institutions.

While the special mortgage recording fee set forth in section 4 of the proposed H.D. 2 applies across the board on each residential mortgage recorded in the state, the assessment of \$100 per residential mortgage set forth in section 9 of the proposed H.D. 2 affects only state-chartered financial institutions. The Department is concerned that this assessment (1) places state-chartered institutions at a competitive disadvantage with other financial institutions; (2) will create a clear disincentive for financial institutions to maintain or obtain a state charter; and (3) shifts the cost of assisting distressed homeowners away from those out-of-state financial institutions that are the primary source of consumer complaints.

There are 17 licensees which would be affected by this provision. Some of the licensees may be severely impacted when the assessment is assessed. Since only state chartered financial institutions will be assessed, the Department believes it is unfair to assess only those institutions that choose to be state chartered. State chartered institutions should not pay for all mortgage loans secured by residential property, as many are made by other non-state chartered financial institutions also

located in Hawaii. Financial institutions may opt to change charters to avoid the state assessment.

State chartered financial institutions will be at a huge competitive disadvantage in the mortgage industry. The additional cost of the assessment may be taken into account when financial institutions originate residential mortgage loans.

In addition, the daily administrative fine for non-payment of the assessment of \$250 a day will definitely negatively impact some financial institutions those financial institutions unable to pay the assessment.

In addition, under the proposal, beginning July 1, 2012, the commissioner shall collect from state chartered financial institutions an assessment of \$100 for each mortgage loan secured by residential property in the state. The Department is uncertain whether the assessment is intended to be applied to the total mortgage loans secured by residential property in the state or a proportional amount based on the individual financial institution's mortgage loans secured by residential property. Also, would the assessment apply to any mortgage loans secured by residential property, including owner-occupant and investor loans as well as home equity lines of credit? Is the assessment for any mortgage loans secured by residential property in the year of origination or for the life of the loan? If for the latter, a financial institution may be assessed for the life of the loan which may add to the cost of fees charged to consumers. If state-chartered financial institutions will be assessed, the Department

TESTIMONY ON HOUSE BILL NO. 2394, Proposed H.D. 2
March 21, 2012, 2:11 p.m.
Page 4

requests that the bill provide more specificity as to how the assessment will be determined.

Thank you for the opportunity to provide these comments on Senate Bill No. 2394, Proposed H.D. 2. I will be available to respond to any questions.



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TESTIMONY FOR SENATE BILL 2394, SD1, HD1, RELATING TO CONSUMER PROTECTION

House Committee on Consumer Protection and Commerce

Hon. Robert N. Herkes, Chair

Hon. Ryan I. Yamane Vice Chair

Wednesday, March 21, 2012, 2:11 PM

State Capitol, Conference Room 325

Honorable Chair Herkes and committee members:

I am Kris Coffield, representing the IMU Alliance, a nonpartisan political advocacy organization that currently boasts over 150 local members. On behalf of our members, we offer this testimony in support of SB 2394, SD1, HD1, relating to consumer protection.

As you mull the merits of this proposal as it relates to the the codification of a distressed residential properties program to address the mortgage loan crisis in Hawaii, please keep in mind the following post-crash economic context regarding those suffering from fraudulent lending practices. During the housing bubble, big banks sold mortgage-backed securities to their largest, and frequently most gullible, customers. When the tech bubble burst, investment entities—sovereign wealth funds, pension funds, investment trusts, hedge funds, bank investment funds, etc.—discovered mortgage bundles (officially known as “Residential Backed Mortgage Securities”) earning, accruing, and paying sharp dividends in the artificially inflated, but nevertheless booming housing market. Imagine you own an ice cream stand. You make 1,000 sundaes each day, selling most of your product. Then, one day, 1,000,000 customers show up. You'd try your best to meet the demands of your new customer base, right? Well, in the case of the banks, “meeting demand” meant encouraging mortgage bundlers to create newer, faster, cheaper products and instruments to facilitate heavier transaction loads. Bundlers, in turn, pressured mortgagees, like Countrywide to lower restrictions for home loans to keep the already artificially inflated bubble expanding. For a prime (subprime?) piece of the pie, companies like Countrywide complied, selling the paperwork to RBMS shops, who rebranded them as “securities” and sold them to banks. The banks, in turn, sold the end-bundled product to investors. A major catch to this nefarious plot: Many of the mortgages were never recorded, and many people were lied to in the process of bundling and selling these mortgages. Moreover, many mortgage industry executives and employees, to this day, engage in the practice of “robo signing,” or cutting corners to keep pace with crushing foreclosure rates by signing a

mortgage affidavit document without verifying the information, failing to comply with notary procedures, or forging an executive's signature, all leading to questionable—read: illegal—signatures on mortgage documents. Worst of all, some mortgagees simply lost their mortgage documents, tainted or otherwise, and have yet to provide a plausible reason for why the displacement occurred. Oops. Big freakin' oops.

For the sake of local mortgagors taken advantage of by this financial conspiracy (and let's face it, a “conspiracy” is exactly what it should be called), we urge you to pass this bill. As Ellen Brown, president of the Public Banking Institute, has indicated, the projected collective state budget deficit for 2011 stood at \$140 billion, a total that pales in comparison to the \$12.3 trillion in liquidity and short-term loans extended, by the Federal Reserve, to bail out Wall Street. Yet, Fed Chairman Ben Bernanke announced, last January, that a bailout for local and state governments had been taken off the table. States, then, must act to protect the interests of their own economically distressed citizens, and passage of this measure would be a smart first step. Mahalo for the opportunity to testify in support of this bill.

Sincerely,
Kris Coffield
Legislative Director
IMUAlliance



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Presentation of the Committee on Consumer Protection & Commerce
Wednesday, March 21, 2012 at 2:11 p.m.
Testimony on SB 2394, SD1, HD2 Relating to Consumer Protection

In Opposition to Section K. DISTRESSED RESIDENTIAL PROPERTIES PROGRAM

TO: The Honorable Chair Robert N. Herkes
The Honorable Vice Chair Ryan I. Yamane
Members of the Committee

I am Gary Fujitani, Executive Director of the Hawaii Bankers Association (HBA), testifying on SB 2394, SD1, HD2. HBA is the trade organization that represents FDIC insured depository institutions operating branches in Hawaii.

Added to the laudable intent of this bill, which was originally to protect our military members and families from abusive lending practices, was Section K. DISTRESSED RESIDENTIAL PROPERTIES PROGRAM.

We are opposed to this "distressed residential program", which essentially bails out lenders who made no down payment liar loans and creates a State of Hawaii portfolio of toxic properties.

This program will assume liability for distressed mortgages from lenders that previously denied a loan modification to troubled borrowers, due, in part, to these borrowers not having income necessary to make lower payments. **The State's full faith and credit would be used to guarantee payment on the existing distressed loans to mortgage lenders.** Thus this may impact the State debt limits &/or credit/bond ratings.

The bill authorizes a \$25 million issuance of revenue bonds, which is akin to the State selling bonds secured by toxic mortgages. This is precisely one of the practices that fueled this mortgage crisis, the passing of the default risk to unsuspecting bondholders.

This bill creates new mortgage fees like a special mortgage recording fee imposed on each mortgage secured by residential property. This just makes it more difficult for first-time and middle income borrowers to purchase a home.

Another fee, an annual assessment equal to \$100 for each mortgage loan secured by residential property in the State of Hawaii issued in accordance with Chapter 412 during the previous fiscal year, will **unfairly tax only the six Hawaii State chartered banks**. Thus six Hawaii banks will be penalized for the failings of non-Hawaii banks and other non-bank mortgage lenders.

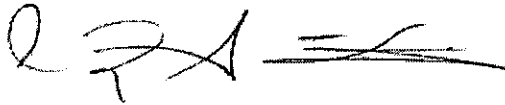
In the end the fees to help fund this program, will come at the expense of future buyers that will have to come up with additional cash to purchase a home. This further impacts borrowers that already have been affected by legislation that discourages mortgage lending.

It is ironic that this bill chooses to punish Hawaii banks, yet, it calls for commercial banks and other lending institutions doing business in the State to contract for the servicing of these troubled mortgages.

We also question the legality of the provision in section 201B- B. (d) condemnation of private personal property for public use provision. This would be open to the property owner challenging the action because the proposed taking is not for "public use", which could lead to protracted and unnecessary litigation for the State, which will only drive up the cost for the State.

The distressed residential properties program should be stricken from this bill in order to return it to its original intent, to protect our military from abusive lending practices.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a long horizontal flourish extending to the right.

Gary Y. Fujitani
Executive Director



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Testimony to the House Committee on Consumer Protection and Commerce
March 21, 2012

Testimony in Opposition to SB 2394 SD1 Proposed HD2 – Relating to Consumer Protection

To: The Honorable Robert Herkes, Chair
The Honorable Ryan Yamane, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 81 Hawaii credit unions, representing approximately 811,000 credit union members across the state. We are in opposition to SB 2394 SD1 HD2 (proposed).

This bill would protect military families from predatory lending. We have no objection to this portion of the bill. Part II of the bill creates a "Distressed Residential Properties Program", which would function as a "mortgage loan purchase program". While we are sympathetic to the financial hardship currently faced by many people today, Hawaii's credit unions and local banks have not contributed to the "foreclosure crisis". Credit unions have a long history of "serving the underserved" and put the needs of their members first. It is common for credit unions to personally assist members that find themselves in a situation where it becomes difficult to pay their mortgage.

While we understand the desire of the legislature to help people stay in their homes, we object to this method.

Thank you for the opportunity to testify in opposition.

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

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Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

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March 21, 2012

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **Senate Bill 2394, SD 1, HD 1, proposed HD 2(Consumer Protection)**
Hearing Date/Time: Wednesday, March 21, 2012, 2:11 p.m..

I am Marvin Dang, 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 the proposed House Draft 2 version of this Bill as drafted.

The purpose of this Bill is to authorize the Director of Commerce and Consumer Affairs to enforce certain federal laws to protect military members and their families from abusive lending practices.

In the proposed HD 2, the proposed additional language relating to a Distressed Residential Properties Program has been added to the contents of this Bill. The additional language is in Part II beginning with Section 3 and continuing to Section 11.

It is a questionable policy to require the Hawaii Housing Finance and Development Corporation ("HFDC") to purchase from a lender the problematic loan of a homeowner (a) who is in default on the mortgage or (b) whose request for mortgage modification under a federally sponsored program has been denied. This proposed draft appears short on sound reasons and guidelines for the HFDC to purchase (and in some instances force the purchase of) such a problematic loan and then make a new loan on that property to bailout that same homeowner.

The funding for the Distressed Residential Properties Program would be partly from monies raised by increasing the cost of loans and increasing the cost of doing business by Hawaii lenders. To fund this Program, there would be a special mortgage recording fee imposed on all mortgages and amendments of mortgages which are recorded at the Bureau of Conveyances or the Land Court. It just doesn't make sense to increase the costs of making good loans so that those costs could then be used to buy problematic loans. To additionally fund this Program, only Hawaii financial institutions (banks and financial services loan companies) would be required to pay an assessment of \$100 for every mortgage loan made. This assessment would inequitably be collected from only some Hawaii lenders, but not from other mortgage lenders. This scheme would unnecessarily increase the cost of doing business in Hawaii.

We ask that you delete Part II of the proposed HD 2. Thank you for considering our testimony.



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



Mar 19, 2012

**TESTIMONY IN SUPPORT OF SENATE BILL 2394 SD1 HD1
RELATING TO CONSUMER PROTECTION**

**HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
HEARING ON WEDNESDAY, MARCH 21ST, AT 2:11PM, IN CONFERENCE
ROOM 325**

Aloha Chair Herkes: The Oahu Veterans Council's delegates are deeply honored to serve at the pleasure of our veterans and their families. Our Legislative Committee voted unanimously to support SB 2394 SD1 HD1.

We are sincerely grateful for your efforts to authorize the director of commerce and consumer affairs to enforce certain federal laws, to protect military personnel and their families from abusive lending practices.

Hawaii is proud to host the largest per-capita military community in the nation. We are doing the right thing to protect our military personnel and their families from predatory lenders.

The Oahu Veterans Council respectfully urges your committee to consider passing Senate Bill 2394 SD1 HD1 as written; mahalo for allowing us to testify, regarding this extremely important issue.

Dennis Egge

Dennis Egge; Chairman, Legislative Committee



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

Wednesday, March 21, 2012

2:11 AM

Conference Room 325

**RE: SENATE BILL NO. 2394, SD1, HD1, RELATING TO CONSUMER
PROTECTION**

Chair Herkes and Rhoads, Vice Chair Yamane, and members of the committee.

My name is Charles Ota and I am the Vice President for Military Affairs at The Chamber of Commerce of Hawaii (The Chamber). I am here to state The Chamber's strong support of Senate Bill No. 2394, SD1, HD1, Relating to Consumer Protection.

The measure proposes to authorize the Director of Commerce and Consumer Affairs to enforce certain federal laws to protect military members and their families from abusive lending practices.

We concur with the comments stated in Section 1 of the proposed bill. Military members have long been vulnerable to abusive lending practices. Most are young service members aged 18-24 and have little or no experience in making major purchases. All too often they are victimized by sales people who take advantage of their inexperience.

The US Department of Defense has declared that abusive lending practices are a serious quality of life concern for service members and their families, and recommended that states act to adopt protective programs. This concern was especially prevalent over the past 10 years because of the high deployment rates faced by service members due the wars in Iraq and Afghanistan.

Thank you for the opportunity to testify in strong support of this bill.

**LAW OFFICE OF GEORGE J. ZWEIBEL
45-3590A Mamane Street
Honoka'a, Hawaii 96727
(808) 775-1087**

House Committee on Consumer Protection & Commerce

**Hearing: Wednesday, March 21, 2012, 2:11 p.m.
Conference Room 325, State Capitol, 415 South Beretania Street**

IN SUPPORT OF SB 2394, SD1, HD1 proposed HD2

Chairs Herkes, Vice Chair Yamane, and Committee Members:

My name is George Zweibel. I am a Hawaii Island attorney and have for many years represented mortgage borrowers living on Oahu, Hawaii, Kauai and Maui. Earlier, I was a regional director and staff attorney at the Federal Trade Commission enforcing consumer credit laws as well as a legal aid consumer lawyer. I have served on the Legislature's Mortgage Foreclosure Task Force ("Task Force") since its inception in 2010, although the views I express here are my own and not necessarily those of the Task Force.

Proposed HD2 for SB 2394, SD1, HD1 would add language creating a distressed residential properties program to help address the Hawaii mortgage crisis. I strongly support this additional language and the program it anticipates as well as the HD1 provisions authorizing DCCA to enforce federal laws that protect military members and their families from abusive lending practices.

As noted in Section 3, the foreclosure crisis in Hawaii is far from over. On the contrary, mortgagees' decision to stop doing nonjudicial foreclosures (when as many as 100 a day were being advertised in the Honolulu Star-Advertiser in late 2010) following enactment of Act 48, has created a massive backlog of foreclosures waiting to happen. The increase in judicial foreclosures is modest compared to the number of foreclosures yet to come. Implementing effective foreclosure mediation/dispute resolution programs ("ADR") in both judicial and nonjudicial foreclosures is essential to avoiding the unnecessary loss of homes in our state. The HD2 distressed residential properties program has the potential of keeping in their homes large numbers of borrowers who are not able to themselves reach an agreement with their lenders through ADR.

There have been widespread problems throughout the country involving failure to review documents establishing the legal right to collect on loans and to foreclose, filing notarized affidavits falsely attesting to such review and other material facts, and "robosigning" of documents. A recent foreclosure audit in San Francisco County strongly suggests that the true magnitude of this problem – in

Hawaii and elsewhere – is much greater than previously realized. Casting doubt on the validity of almost every foreclosure it examined, that audit determined that 84% contained law violations. New York Times, Feb. 16, 2012, at A1, A3. Transfers of many loans were made by entities that had no right to assign them and institutions took back properties in auctions even though they had not proved ownership. In 45% of the reviewed foreclosures, properties were sold at auction to entities improperly claiming to be the beneficiary of deeds of trust (used instead of mortgages to secure residential loans in California). In 6% of the foreclosures, the same deed of trust was assigned to two or more different entities, raising questions about who actually had the right to foreclose. Many securitized foreclosures showed gaps in the chain of title, indicating that transfers from the original loan owner to the entity currently claiming to own the deed of trust have disappeared.

By allowing occupants to remain in their homes if they can make reasonable loan payments to the Hawaii Housing Financing and Development Corporation, SB 2394, SD1, HD1, proposed HD2 would simultaneously save homes where ADR is not successful and address lenders' frequent inability to properly document their right to collect or to foreclose.

Thank you for your consideration of my testimony.