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KEALI'I S. LOPEZ  
DIRECTOR

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION  
TO THE HOUSE COMMITTEE ON FINANCE  
THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

Friday, March 30, 2012  
5:00 p.m.

**TESTIMONY ON SENATE BILL NO. 2394, S.D. 1, H.D. 2 - RELATING TO CONSUMER PROTECTION.**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,  
TO THE HONORABLE MARILYN B. LEE, 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. 2. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP strongly supports the original S.B. No. 2394, S.D. 1 as drafted. OCP takes no position on the new provisions contained in Part II of 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.



S.B. 2394, S.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 the original S.B. No. 2394, S.D. 1 as set forth in Part I of H.D. 2.

As for the new Part II in 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, there will be many more opportunities than exist today for Hawaii homeowners facing foreclosure 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  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

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

**HOUSE COMMITTEE ON FINANCE**

March 30, 2012 at 5:00 p.m.  
Room 308, State Capitol

In consideration of  
**S.B. 2394, S.D. 1, H.D. 2,**  
**RELATING TO CONSUMER PROTECTION.**

S.B. 2394, S.D. 1, H.D. 2, has the potential to assist distressed homeowners and stabilize communities. HHFDC's specific concerns with the proposed distressed residential properties program set forth in Part II of the H.D. 2 follow:

1. Any property subject to legislative approval of sale or gift of land in accordance with section 171-64.7, HRS, is not eligible to participate in the program. This proviso makes the program unworkable. Under the terms of the program, HHFDC would acquire the fee simple title to the property and re-sell it to the homeowner. However, except for 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", lands to which the HHFDC in its corporate capacity holds title is subject to section 171-64.7.

To resolve this problem, we suggest amending the bill as follows:

- Page 10, delete the proviso on lines 13-15, such that section 201H-B(a) would read as follows:

**§201H-B. Program eligibility.** (a) A mortgagor who has been using the subject property as a primary residence for a continuous period of not less than two hundred days immediately prior to the date when the





mortgagor received a letter of default on the mortgage or notice that the mortgagor's application for a mortgage modification under a federally sponsored program has been denied shall be entitled to apply for consideration in the distressed residential properties program[; ~~provided that no property subject to legislative approval of sale or gift of land in accordance with section 171-64.7 shall be eligible to participate in this program.~~].

- Page 17, amend section 201H-B (f), which starts on line 1, by adding exemption language 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. HHFDC would review a homeowner's application and determine whether the property should be accepted for further evaluation. The H.D. 2 lists various items that should be included in the application. We believe that it is necessary to have authorization to pull a credit report and share, release, discuss, and otherwise provide to third parties involved in the program (e.g., attorneys and credit counselors), public and non-public personal information contained in or related to the mortgage loan account of the applicant. This information may include the name, address, telephone number, social security number, credit score, credit report, income documentation, loss mitigation application status, account balances, program eligibility, and payment activity of the applicant.

We, therefore, suggest amending section 201H-B(a) by adding a new paragraph (5), on page 11, beginning on line 13, to read as follows:

(5) Authorization for the corporation to pull credit record and to share, release, discuss, and otherwise provide to and with authorized third parties, or their agents, public and non-public personal information contained in or related to the mortgage loan account of the applicant.

3. Our determination to accept a property for further evaluation will be based on many factors including an appraisal and an up-front assessment by an approved



housing counselor or budget and credit counselor. While every effort will be made to expedite the review, 60 days (instead of 45 days) would be a more reasonable time period to complete our due diligence. We suggest amending section 201H-B(b), starting on page 11, line 13, to read as follows:

(b) Within [~~forty-five~~] sixty days of receiving an application pursuant to subsection (a), the corporation shall review the application and determine whether the property shall be accepted for further evaluation.

If the corporation accepts the property for further evaluation, within the [~~forty-five~~] sixty day review period, the corporation shall conduct an appraisal of the property in accordance with rules adopted pursuant to chapter 91, and notify the mortgagee and its agents on record at the bureau of conveyances, including all affiliates that may be reported pursuant to any affiliate statement recorded pursuant to sections 454M-5(a)(4) and 667-58(a), and any entities purporting to represent the mortgagee, as reflected in the mortgage statements provided in the application. The notice shall describe the program and include details about the program's requirements, as set forth by rules adopted by the corporation in accordance with chapter 91. The corporation shall either file a copy of the notice in the office of the assistant registrar of the land court under chapter 501, or record it in the bureau of conveyances under chapter 502, or both, as appropriate.

If the corporation declines to accept the property for further evaluation, the corporation shall provide written notification to the applicant stating the reasons for that determination within the [~~forty-five~~] sixty day review period.

4. 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 suggest amending section 201H-B(g), on page 17, line 11, by increasing the mortgage servicing fee to no more than one percent. Proposed language would read as follows:

(g) The mortgages, agreements of sale, and other instruments of indebtedness, at the direction of the corporation, may be assigned to and serviced by commercial banks and other lending institutions doing business in the



State at a fee of not more than [~~one-half of~~] one per cent of the amount loaned to the purchaser.

5. We understand the \$8,000,000 in Section 9 of the bill (page 31, starting on line 15) may not be used to fund the program. If this is the case, a legislative appropriation will be needed to replace this funding source.

We defer to the Department of Commerce and Consumer Affairs on Part I of the H.D. 2. We also defer to the Departments of the Attorney General and Budget and Finance as to the use of the proposed sources of funding for the program set forth in sections 9 and 10 of the H.D. 2, and on any Constitutional or legal issues that this bill might raise.

Thank you for the opportunity to provide our testimony.



TESTIMONY BY KALBERT K. YOUNG  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 2394, S.D. 1, H.D. 2

March 30, 2012

RELATING TO CONSUMER PROTECTION

Senate Bill No. 2394, S.D. 1, H.D. 2, provides protection for military members and their families from unfair lending practices; creates a Distressed Residential Properties Program; authorizes the Hawaii Housing Finance and Development Corporation (HHFDC) to purchase existing loans between mortgage lenders and occupants of distressed properties; and establishes a Distressed Residential Properties Program Special Fund.

While the Department of Budget and Finance appreciates the intent of the bill to protect military members and distressed property owners, we defer to the HHFDC and the Department of the Attorney General regarding the technical issues and merits of the bill.

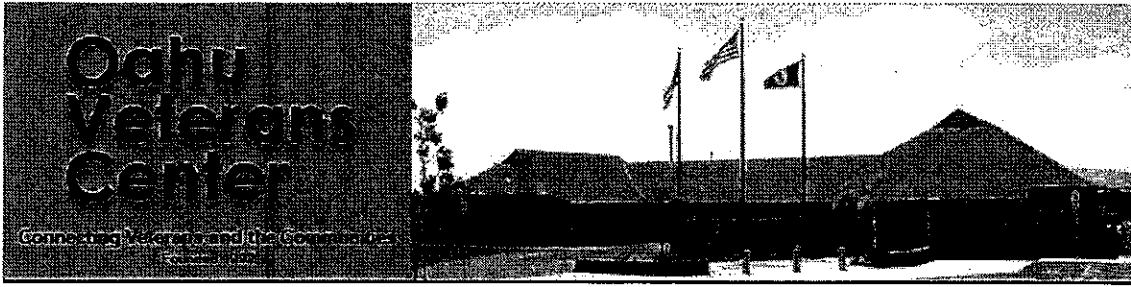
However, as a matter of general policy, the department does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to Senate Bill No. 2394, S.D. 1, H.D. 2, it is difficult to determine whether the fund will be self-sustaining.





I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.





Mar 29, 2012

**TESTIMONY IN SUPPORT OF SENATE BILL 2394 SD1 HD2  
RELATING TO CONSUMER PROTECTION**

**HOUSE COMMITTEE ON FINANCE**

**HEARING ON WEDNESDAY, MARCH 30TH, AT 5:00 PM, IN CONFERENCE  
ROOM 308**

Aloha Chair Oshiro: 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 HD2.

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 HD2 as written; mahalo for allowing us to testify, regarding this extremely important issue.

*Dennis Egge*

Dennis Egge; Chairman, Legislative Committee



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Hawaii Chapter, MOAA  
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**Testimony of Thomas Smyth**

**Military Officers Association of America, Hawaii Chapter**

**Before the Committee on Finance**

**Friday, March 30, 2012, 5:00 pm, Room 308**

**SB 2394 SD 1 HD 2 Relating to Consumer Protection**

**Chair Oshiro, Vice Chair Lee and Committee Members**

**We strongly support SB 2394, as amended, that provides further state-level enforcement of federal law protecting military personnel and their families from unfair lending practices.**

**While the 2003 Service Members Civil Relief Act does cover specified types of unfair interest charges and other types of contract relationships, it does not generally deal with the types of lending practices listed in this bill.**

**The authorization for the DCCA Consumer Protector to work with federal agencies to enforce these broader investigations and ensure that those military members and their families living in Hawaii are provided the best possible protection is a wise approach.**

**We commend the Legislature, working with DCCA, in amending the bill to ensure that this complex measure can effectively carry out its intended purpose.**

**Thank you for the opportunity to provide testimony.**



**Testimony to the House Committee on Finance**

**Friday, March 30, 2012**

**5:00 PM**

**Conference Room 325**

**RE: SENATE BILL NO. 2394, SD1, HD2, RELATING TO CONSUMER PROTECTION**

**Chair Oshiro, Vice Chair Lee, 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 support of the intent Senate Bill No. 2394, SD1, HD2, 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 intent of SB 2394 in enforcing certain federal laws to protect military members and their families from abusive lending practices. Most military members are 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 Chamber cannot comment on the proposed amendment relating to establishing a Distressed Residential Properties Program.

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.







46-063 Emepela Pl. #U101 Kaneohe, HI 96744 · (808) 679-7454 · Kris Coffield · Co-founder/Legislative Director

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**TESTIMONY FOR SENATE BILL 2394, SD1, HD2, RELATING TO CONSUMER  
PROTECTION**

**House Committee on Finance  
Hon. Marcus R. Oshiro, Chair  
Hon. Marilyn B. Lee, Vice Chair**

**Friday, March 30, 2012, 5:00 PM  
State Capitol, Conference Room 308**

Honorable Chair Oshiro 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, HD2, 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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Calvin Pang, Esq.  
President, Board of Directors

M. Nalani Fujimori Kaina, Esq.  
Executive Director

**The Honorable Marcus R. Oshiro, Chair**  
**The Honorable Marilyn B. Lee, Vice Chair**  
**House Committee on Finance**

**Hearing :     Friday, March 30, 2012, 5:00 p.m.**  
**State Capitol, Conference Room 308**

**In Support of Intent of SB 2394, HD2 Relating to Consumer Protection**

**Chair, Vice Chair, and Members of the Committee:**

My name is Madeleine Young, representing the Legal Aid Society of Hawai'i ("Legal Aid"). I am advocating for our clients who include the working poor, seniors, citizens who speak English as a second language, the disabled, other low and moderate income families who are consumers, and families facing default and foreclosure on their homes. I provide bankruptcy services as a staff attorney in Legal Aid's Consumer Unit. I also provide legal services to clients regarding mortgage default and foreclosure matters, wage garnishment avoidance, fair debt collection practices, debt collection defense, as well as student loan, tax debt, and other consumer debt problems.

We are testifying **in support of the intent** of SB 2394, HD2, which would, among other things, establish a Distressed Residential Properties Program ("Program") for homeowners who are able to pay a mortgage but are facing imminent foreclosure. We support the intent of Part II of HD2 to assist consumers in Hawai'i seeking foreclosure relief, and prevent the unnecessary loss of their homes, by enabling program participants to remain in their homes as long as they can satisfy a reasonable loan through the Program. Part II of HD2 would also require program participants to consult with an approved housing counselor or approved budget and credit counselor. Legal Aid believes these provisions would directly benefit consumers struggling with problematic mortgages and reduce hardships on families and communities by preventing wrongful or avoidable foreclosures.

**Conclusion:** We appreciate the committee's recognition of the need to address the mortgage loan crisis in Hawai'i and support SB 2394, HD2's attempts at doing so. Thank you for the opportunity to testify.





To: The House Committee on Finance

From: Rev. Bob Nakata, FACE

SB 2394 SD1 HD2

5:00pm Friday, March 30, 2012

Room 308

I am Rev. Bob Nakata with Faith Action for Community Equity and I fully support SB 2394 SD1 HD2. I have been working with families facing foreclosure for more than a year now and I have seen first hand the mess the predatory lending makes of our families' resources. It even hurts family relationships.

I like that this bill empowers DCCA to stop predatory lending. I like that it helps families clear the titles on their mortgages. And I especially like that this bill authorizes the HHFDC to develop a mortgage loan purchase program.

I want to be able to tell the families I have been working with that you are passing this bill and it is going to become law.

Thank you for your consideration of these important issues.







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March 30, 2012

**The Honorable Marcus R. Oshiro, Chair**  
House Committee on Finance  
State Capitol, Room 308  
Honolulu, HI 96813

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

**HEARING: Friday, March 30, 2011, at 5:00 p.m. ; AGENDA #4**

Aloha Chair Oshiro, Vice-Chair Lee, 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, 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, and establishes a Distressed Residential Properties Program.

HAR has serious concerns with several provisions of S.B. 2394, S.D.1, 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.

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

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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Testimony to the House Committee on Finance  
March 30, 2012

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

To: The Honorable Marcus Oshiro, Chair  
The Honorable Marilyn Lee, 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.

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 financial 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

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March 30, 2012

Rep. Marcus R. Oshiro, Chair  
and members of the House Committee on Finance  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **Senate Bill 2394, S.D. 1, H.D. 2(Consumer Protection)**  
**Hearing Date/Time: Friday, March 30, 2012, 5:00 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 this Bill as drafted.**

The purposes of this Bill are to: (a) authorize the Director of Commerce and Consumer Affairs to enforce certain federal laws to protect military members and their families from abusive lending practices; and (b) establish a Distressed Residential Properties Program.

We ask that you delete Part II of the proposed HD 2. 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.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

(MSCD/hfsa)





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Presentation of the Committee on Finance  
Friday 30, March 30, 2012 at 5:00 p.m.  
Testimony on SB 2394, SD1, HD2 Relating to Consumer Protection

**In Opposition to Section K. DISTRESSED RESIDENTIAL PROPERTIES PROGRAM**

TO: The Honorable Marcus Oshiro, Chair  
The Honorable Marilyn B. Lee, Vice Chair  
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 properties program", which essentially bails out lenders who made no down payment liar loans and would create 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 lender "bailout" could impact the State's 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.

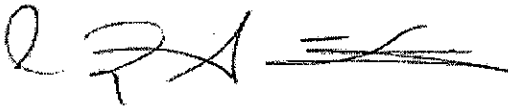




We also question the legality of the provision in section 201H-B. (d) condemnation of private personal property for public use. This would be open to the lender challenging the action because the proposed taking is not for "public use", which could lead to protracted and unnecessary litigation for the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

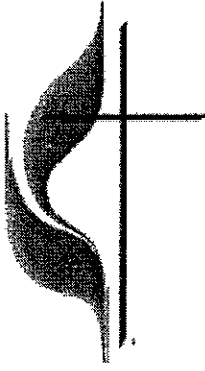
The distressed residential properties program should be stricken from this bill in order to return it to its original intent, to protect our military from abusive lending practices.

Thank you for the opportunity to provide our testimony.

A handwritten signature in black ink, appearing to read 'Gary Y. Fujitani', with a horizontal line drawn through the end of the signature.

Gary Y. Fujitani  
Executive Director





**From the Desk of  
The Rev. Samuel L. Domingo**

**FROM: REV. SAMUEL L. DOMINGO, FACE Oahu President  
TO: HOUSE COMMITTEE ON FINANCE  
MARCH 30, 2012 5:00 PM  
SB2394 HD2 Relating to the Foreclosure Prevention**

**Good afternoon Chair Oshiro and committee members:**

**I submit my testimony in support of SB 2394 HD2. This bill further strengthens support for the consumer against predatory lending. I am fully behind the loan purchase program that will be administered by Hawaii Housing Finance Development Corporation. This program will help our residents, especially our military families, keep their homes.**

**I urge passage of SB 2394 HD2.**

**Mahalo,**

**Rev. Samuel L Domingo**

*204 Ku'uhua Place  
Kailua, Hawai'i 96734*



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

**House Committee on Finance**

**Hearing: Friday, March 30, 2012, 5:00 p.m.  
Conference Room 308, State Capitol, 415 South Beretania Street**

**IN SUPPORT OF SB 2394, SD1, HD2**

**Chair Oshiro, Vice Chair Lee, 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.

SB 2394, SD1, HD2 would authorize DCCA to enforce federal laws that protect military members and their families from abusive lending practices. It would also create a Distressed Residential Properties Program to help address the mortgage loan crisis in Hawaii by assisting homeowners who are able to pay a mortgage but are facing foreclosure. I strongly support SB 2394, SD1, HD2.

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 Distressed Residential Properties Program would keep 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.

The Distressed Residential Properties Program would involve the purchase of existing loans of distressed properties, which would then be treated as loans to qualified owner-occupants. By allowing occupants to remain in their homes if they can make reasonable loan payments, SB 2394, SD1, HD2 would save large numbers of homes that would otherwise be lost to foreclosure and address lenders' frequent inability to properly document their right to collect or to foreclose. As described in Section 3, this would greatly benefit the parties and the State alike. I strongly support creation of the Distressed Residential Properties Program, which has the potential to provide benefits that far exceed its cost.

Thank you for your consideration of my testimony.





## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 29, 2012 7:54 PM  
**To:** FINTestimony  
**Cc:** kminc67@hotmail.com  
**Subject:** Testimony for SB2394 on 3/30/2012 5:00:00 PM

Testimony for FIN 3/30/2012 5:00:00 PM SB2394

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: karen miyashiro  
Organization:  
E-mail: [kminc67@hotmail.com](mailto:kminc67@hotmail.com)  
Submitted on: 3/29/2012

**Comments:**

The people of Hawaii need to have this law that protects our State economy and the people. This is a fare bill that protects American citations from unbalanced and damaging for profit practisies. Keep Hawaii's people in a healthy Hawaii and in their homes.



## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 29, 2012 8:30 PM  
**To:** FINTestimony  
**Cc:** Melbahawaii@gmail.com  
**Subject:** Testimony for SB2394 on 3/30/2012 5:00:00 PM

Testimony for FIN 3/30/2012 5:00:00 PM SB2394

Conference room: 308  
Testifier position: Support  
Testifier will be present: Yes  
Submitted by: Melba Amaral  
Organization: Individual  
E-mail: [Melbahawaii@gmail.com](mailto:Melbahawaii@gmail.com)  
Submitted on: 3/29/2012

**Comments:**

Act 48 needs to be made permanent and stronger. It is clear that laws still need to be implemented to better monitor and prevent any more unnecessary fraudclosures in our state.



## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Thursday, March 29, 2012 5:33 PM  
**To:** FINTestimony  
**Cc:** marcyfrommaui@gmail.com  
**Subject:** Testimony for SB2394 on 3/30/2012 5:00:00 PM

Testimony for FIN 3/30/2012 5:00:00 PM SB2394

Conference room: 308  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Marcy Koltun-Crilley  
Organization: Individual  
E-mail: [marcyfrommaui@gmail.com](mailto:marcyfrommaui@gmail.com)  
Submitted on: 3/29/2012

**Comments:**

I STRONGLY SUPPORT SB 2394

I am not in the military , but I have experienced the abuse banks have caused and gotten away with.

I can not even begin to imagine what this must do to Military families, or how it was ever allowed, but it must stop.

I thank the members and our representatives for supporting this bill and our Military, who obviously can not lobby like the banks do.

Marcy Koltun-Crilley  
Kihei, Hi

