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TO THE
HOUSE COMMITTEE ON
FINANCE

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Monday, April 2, 2012
4:00 p.m.

TESTIMONY ON S.B. NO. 2763, S.D. 2, H.D. 1
RELATING TO MORTGAGE LOAN ORIGINATION

THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("DCCA") in strong support of administrative bill, Senate Bill No. 2763, S.D. 2, H.D. 1. We have one clarification amendment to suggest related to the sole proprietor fees.

Overview of Division of Financial Institutions Budget

The Division of Financial Institutions ("DFI") bases its budget requests on the amount of revenue generated from programs plus the \$2.0 million from the franchise tax. For each year, we calculate the amount of revenues less the expenditures to determine the initial amount of the funds available. Starting in FY2012, DFI will be running a deficit as DFI is not bringing in adequate revenue to cover all expenses and adjustments.

We are asking for the increase in fees for this and other programs as we need to show a stable source of income for the upcoming accreditation review of DFI by CSBS (Conference of State Bank Supervisors). As our current source of funding has been in jeopardy in the last few years, there are indications that if we do not have a stable source of funding, this will weigh heavily against being accredited for another five years.

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

Mortgage Loan Originator Program Costs

The Mortgage Loan Originator ("MLO") program began in 2010 with the first licenses issued in December 2010, and the rest of the licenses issued in 2011. The end of calendar year 2011 marks the first full year of the MLO program for DFI. In anticipation of budgeting for the program in fiscal year 2010, DFI knew that there were approximately 6,500 mortgage brokers and solicitors registered with DCCA's Professional and Vocational Licensing branch. DFI estimated that with the new requirements of licensure, it would license approximately 3,000 MLOs and Mortgage Loan Originator Companies ("MLOC") combined. At the end of 2011, DFI had approximately 840 MLOs and approximately 240 MLOCs. Because the initial projections for the budget were based on 3,000 licensees and we have less than half of the number of expected licensees, the fees collected have not comported to the expenses of the MLO program. In addition, when the MLO program began, DFI had about 600 inquiries a month from people who wanted to understand how to get a license, and what the requirements were for licensure, even though DFI posted FAQs on our webpage. Currently, the MLO program receives about 200 inquiries a month, and receives numerous anonymous complaints about companies or individuals who may be engaging in unlicensed activity. We have commenced investigations on many of these complaints and have begun enforcement proceedings.

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

Fee Structure

After discussions with interested parties affected by this chapter, we have agreed to a compromise on the fee structure. The additional anticipated revenues will be approximately \$66,000 will be used to pay for the expenses of investigations (including subpoenas, and interisland travel, sheriff costs, locksmith costs), and we anticipate the need for an additional person in fiscal year 2013-14 to permanently conduct investigations.

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

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

Sole Proprietors

DFI licensed 28 sole proprietors during 2011. Every state in the country uses the NMLS to allow applicants to apply online for both initial applications and renewal applications. NMLS collects all fees for each state based on set parameters of MLOs, MLOCs, branches, and exempt MLOCs. NMLS cannot easily program special fees for states to charge for specialized licensees. The only way to adjust the fees for sole proprietors is for them to pay all fees through NMLS and request that the State reimburse the fees we may choose to waive. The reimbursement process may take up to 120 days during the renewal period, and we would complete the renewals before starting the reimbursements as all staff persons work on the renewal applications. The

reimbursement process is a manual one for DFI, DCCA fiscal office and DAGS fiscal office.

To avoid the extra costs both to the sole proprietors, we request an amendment to the bill to allow the DFI to reimburse sole proprietors from the initial application and annual license renewal fees. NMLS is not able to change its system to allow for state specific changes to fee collections as the fee collection system is a nationwide operation. We suggest the following language be added to section 1 of the bill as a third new section:

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

Concurrently, if the above language is accepted, please delete on page 16, subsection (3) on lines 3 to 13. We believe our suggested language will be clearer to MLOs who are sole proprietors.

Based on the number of licenses issued to sole proprietors (MLOC and MLO), we project 15 new applicants for 2012. Using the proposed fees and if we waive the

MLO fees, the projected loss of revenue would be \$12,000, which includes the recovery fund fee. At renewal, using the proposed fees and estimating that there will be 40 sole proprietors applying for renewal, waiving the same fee (MLO), the projected loss of revenue would be \$18,000 which also includes the recovery fund fee.

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

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

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

For these reasons, DFI strongly supports this administration bill, Senate Bill No. 2763, S.D. 2, 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.



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Monday, April 2, 2012
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TESTIMONY ON S.B. NO. 2763
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TO: THE HONORABLE MARCUS R. OSHIRO, CHAIR
THE HONORABLE MARILYN B. LEE
MEMBERS OF THE COMMITTEE ON FINANCE

My name is Glenn K. C. Ching, Senior Vice President and General Counsel of Central Pacific Bank and I am testifying on behalf of Central Pacific Bank in opposition to SB 2763.

SB 2763 amends Hawaii Revised Statutes, Chapter 454F (the "Hawaii SAFE Act"), in part, by deleting the current exemption from Hawaii SAFE Act licensing requirements for subsidiaries of insured financial institutions who are currently subject to registration under federal law. Thus, if enacted in its current form without changes, the Hawaii SAFE Act will be in direct conflict with the federal law, and subject subsidiaries of insured depository institutions to conflicting State of Hawaii and federal requirements.

While Central Pacific Bank supports the other changes to the Hawaii SAFE Act contained in SB 2763, Central Pacific Bank opposes the changes to Section 454F-2(1) of the Hawaii SAFE Act. Section 454F-2(1) currently provides an exemption from the Hawaii SAFE Act licensing requirements for insured depository institutions and their subsidiaries that are subject to federal registration regulations. However, on page 10, lines 18 to 20 of the bill "a subsidiary of an insured depository institution regulated by a federal banking agency" is stricken. This revision to the Hawaii SAFE Act directly affects insured depository institutions and their subsidiaries that are currently subject to the federal regulations on loan originator registration. If enacted in its current form, any subsidiary of an insured depository institution will arguably be in violation of the Hawaii SAFE Act even though the subsidiary is in compliance with the federal loan originator registration rules adopted by the Consumer Financial Protection Bureau (the "CFPB") and other federal statutes and regulations.

In particular, SB 2763 is in direct conflict with the following federal statutes and regulations:


- Title V of P.L. 110-289 enacted the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "Federal SAFE Act"). Section 1504 of the Federal SAFE Act requires mortgage loan originators to either be licensed under state law or registered with the Nationwide Mortgage Licensing System and Registry (the "NMLSR") pursuant to regulations adopted by the federal banking agencies. Section 1503(7) of the Federal SAFE Act defines a "registered loan originator" as "... any individual who (A) meets the definition of loan originator and is an employee of (i) a depository institution; (ii) a subsidiary that is (I) owned and controlled by a depository institution; and (II) regulated by a Federal banking agency..." The Hawaii SAFE Act

was enacted in order to implement the licensing requirements of the Federal SAFE Act, and current Section 454F-2(1) provides an exemption from licensing for registered loan originators, which is consistent with the definition of a registered loan originator under the Federal SAFE Act.

- On August 23, 2010, the federal banking agencies published a final rule which implemented the registration requirements for insured depository institutions, their subsidiaries and their respective employees. Under the federal banking agencies' final rules, the insured depository institutions and subsidiaries subject to the final rule was consistent with the definition of a registered loan originator under the Federal SAFE Act. For example, under the final rule adopted by the Federal Deposit Insurance Corporation (the "FDIC"), the final rule applied to "...insured state nonmember banks (including state-licensed insured branches of foreign banks) and their subsidiaries".
- Pursuant to Section 1100 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, authority to issue regulations under the Federal SAFE Act was transferred to the new CFPB. On December 19, 2011, the CFPB adopted an Interim Final Rule implementing the registration requirements of the Federal SAFE Act. Regulation G (12 C.F.R Part 1007) of the CFPB requires federally insured depository institutions and their subsidiaries to be registered with the NMLS. Importantly, the scope of Regulation G is the same as under the former rules adopted by the individual federal banking agencies. For example, Section 1007.101(c)(1)(iii) of Regulation G applies to "...insured state nonmember banks (including state-licensed insured branches of foreign banks) and their subsidiaries", which is the same as under the former FDIC rule.
- On June 30, 2011, pursuant to the Federal SAFE Act, the federal Department of Housing and Urban Development ("HUD") issued a final rule setting forth the minimum standards for state licensing and registration of mortgage loan originators. Section 3400.103(e)(5) of the HUD final rule (24 C.F.R. Part 3400) specifically provides that a state is not required to impose the Federal SAFE Act state licensing requirements on "(5) An individual who is lawfully registered with and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry, and is an employee of (i) A depository institution; (ii) A subsidiary that is: (A) Owned and controlled by a depository institution;..."

As demonstrated above, depository institutions and their subsidiaries are already subject to comprehensive federal loan originator registration requirements and federal agency examination. Hawaii insured depository institutions and their subsidiaries have complied with those federal requirements and relied on the exemption contained in Section 454F-2(1) since the Hawaii SAFE Act was enacted. In addition, there have not been any federal statutory or regulatory changes that require a state to exercise licensing authority over insured depository institutions and their subsidiaries. Therefore, the amendment to Section 454F-2(1) contained in SB 2763 is not necessary and should not be included in the final version of SB 2763.

Thank you for the opportunity to present this testimony.



Glenn K. C. Ching
Senior Vice President and General Counsel
Central Pacific Bank