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TO THE  
HOUSE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION  
THE TWENTY-SEVENTH STATE LEGISLATURE  
REGULAR SESSION OF 2014

February 12, 2014  
2:10 p.m.

TESTIMONY ON H.B. NO. 2267  
RELATING TO SECURE AND FAIR ENFORCEMENT  
FOR MORTGAGE LICENSING ACT

THE HONORABLE ANGUS L.K. MCKELVEY, 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 strong support of this administration bill, House Bill No. 2267, with suggested amendments stated in this testimony.

H.B. 2267 amends Chapter 454F of the Hawaii Revised Statutes, the "Secure and Fair Enforcement for Mortgage Licensing Act." It is largely a housekeeping bill that adds consistency to changes made last session. It also provides needed clarification

and a few updates that will benefit the public and better protect consumers. The bill includes these highlights:

### **Housekeeping and Clarification**

- Adds definitions for the terms elder, principal office, "offers or negotiates terms of a residential mortgage loan" (part of the mortgage loan originator definition), regular business hours, and sole proprietor. Amends definitions for branch office, mortgage loan originator, mortgage servicer company, and principal place of business.
- Updates names of mortgage call report forms. Clarifies that the reporting requirement applies to an exempt sponsoring mortgage loan originator company ("MLOC").
- Replaces the term "the Nationwide Mortgage Licensing System" with the system's current name, "NMLS" in a couple of places that were missed as an oversight.
- Clarifies that an MLOC must have a separate branch manager at each branch.
- Exempts certain MLOC and mortgage servicer company information from confidentiality requirements, as it is accessible by the public through NMLS.
- Clarifies existing fee schedules for a mortgage servicer company to maintain a mortgage loan servicer loan modification license.

- Deletes a provision reimbursing application and renewal fees to sole proprietor MLOCs. DFI was able to change the NMLS billing system, rendering reimbursement unnecessary.

### **Consumer Protection**

- Removes chapter exemptions for individuals handling mortgage loans for their family members and family property. Mortgage loans involve substantial assets and should be handled by qualified licensees.
- Adds the failure to meet initial licensing requirements at any time as grounds for license denial, suspension, revocation, condition, and non-renewal. Once issued a license, the licensee should continue to meet initial licensing standards.
- Expressly requires registration and good standing with the Department for renewal of an MLOC or a mortgage servicer company license.
- Extends the Commissioner's authority to issue a temporary order to cease doing business, to unlicensed persons who are in violation of Chapter 454F. The law already grants the Commissioner this power with respect to licensees.
- Requires licensees to keep and post regular business hours at each location, and to be open to the public for business during those times. This will improve access for customers, and for DFI staff in the conduct of examinations and investigation.

#### **Four Requested Amendments**

A compromise position on this bill was reached after additional discussions between DFI and industry representatives. DFI recommends that amendments be made to H.B. 2267 as shown on the bill mark-up attached. This is a summary of the requested amendments:

1. Page 1, line 16, through page 2, line 3 – In the proposed definition of “offers or negotiates terms of a residential mortgage loan”, change subparagraph (3) to clarify the conduct that requires licensure as a mortgage loan originator.
2. Page 2, lines 10 through 12 – Delete the proposed definition of “sole proprietor”, and replace it with a new definition of “sole proprietorship”. This will better describe the type of business ownership contemplated by a “sole proprietor” mortgage loan originator license.
  - a. For consistency, in H.R.S. §454F-22(b), change references to “sole proprietor” to “sole proprietorship”. (Insert change at Page 13, line 18.)
3. Page 10, lines 10 through 21 – In subparagraph (g), which addresses an MLOC’s business, change language to require that MLOCs be open during posted business hours. Add a new subparagraph (h) that clarifies the authority of the Commissioner or the Commissioner’s authorized representatives to conduct an examination or investigation of an MLOC during regular business hours.

Finally, due to a misunderstanding of a business registration requirement discovered after the bill's submission, an additional change is requested as follows:

4. Page 7, lines 1 through 2, and lines 12 through 13 – Change the license renewal requirement that an MLOC and a mortgage servicer company be “registered to do business in this State, and in good standing” with the Department’s Business Registration Division (“BREG”), to a requirement that such business be “registered” with BREG. This is requested because BREG does not issue certificates of good standing for trade names used by sole proprietors.

**DFI strongly supports this administration bill, House Bill No. 2267, and respectfully requests that it be passed out of the committee with the four amendments suggested above.**

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

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A BILL FOR AN ACT

RELATING TO SECURE AND FAIR ENFORCEMENT FOR MORTGAGE LICENSING ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 454F-1, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By adding five new definitions to be appropriately  
4 inserted and to read as follows:

5 "Elder" means an individual who is sixty-two years of age or  
6 older.

7 "Offers or negotiates terms of a residential mortgage loan"  
8 means:

9 (1) Presents for consideration by a borrower or  
10 prospective borrower particular residential mortgage  
11 loan terms; or

12 (2) Communicates directly or indirectly with a borrower or  
13 prospective borrower for the purpose of reaching a

14 understanding about prospective residential  
15 loan terms; or

16 (3) ~~Recommends, refers, or steers a borrower or~~  
17 prospective borrower to a particular lender or set of

directly or indirectly

1 residential mortgage loan terms, in accordance with a  
2 duty to or incentive from any person other than the  
3 borrower or prospective borrower.

4 "Principal office" means the office location where the  
5 company's core executive and administrative functions are  
6 primarily carried out.

7 "Regular business hours" means  
8 between the hours of 8:00 a.m. and  
9 holidays.

mortgage loan originator business that is solely and personally owned and operated by an individual mortgage loan originator, and where there is no legal distinction between the individual business owner and the business.

proprietorship

10 "Sole ~~proprietor~~" means a ~~single individual not exempt under~~  
11 ~~section 454F 2 who engages in the business of a mortgage loan~~  
12 ~~originator and owns all the assets of the business.~~"

13 2. By amending the definitions of "branch office", "exempt  
14 sponsoring mortgage loan originator company", "mortgage loan  
15 originator", "mortgage servicer company", "principal place of  
16 business", and "unique identifier" to read as follows:

17 "Branch office" means any location[~~, separate from the~~  
18 ~~principal place of business of the mortgage loan originator~~  
19 ~~company] in this State that is identified by any means to the  
20 public or customers as a location at which the licensee holds  
21 itself out as a mortgage loan originator company. [~~For mortgage~~  
22 ~~loan originator companies headquartered out of state, a branch~~  
23 ~~office may be its principal place of business.]~~~~

1        (4) The mortgage loan originator company is registered to  
2        ~~do business in this State, and is in good standing,~~  
3        with the business registration division of the  
4        department of commerce and consumer affairs.

5        (c) The minimum standards for license renewal for a  
6 mortgage servicer company shall include the following:

7        (1) The mortgage servicer company continues to meet the  
8        minimum standards for licensure established pursuant  
9        to section 454F-5; ~~and~~

10       (2) The mortgage servicer company has paid all required  
11       fees for renewal of the license ~~[-]~~; and

12       (3) The mortgage servicer company is registered to do  
13       ~~business in this State, and is in good standing,~~ with  
14       the business registration division of the department  
15       of commerce and consumer affairs."

16       SECTION 4. Section 454F-10.5, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "**§454F-10.5 Authorized places of business; designation of**  
19 **qualified individuals and branch managers; branch offices; ~~out-~~**  
20 **~~of-state headquarters;~~ principal office; relocation. (a)**

21 Every mortgage loan originator company licensed under this  
22 chapter shall have and maintain a principal place of business in  
23 the State and shall designate a qualified individual ~~[who is~~



1 of a branch office where the qualified individual is  
2 physically present.

3 (f) A mortgage loan originator company that maintains its  
4 [headquarters] principal office in this State shall designate a  
5 qualified individual who is physically present in the principal  
6 place of business [office] as its branch manager to oversee and  
7 manage that principal place of business [office]. Such  
8 principal place of business shall not be considered a branch  
9 office for purposes of section 454F-22(c).

10 (g) The principal place of business and each branch office  
11 of the mortgage loan originator company shall be identified in  
12 NMLS to consumers as a location at which the licensee holds  
13 itself out as a mortgage loan originator company. Each such  
14 location shall be open for business to the public during ~~regular~~  
15 ~~business hours, and business hours shall be posted in a~~  
16 ~~conspicuous place. Should the commissioner or the~~  
17 ~~commissioner's authorized representatives appear at the office~~  
18 ~~of a mortgage loan originator company to conduct an examination~~  
19 ~~or investigation during regular business hours, and be denied~~

20 access to any office, reco  
21 denial may be considered a

22 SECTION 5. Section 4  
23 amended by amending subsec

posted business hours. The posted business hours shall be during regular business hours and displayed in a conspicuous place at the location to inform the consumer when the location will be open.  
(h) The commissioner or the commissioner's authorized representatives shall be able to conduct an examination or investigation during regular business hours. If

are

1       "~~§454F-16~~ **Mortgage call reports.** Each licensee~~[7]~~ and  
 2 exempt sponsoring mortgage loan originator company, as may be  
 3 required by title 12 United States Code sections 5101 to 5116,  
 4 shall submit quarterly to NMLS reports of condition, using the  
 5 form entitled "~~[REPORT OF]~~ FINANCIAL CONDITION"~~[7]~~ or  
 6 "RESIDENTIAL MORTGAGE LOAN ACTIVITY", which shall be in the form  
 7 and contain the information as NMLS may require."

8       SECTION 8. Section 454F-19, Hawaii Revised Statutes, is  
 9 amended to read as follows:

10       "~~§454F-19~~ **Unique identifier shown.** The unique identifier  
 11 of any person originating a residential mortgage loan, except a  
 12 person who is exempt from this chapter, shall be clearly shown  
 13 on all residential mortgage loan application forms,  
 14 solicitations, ~~[or]~~ and advertisements, including business cards  
 15 or websites, and any other documents as established by rule or  
 16 order of the commissioner."

17       SECTION 9. Section 454F-22, (b) and Hawaii Revised Statutes, is  
 18 amended by amending subsection (f) to read as follows:

19       "~~(f)~~ 1. By amending subsection (b) to read:  
 20 office the "(b) A sole [proprietor] proprietorship mortgage loan originator shall pay the following fees to obtain  
 21 [originator- and maintain a valid sole [proprietor] proprietorship mortgage loan originator license:  
 22       (1) In (1) Initial application fee of \$35;  
 23       (2) Ar (2) Annual license renewal fee of \$35;  
       (3) Reinstatement fee of \$100;  
       (4) Late fee of \$25 per day; and  
       (5) Criminal background check fee of \$35, or of an amount determined by the commissioner by rule  
       pursuant to chapter 91."  
       2. By amending subsection (f) to read:



TO: HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE  
Representative Angus L. K. McKelvey, Chair  
Representative Derek S. K. Kawakami, Vice Chair

FROM: Tiare Fullerton, President  
Hawaii Association of Mortgage Professionals

RE: HB 2267, Relating to Secure and Fair Enforcement for Mortgage Licensing Act

Position: Comments

Dear Chair McKelvey, Vice Chair Kawakami and members of the Committee:

I am Tiare Fullerton, President of the Hawaii Association of Mortgage Professionals (HAMB), a nonprofit organization dedicated to promoting high standards of professionalism in the mortgage industry through education and advocacy. We are a state affiliate of NAMB "The Association of Mortgage Professionals." HAMB's comments on the bill are limited to the proposed definition of sole proprietor and the hours of operation requirement. We have been in dialogue with the Commissioner of Financial Institutions, Iris Catalani, regarding our concerns.

As we understood the intention of the legislature, the fee exemption for sole proprietors was intended to allow Mortgage Loan Origination Companies (MLOC) controlled by a single Mortgage Loan Originator (MLO) to pay only the MLOC fee. However, the definition of sole proprietor limits the fee reduction to only those MLOCs organized for liability purposes as a sole proprietor. There are MLOCs owned and operated by single MLOs who have chosen to organize as Limited Liability Companies or S Corporations in an effort to protect the MLOs personal assets. This is the approach we prefer as it allows the single MLO MLOCs to not have to pay registration fees twice.

We are concerned with the requirement in the bill that MLOCs maintain "regular business hours" that are defined in the bill as being from 8:00am to 4:30 Monday through Friday. In an industry where clients are often met outside of the office and the principals must attend mortgage signings off site, it is not practical to provide an office that remains open throughout the week. We were pleased that in our recent communication with Commissioner Catalani she was willing to work with us on a compromise that involves the posting of hours when an MLOC is open. Our discussions with Commissioner Catalani lead to an agreement upon the following language to address this issue.

(g) The principal place of business and each branch office of the mortgage loan originator company shall be

identified in NMLS to consumers as a location at which the licensee holds itself out as a mortgage loan originator company. Each such location shall be open for business to the public during posted business hours. The posted business hours shall be during regular business hours and displayed in a conspicuous place at the location, to inform the consumer when the location will be open.

During our meeting with Commissioner Catalani another issue came to light that both parties agreed we would like to address. DFI is having a problem with MLOCs that insist they are open for business only in the middle of the night. They do not make themselves available to DFI examiners or auditors during hours that DFI is open. There is nothing in the current law that allows DFI to compel MLOCs to allow for examinations and audits during regular business hours and therefore these unreasonable actors are not being examined or audited. We both agree that this hinders DFI's ability to regulate these companies and protect consumers. We propose the following amendment to address this issue.

(h) The commissioner or the commissioner's authorized representatives shall be able to conduct an examination or investigation during regular business hours. If the commissioner or the commissioner's authorized representatives are denied access to any office, record, or file for any reason, such denial may be considered a violation of this chapter.

We look forward to working with you as this bill moves through the process. Thank you for this opportunity to testify.

# HAWAII FINANCIAL SERVICES ASSOCIATION

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**LATE**

February 12, 2014

Rep. Angus L.K. McKelvey, Chair, and Rep. Derek S.K. Kawakami, Vice Chair  
and members of the House Committee on Consumer Protection and Commerce  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 2267 (Secure and Fair Enforcement for Mortgage Licensing Act)**  
**Hearing Date/Time: Wednesday, February 12, 2014, 2:10 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 wording of one of the definitions in this Bill, and asks that it be amended.**

The purposes of this Bill are to: (1) add definitions for clarity; (2) require a mortgage loan originator company to be open during specified regular business hours to the public and for examination or investigation by the commissioner; (3) delete exemptions for individuals facilitating mortgage loans for their family members and family property; (4) clarify that a branch manager may not oversee more than one branch office or principal place of business; and (5) exclude certain information included in NMLS from confidentiality provisions of the law.

**After this Bill was introduced, the Commissioner of Financial Institutions and the HFSA agreed that the proposed new definition in this Bill called "offers or negotiates terms of a residential mortgage loan" (page 1, beginning on line 7) is to be further amended on line 16 as follows:**

**"(3) Takes or gathers information from a borrower or prospective borrower for the purpose of recommending, referring, or steering that borrower or prospective borrower directly or indirectly to a particular lender or set of residential mortgage loan terms, in accordance with a duty to or incentive from any person other than the borrower or prospective borrower."**

The HFSA agreed to this amendment because it is consistent with what was intended by the federal Secure and Fair Enforcement for Mortgage Licensing Act ("federal SAFE Act") and the rule adopted by the Department of Housing and Urban Development to implement the federal SAFE Act, and now administered by the Consumer Financial Protection Bureau as Regulation H ("federal SAFE Act Rule"). In the preamble to the federal SAFE Act Rule, an "individual's generic referral to or recommendation of a particular lender, divorced from any receipt and consideration by the individual of the prospective borrower's application", would not likely be an activity that would subject the individual to a mortgage loan originator licensing obligation.

Under the proposed amendment to the definition to which the HFSA and the Commissioner have agreed, the HFSA envisions that under one scenario, an individual, who is a financial advisor, would not take applications from the individual's clients for mortgage loans and would not take information from the individual's clients for purposes of making a decision, or extending an offer, for a mortgage loan. That financial advisor might introduce his or her clients to a mortgage lender. The individual financial advisor might be compensated for such introduction by the individual's employer, as permitted under the Real Estate Settlement Procedures Act (RESPA), but the compensation would be only from the individual's employer and not from the lender or the borrower. With the proposed amended definition of "offers or negotiates terms of a residential mortgage loan", by referring such a client to a lender, the individual's activity as described above would not constitute acting as a mortgage loan originator.

Accordingly, we ask that this Bill be amended. Thank you for considering our testimony.

*Marvin S. C. Dang*

MARVIN S.C. DANG, Attorney for HFSA