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TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE
THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Wednesday, February 6, 2013
2:30 p.m.

TESTIMONY ON H.B. NO. 838
RELATING TO MORTGAGE LOAN ORIGINATION

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 in strong support of this administration bill, House Bill No. 838.

This bill primarily focuses on amendments to Chapter 454F of the Hawaii Revised Statutes ("HRS"), the "Secure and Fair Enforcement for Mortgage Licensing Act." The bill has two major purposes. First, it clarifies licensure requirements for mortgage loan originators and mortgage loan originator companies, and for mortgage servicer companies conducting mortgage loan origination

activity (collectively, "Chapter 454F licensees"). Second, it adjusts fees for the mortgage loan origination licensees, and it establishes fees for mortgage servicer companies that conduct mortgage loan origination activities. Fee adjustments were discussed with mortgage loan origination industry representatives last summer, and are needed to close the gap on the deficit that the Division of Financial Institutions ("Division") has been covering to meet its statutorily mandated duties to oversee and regulate its licensees.

Mortgage loan originators and mortgage loan originator companies start the process of making residential mortgage loans. They take loan applications from consumers seeking financing for real estate purchases or refinance loans. Loan originators and originator companies often gather and submit documentation that is submitted to underwriting to a consumer's loan application, and they may offer and negotiate loan terms.

The mortgage loan origination industry is closely related to the mortgage servicer industry, which the Division also oversees. After a mortgage loan closes, a mortgage servicer may be contracted to bill and collect mortgage payments from residential homeowner borrowers, and transmit payments to owners of the mortgage loans. Mortgage servicers may also handle customer service, escrow accounts, collections, loan modifications, and foreclosures. The financial magnitude of these intertwined industries is evident from recent data. In 2012, Hawaii mortgage servicer licensees

reported servicing more than 35,000 residential loans with an aggregate loan value of \$9.78 billion.

Mortgage loan originators and mortgage loan originator companies are generally paid for their services by “points” or a percentage of the closed loan amount. Borrowers are motivated to close their loan in order to purchase or refinance real estate. Borrowers with marginal borrowing qualifications usually have few borrowing options and may unwittingly pay exorbitant lending fees without even understanding the cost of the mortgage loan transaction. A loan that should not have been made can be disastrous for a defaulting borrower, who can lose his or her credit, down payment, the home, family and financial security, and possibly his or her livelihood. Widespread loan default can lead to a national economic crisis, such as the one that occurred in 2008 from which the nation is still recovering.

In the aftermath of the mortgage industry meltdown, massive fraud and conspiracy in multiple aspects of the industry was exposed, including issues with the mortgage loan origination. In Hawaii, although 88% of mortgages are paid on time, our population is still vulnerable to unscrupulous activity. Recently, several local mortgage loan originators in Hawaii were sentenced for crimes including mortgage fraud and operation of a money laundering scheme. Across the country, federal and state governments are reevaluating their laws in an effort to resurrect the mortgage industry

following the \$700 billion industry bailout, to prevent future crises, and to better protect consumers.

The Commissioner expects licensees regulated by the Division to operate with a high level of integrity. Still, in view of what has been learned from the nationwide financial crisis, it is submitted that the proper statutory framework and adequate resources are vital for the Commissioner to exercise meaningful oversight over these Chapter 454F industries, to better protect consumer lives, homes and financial futures.

NMLS Licensing System

The Commissioner believes that using the “NMLS” system is a cost-effective way to manage all of its Chapter 454F licensees, including the mortgage origination and mortgage servicer industries. It will also enable the Division to use the electronic method to review, oversee and license the mortgage servicer and mortgage loan origination industries. NMLS is a mortgage licensing system for state licensing and registration of state-licensed loan originators as well as other financial services providers. It was originally known as the “Nationwide Mortgage Licensing System” and changed its name when it expanded its services beyond mortgage loan originator registration. As a note, the Division must continue to ask for items outside of the NMLS for the state specific information required by our Hawaii law.

Sections 1 and 2 of the bill update HRS by changing specific references to the “Nationwide Mortgage Licensing System,” to “NMLS.”

In Section 8, the bill authorizes, rather than requires, the Commissioner to enter into agreements with NMLS or other entities to use NMLS to collect and maintain records and process licensee fees.

In Section 19, the bill establishes a quarterly frequency for Chapter 454F licensees to submit reports of condition to NMLS. A report requirement is already set out in existing law but the frequency is not specified. The report frequency is specified in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008, but not in the Hawaii SAFE Act.

The NMLS system benefits the public which will be able to see which companies are licensed in Hawaii through the NMLS consumer access page. The on-line application and renewal process will benefit licensees who conduct mortgage loan origination activities in more than one state and have the ability to use a nationwide application. As the Division focuses its supervisory, regulatory, and examination authority on these licensees, it anticipates that the industry will be more responsive and compliant with state and federal laws, which will in turn, consumers will be protected.

Mortgage Servicer Licensees

In Section 2, the bill clarifies that for purposes of Chapter 454F, a "mortgage servicer company," refers to a mortgage servicer company that employs at least one person who conducts mortgage loan origination activity. Such a mortgage servicer company must be registered and licensed through NMLS, per Sections 7 and 14 of the

bill. As previously mentioned, the Commissioner believes that using the NMLS system will be a cost-effective way to manage all of its Chapter 454F licensees, and it will enable the Division to use the electronic method to review, oversee and license its licensees.

In Section 14, the Commissioner is authorized to establish licensing requirements for mortgage servicer companies by administrative rule. Section 12 of the bill adds minimum standards for license renewal for a mortgage servicer company. Basically, the company must continue to meet the minimum standards for licensure set out in Section 454F-5, and pay license renewal fees. Licensing fees for mortgage servicer companies to maintain a mortgage loan originator license are set out in Section 22. Mortgage servicer companies are required to pay specified amounts toward the mortgage loan recovery fund under Section 24. Such a payment is already required of mortgage loan originator companies.

Branch Supervision

It is important to have a designated responsible person overseeing the operations at branch offices to ensure that company policies and procedures are followed by staff who work away from the principal place of business. Therefore, Section 15 of the bill clarifies that a branch manager must be physically present in the branch office of a mortgage loan origination company, to oversee it. It also clarifies that a mortgage loan originator company that maintains its headquarters in Hawaii must

designate a qualified individual as branch manager who is physically present in the company's principal place of business to oversee that office. If a mortgage loan originator company seeks to relocate its office, Section 15 of the bill requires that it apply to the Commissioner for approval at least 30 days in advance of relocating.

Education

The mortgage loan origination industry continues to undergo many significant regulatory changes, much of which focuses on better protecting the public and improving industry practices. Professionals offering mortgage loan origination services need ongoing education to be aware of these changes so they can implement them and stay in compliance with State and federal law.

Accordingly, in Section 10, the bill enhances pre-licensing educational requirements for mortgage loan originator license applicants, by adding three hours of State law and rules education to the existing requirement pre-education. To maintain relevance, the bill requires that education hours be completed within twelve months before a mortgage loan origination application is submitted.

The bill specifies in Sections 12 and 13 that for licensed mortgage loan originators, one hour of education on state laws and rules must be included in the eight hours of continuing education required annually. Licensees would need to satisfy the annual continuing education requirements before requesting a license renewal.

Fee Adjustments

Representatives of the mortgage loan origination industry met with the Commissioner in 2012, and agreed to the fee adjustments for their industry set out in this bill. The fee adjustments are necessary in view of heightened levels of regulation, investigation, supervision and investigation that Hawaii law now requires DFI over mortgage loan originators, mortgage loan origination companies, and mortgage servicers. DFI has further regulatory responsibilities over these licensees resulting from federal amendments to Privacy Laws, Bank Secrecy Act/Anti-Money Laundering Program laws, and Consumer Financial Protection Bureau guidance and regulations. The fee structure is adjusted by this bill to take into account the additional supervision, regulation, and examination of these licensees.

Adjustments include the following. In Section 18, the permissible hourly fee for examination or investigation of a Chapter 454F licensee and others subject to the chapter is changed from \$40 to \$60. In Section 22, mortgage loan originator fees are adjusted for the initial application and annual license renewal. Reduced fees are set out for sole proprietor mortgage loan originators. A new \$35 fee is added for processing a control person. Licensee fees are also changed for certain amendments to information provided to NMLS that require the Commissioner's review.

Self-Funding Requirement Necessitates Fee Adjustments

To provide context for the fee changes proposed by this bill, the Commissioner submits the following. The Division is responsible for the licensure, examination and supervision of state-chartered and licensed banks, trust companies, savings and loan associations, financial services loan companies, credit unions, escrow depositories, money transmitters, mortgage servicers, mortgage loan originators and mortgage loan originator companies. It is the only entity that monitors the regulatory compliance, safety and soundness of these industries – the federal government does not provide such oversight – and the Division carries out its duties in order to protect the rights and funds of depositors, borrowers, consumers and other members of the public.

This program is fully staffed with four people. Licenses are typically approved in 7-10 days if there are no issues with the licensing requirements by applicants. One of the main reasons this program does not have a backlog, is due to its use of electronic tools. The applicants apply on-line, our Division receives a message that someone applied, we review the licensing items which include a review of the applicant's credit report and criminal background check, validate that they passed the state test, and do not have other disqualifying items, the supervisor alerts me that the applicant is ready to be approved and I log into the secure website to view the items reviewed by staff and approve the application. Because this process is electronic, I can perform this work anytime of the day, from any location until 1:45 am EST.

For the current level of funding, the Division has been offering value to its licensees. We provided training to the licensees to their industry group and to their individual companies as requested.

The Division needs additional funds to appropriately carry out its mission. In determining the best way to generate the funds, a guiding principle is that the revenues from each of program must be sufficient to cover the Division's cost of operating that program. Revenues schedules for program fees and rates are predetermined for the Division, as they are set out in the Hawaii Revised Statutes.

More specifically, the mortgage loan origination program ran substantial deficits in FY11 and FY12. To provide the minimum oversight in FY11, it cost the Division \$932,161 to operate the program, while it generated revenue for the Division of \$760,021, leaving the Division to cover the \$172,140 shortfall. In FY12, the program ran a deficit of \$94,321. The most recent results are as follows:

Mortgage Loan Origination Program	FY11	FY12
Program Cost to Division	\$932,161	\$716,791
Less Program Revenues	\$760,021	\$622,470
Program Deficit to Division	(\$172,140)	(\$94,321)

Clearly, under the fee schedules set by HRS, the mortgage loan origination program has proven fiscally unsustainable for the Division. The minimum oversight

includes review of the safety and soundness of the company and examination of a company. The Division would like enhance its program to: (1) provide additional oversight throughout the year to companies who may have compliance issues, and (2) provide additional training to the Division's examiners and licensees to learn about the risks associated with the new compliance regulations.

The Commissioner submits that the fees changes set out in this bill should enable the Division to continue to carry out its legislatively mandated duties. After having run an aggregate deficit on these two programs of more than \$250,000 in the past two fiscal years, the Commissioner respectfully submits that requested changes in fees are both necessary and appropriate.

The Division aims to collect revenues from each of its programs sufficient to cover the particular program's regulatory and oversight costs. As the Division focuses supervisory, regulatory, and examination attention on State licensees, it expects the industry to be more responsive and compliant with state and federal laws, and that in turn, consumers will be better protected. The increase in revenues generated will be approximately \$10,000 to \$15,000 a year.

Clarifying Amendments

This bill clarifies terms that are already used in Chapter 454F. Section 2 adds new definitions for "loan modification", "mortgage call report", "NMLS", and "principal place of business." Section 2 amends a number of definitions in Chapter 454F,

including the following. "Branch manager" is amended to include those responsible for the company's principal place of business. "Branch office" is amended to clarify that a mortgage loan originator company headquartered out-of-state may designate a branch office as its principal place of business. "Exempt registered mortgage loan originator" is amended to remove from the definition an individual who is an employee an insured depository institution subsidiary. "Licensee" is amended to include certain mortgage servicer companies and exclude certain nonprofits. "Mortgage loan originator" is amended to include an individual who offers or negotiates a mortgages loan secured on specified family property, and who does so no more than three times a year.

In Section 4, the concept of 'presumption of control' over a mortgage loan originator company is explained in terms voting rights, and the power to direct the sale of a class of voting securities of the company. The concept is also extended to apply to a mortgage servicer company.

These changes will help avoid ambiguity as to the Commissioner's authority and duties, and licensee responsibilities.

Housekeeping and Conforming Amendments

Housekeeping changes include Sections 1, 3, 5, 6, 9, 11, 16, 17, 20, 21, and 23, which make conforming amendments and update and clarify current provisions.

The Division has been executing its oversight of the mortgage loan origination and particular mortgage servicer who perform mortgage loan activities taking into

account federal policy set out by the federal government agencies and most recently by the Consumer Financial Protection Bureau, and increasing federal government regulations. With financial transactions becoming increasingly sophisticated, billions of dollars being transacted by licensees involved in mortgage loan origination activities, and with our population having shown its vulnerability, the Commissioner submits that changes to the Hawaii's mortgage loan origination and related laws as proposed by this bill are needed to better protect consumers and promote greater soundness of the mortgage loan origination and mortgage loan origination companies.

For these reasons, DFI strongly supports this administration bill, House Bill No. 838, and respectfully asks that the measure be passed.

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



February 4, 2013

TO: COMMITTEE ON CONSUMER PROTECTION AND COMMERCE
Representative Angus McKelvey, Chair
Representative Derek Kawakami, Vice Chair

FROM: Jodie V. Tanga, President
Hawaii Association of Mortgage Brokers

RE: H.B. 838 Relating to Mortgage Loan Origination
Position: Comments only

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

I am Jodie V. Tanga, President of the Hawaii Association of Mortgage Brokers (HAMB), a non-profit organization that is dedicated to promoting high standards of professionals in the mortgage industry through education and representation. We are a state affiliate of NAMB "The Association of Mortgage Brokers." HAMB's comments on the bill are limited to the proposed fee increase.

In 2011, fees for Mortgage Loan Origination companies and individual Mortgage Loan Originators were increased shortly after the original law was implemented. In 2012, this Committee considered increasing the fees again at the recommendation of the Commissioner of Financial Institutions. However, the fee increases were not part of the measure that ultimately became law.

Here we are again this year, to discuss fee increases. As I testified last year, HAMB remains concerned over the state's repeated efforts to increase the fees and lack of transparency. HAMB has repeatedly requested information on how the fees collected are being utilized and expended. If fees are raised, we would like to see not only a budget for the current revenue, but a spending plan for the anticipated revenue these fee increases would generate. We would like to work with the Commission on exploring cost containment measures to ensure that we are not before you next year discussing yet another proposed fee increase.

Thank you for the opportunity to submit testimony.