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TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION & COMMERCE

THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Wednesday, January 30, 2013
2:00 p.m.

TESTIMONY ON H.B. NO. 840
RELATING TO FINANCIAL INSTITUTIONS

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 ("DCCA") in strong support of administration bill, House Bill No. 840.

This bill has two primary purposes. First, it modernizes the State's Financial Institutions law, Chapter 412, Hawaii Revised Statutes ("HRS"), in light of changes to federal banking laws including the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Second, it adjusts fees for financial institutions to reflect the

additional regulation and monitoring required of the Division of Financial Institutions ("Division") as a result of changes to the law, and increasing sophistication of the financial institutions industry.

The stated purpose of the Code of Financial Institutions, Chapter 412 ("Chapter 412" or the "Code"), HRS, is to simplify, clarify, and modernize the laws concerning the regulation, organization, management, and activities of financial institutions in the State, and to provide a comprehensive set of laws applicable to financial institutions. Section 412:1-101, HRS. "Financial institution" as used in the Code includes a bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, and intra-Pacific bank.

The last comprehensive review of financial institutions laws was in 1993. In the summer of 2012, the Commissioner conducted meetings with representatives of the financial institutions industry for the purpose of reviewing and modernizing the State's banking laws to reflect changes in federal law. This bill is the result of those meetings.

Part I - Clarification of Existing Law

Part I of the bill adds some new definitions and amends some existing definitions to reflect changes in federal laws over the last 20 years.

Section 1 strengthens and clarifies the Commissioner's powers to administer and enforce the Code, and to provide adequate oversight. The Commissioner is the primary

regulator of Hawaii financial institutions under the Code, and is mandated to examine each Hawaii financial institution for safety, soundness and legal compliance at least once every two years. The Commissioner has legal authority to subpoena witnesses, compel the production of documents, and to enforce the law by formal and informal actions, pursuant to existing law. Sections 412:2-100, 412:2-111, 412:2-200, 412:2-300, HRS.

Section 2 updates the definition of "deposit" to include depository institution funds underlying nontraditional access mechanisms such as prepaid access cards and stored value cards.

Section 3 amends the list of places where a financial institution may conduct business by adding a “remote service unit” to the list, and it clarifies the term “branch” business.

Section 4 amends the definition of “operating subsidiary.” Currently, the term refers to a corporation of which more than 80 per cent of the voting securities is held by a bank. The bill changes the threshold to more than 50 per cent of the voting securities, which may be held directly or indirectly by the bank. Also, current law allows an operating subsidiary to engage in activities that are authorized for a bank, and the bill clarifies that this includes activities under Section 412:5-305, HRS (relating to permitted investments by a bank), and title 12 Code of Federal Regulations part 362 (Activities of Insured State Banks and Insured Savings Associations).

Section 5 clarifies the computation of limits on loans and extensions of credit that a bank may make to one borrower, specifying how credit exposure arising out of derivative transactions affects the computation. A definition of "derivative transaction" is added. Section 5 clarifies that if a bank, with the Commissioner's approval, complies with lending limits applicable to national banks as an alternative, the bank must use a single method for calculating lending limits for various transactions. Current law specifies that in monitoring a bank's compliance with national bank lending limits, the Commissioner shall give substantial weight to the Office of the Comptroller of the Currency's regulations and interpretations of national bank lending limits; this bill identifies certain models to be included.

Section 6 amends provisions regarding real property interests owned by a bank. It clarifies that a bank may transfer real property to an operating subsidiary of the bank if the bank's investment in the subsidiary is no more than 15 percent of the bank's tier one capital. "Tier one capital" is defined. Additionally, permitted bank ownership or control of entities is expanded to include within limits, the parent of an operating subsidiary, and a partnership or limited liability company organized for the bank's business or for a permitted purpose under certain federal regulations.

Section 7 applies the same provisions as in Section 5 above to savings banks.

Section 8 authorizes a financial services loan company to charge a borrower a $10 fee to process a draft written below the minimum amount established on an open-ended loan.

Section 9 applies the same provisions as in Section 5 above to depository financial services loan companies. It adds a new subsection specifying how the borrowing limit for a borrower is impacted by loans and credit extensions of credit that the depository financial services loan company has made to entities related to the borrower. (A similar provision already exists for banks and savings banks.) The bill also allows a depository financial services loan company, with the Commissioner's approval, to comply with lending limits applicable to national banks, and specifies conditions for employing this alternative.

Part II – New Fee Structure Effective January 1, 2014

As a result of federal laws enacted and amended over recent years, the Division must exercise heightened supervision, regulation and examination over state chartered financial institutions. Some of these laws include the Gramm Leach Bliley Act, Bank Secrecy Act/Anti Money Laundering, Federal Deposit Insurance Corp. Act, Equal Credit Opportunity Act, Servicemembers Civil Relief Act, Fair and Accurate Credit Transaction Act, Fair Credit Reporting Act, Electronic Funds Transfer, Real Estate Settlement Procedures Act, Truth In Lending Act, Check Clearing for the 21st Century Act, Truth In Savings Act, Secure And Fair Enforcement for Mortgage Licensing Act, and the Dodd–

Frank Wall Street Reform and Consumer Protection Act. A new federal regulatory partner has also been created, the Consumer Financial Protection Bureau. Therefore, Part II of the bill adjusts fees to reflect the additional regulatory requirements and monitoring required for these licensees.

Section 10 establishes a new fee structure for financial institutions, effective January 1, 2014. The request to delay implementation in the fee structure is twofold: (1) to allow the small financial institutions in particular to be able to budget for the increase in fees and (2) the annual fee are assessed in June, thus, we would have already collected for the year by the time the proposed bill is passed. The new structure is based on an institution's total assets, a term that is defined, and consists of a scaled flat fee plus a percentage of total assets. There is a cap on fees for the very largest institutions. Currently, the law allows for only a nominal flat fee and a per branch fee. Basing financial institution fees on asset size will bring Hawaii in step with the great majority of states. This change also recognizes that larger financial institutions have more complexity to its organization both in terms of review of its financial statements and examination of its safety and soundness issues and use more of the Division's resources.

Section 10 also specifies fees for certain applications and certifications. This is to ensure that initial costs to the Division of reviewing these applications and the cost of certifications are covered fairly by the institutions using the Division's resources.

Section 11 makes it mandatory, rather than permissive, for the Commissioner to charge a financial institution for travel, per diem, mileage and other reasonable expenses incurred in connection with an examination and investigation.

Conforming amendments to delete references to specific fees are addressed in Sections 11 to 25.

Part III – Interim Fee Structure Effective on Approval

Section 26 basically mirrors the new fee structure for applications set out in Section 10. Section 26 is effective on approval and is repealed January 1, 2014, which is the date Part II and Section 10 become effective. Section 26 is needed so that the change in application fees will be effective on the bill's approval, rather than waiting until January 1, 2014 when the new fee structure of Part II comes into effect.

Since 1993, when Hawaii's Financial Institutions law was last comprehensively reviewed, there have been many changes to banking laws particularly at the federal level. Recognizing the importance of having Hawaii's banking laws reflect these changes, the Commissioner met with the representatives of the financial services industry last summer. This bill is the outcome of those meetings. It is important legislation that will enable Hawaii's financial institutions law to keep step with changes in banking laws, particularly at the federal level.

For these reasons, DFI strongly supports this administration bill, H.B. No. 840, 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.