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TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION  
AND  
THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

Friday, January 25, 2013  
9:30 a.m.

### INFORMATIONAL BRIEFING

TO THE HONORABLE ROSALYN H. BAKER AND THE HONORABLE ANGUS L. K.  
MCKELVEY, CHAIRS, AND MEMBERS OF THE COMMITTEES

I am Keali'i S. Lopez, the Director of the Department of Commerce and Consumer Affairs ("DCCA" or "Department"). I appreciate this opportunity to provide the committees with an overview of the department.

#### General Overview

My testimony will primarily focus on the Department in general terms, and more detailed information from the divisions with budget requests in the biennial budget will be presented in separate testimony to follow. In addition, for the benefit of members that may be unfamiliar with the department's jurisdiction, I have asked the DCCA divisions that do not have biennial budget requests to provide the committees with some

background about their operations in the form of supplemental written testimony. All divisions are present to answer questions. RICO is included in the list of testifiers because of its involvement with the PVL budget request for a ceiling increase in the Contractor Education Fund.

The Department's mission is to promote a strong and healthy business environment by upholding fairness and public confidence in the marketplace, and by increasing knowledge and opportunity for our business and citizens.

As you are aware, the department relies entirely on the department's compliance resolution fund ("CRF"), making the DCCA fully self-funded and self-sufficient. Self-sufficiency notwithstanding, strong fiscal oversight continues to be important to the department. The fees and revenue collected by the department are solely for the purpose of delivering important commerce and consumer protection related services.

The committees have requested information about DCCA's FY2013 budget. The overall Compliance Resolution Fund ("CRF") projected financial summary for FY 13 is as follows:

Personnel Expenses	Operating Expenses	Total Expenses	Revenues
\$27,610,099	\$11,706,022	\$39,316,121	\$39,499,757

These projections are on target for the most part, and the department will continue to review its ongoing and long term financial stability to ensure that its expenses, revenues and reserves are appropriately aligned. Division-specific CRF financial summaries are incorporated each year in the department's Annual Compliance Resolution Fund Report to the Legislature.

The department's financial strategy requires generally that revenue-generating divisions secure revenues to cover division expenses, and contribute equitably to overhead costs, while ensuring that anticipated major improvements are addressed and that the program has adequate funding to meet operating expenses. This financial strategy is particularly important for those divisions whose revenues are sporadic or are received at the end of a funding cycle. From the onset of the CRF, the department's primary fiscal goal has been to implement this strategy and, as a result, the department has been very conservative in spending and has adjusted expenses to be consistent with projected revenues.

#### **Recent Initiatives**

Early this month the Department launched its multi-media foreclosure fraud public information campaign. The campaign is designed to inform Hawaii homeowners of the options they have to avoid possible foreclosure and mortgage rescue fraud. The campaigns include public service announcements airing on television and radio across the state and in print at locations such as TheBus. As part of these campaigns, the department has launched the online *Hawaii Foreclosure Information Center* ([www.HFIC.hawaii.gov](http://www.HFIC.hawaii.gov)), which contains information for homeowners facing foreclosure, as well as a central telephone number 587-3222 for affected homeowners to call for additional information about the various types of assistance available in the state. This campaign was made possible through funds obtained by the Department of the Attorney General from the nationwide settlement last year with five national financial institutions related to the national foreclosure crisis.

### **Current Issues Facing the Department**

The department has been successful in meeting statutory requirements in a timely manner and in providing direct services, which for the most part, correlate with the fees collected from the industries and professions regulated by the department. The greatest challenge the department faces is being able to plan for jurisdictional adjustments; that is, adding, deleting, or modifying its operations, in a manner that is as strategic as its budget planning. Like many other departments, DCCA is frequently asked to take on new initiatives or new regulations, and is ready and able to work with stakeholders on matters within its jurisdiction. Unlike other departments, and perhaps because of its funding structure and its ability to successfully stand up its own programs, DCCA is sometimes asked to take initiatives that are outside its jurisdiction and more appropriately placed elsewhere in state government. I sometimes refer to this as "jurisdictional creep". This is similar to the "mission creep" nonprofit organizations face when they stray from their core mission.

The primary challenge with non-commerce and non-consumer affairs ("DCCA") programs being placed within the department is that it opens the door to allow other similarly non-DCCA programs to follow suit. The addition of non-DCCA related programs will significantly impact those industries and professions that the department currently regulates. The current strain on existing resources is already at a tipping point and requires constant oversight and monitoring. Therefore, the department must ensure its focus is on commerce and consumer affairs matters, whether they are current or new programs, by having to resist efforts that would result in jurisdictional creep. The

burden of regulation of non-DCCA programs should not be borne by those professions that are appropriately placed within the department's jurisdiction.

### **DCCA Administrative Budget Requests**

The department developed a budget that provides the resources necessary for our programs to perform their functions and meet their goals and objectives. Where possible, trade-offs are proposed and ceiling increases are limited to situations where:

- 1) resources are needed to carry out legislatively prescribed functions and actions, e.g., the registration of Athletic Trainers (Act 198/12), continuation of the Mortgage Foreclosure Dispute Resolution Program (Act 182/12), and the fund transfer requirement pursuant to Section 36-27, HRS (Central Services Assessment);
- 2) there is a critical need for expenditures, e.g., the necessity of upgrading/replacing IT equipment that are past warranty and support periods, and where any continued delay in appropriate action can have a detrimental impact on our ability to provide services;
- 3) resources are needed for updated/new initiatives (the use of radio, television and other media) that will allow the department to be more efficient and effective in performing our outreach function, an essential component of a strong consumer education program as authorized in Section 26-9(g); and
- 4) funds are needed for current priorities, such as the support needed for the implementation of the Governor's Hawaii Broadband Initiatives.

While the department conducts a number of consumer education outreach campaigns that include speaking engagements, brochures, webpage outreach, and press releases, the department believes that certain consumer education initiatives are best served by outreach through radio, television and other media. As such, DCCA is requesting authorization for a ceiling increase of \$100,000 in FY14 and \$50,000 in FY15

to provide for media production and airtime. The media campaign is a visible extension of DCCA's provision of the director's functions to direct the department's public information and consumer education program. These educational activities are designed to complement existing departmental educational programs.

The department's ISCO's budget request in FY14 includes funds for projects to update our computing infrastructure and secure our communications systems. Replacement of essential hardware will provide a faster and safer network environment, and will enable the department to utilize the benefit of OIMT's work to increase network speeds and provide centralized services without a significant impact on performance. Without these upgrades, the network upgrades of ICSD's NGN or One Net would stop at the department's router and faster speeds could not be passed on to user workstations.

An upgrade of our web security subscription would provide more layers of defense, real-time analysis, and point-and-click protection. This would provide our IT staff the resources to better protect our users and networks against the sophisticated attacks present in the Internet today.

As OIMT attempts to transition the State to a Consolidated Infrastructure/Enterprise Shared Services model, having faster network speeds and better performance of these shared services/applications will ensure the success and user adoption of these new programs.

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### **Conclusion**

On behalf of the Department of Commerce and Consumer Affairs, thank you for providing the department with a venue to explain our operations in greater detail. I look forward to working closely with the members of each committee on our administrative bills, on our administrative budget, and on issues of mutual concern.

NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
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TO THE  
SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

and

HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE  
THE TWENTY-SEVENTH STATE LEGISLATURE  
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TESTIMONY FROM THE DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF FINANCIAL INSTITUTIONS

THE HONORABLE ROSALYN H. BAKER, CPN CHAIR;  
THE HONORABLE BRICKWOOD GALUTERIA, CPN VICE CHAIR;  
THE HONORABLE ANGUS L.K. MCKELVEY, CPC CHAIR;  
THE HONORABLE DEREK S.K. KAWAKAMI, CPC VICE CHAIR;  
AND MEMBERS OF THE COMMITTEES:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions  
("Commissioner"), testifying at this informational briefing on behalf of the Department of  
Commerce and Consumer Affairs, Division of Financial Institutions ("DFI" or the "Division").



### **Division of Financial Institutions – Overview**

The Division of Financial Institutions is charged with the overall supervision and regulation of all state-chartered and state-licensed financial institutions in the State of Hawaii. Its purview includes banks, savings banks, foreign bank branches, agencies and representative offices; savings and loan associations, trust companies, depository and nondepository financial services loan companies, credit unions, all escrow depositories, and, unless exempted, money transmitters, mortgage loan originators, mortgage loan originator companies, and mortgage servicers. It is important to note that aside from the banks where DFI has joint regulatory authority and oversight, DFI is the only entity that monitors the regulatory compliance, safety and soundness of the other four industries – the federal government does not provide such oversight. The Division carries out its duties in order to protect the rights and funds of depositors, borrowers, consumers and other members of the public.

DFI is self-funded. Its revenue stream is from fees paid by licensees and licensee applicants at rates that are established by statute. Currently, the statutory fees are at a level that is far below that which the Division needs to be sustainable and self-funded. Due to the shortfall in the Division's program revenue stream, the Division has held off on hiring staff for six approved permanent positions, as it lacks ongoing funding. The Division has been heavily relying on an allocation of a portion of the financial institutions franchise fee, in order to cover the costs of operating its programs.

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DFI relies on a staff of skilled professionals to carry out the Division's regulatory, examination and investigation responsibilities. In FY11-12, the Division's Program

Activity was as follows:

- Examined 217 financial institution branches and other offices.
- Examined 27 escrow depository and mortgage transmitter branches and authorized locations.
- Reviewed 220 applications for licensure as a financial institution, escrow depository, money transmitter, and mortgage servicer.
- Audited 54 financial statements that were received for review.
- Renewed 205 licenses for escrow depositories, money transmitters and mortgage servicers.
- Licensed 444 new mortgage loan originators.
- Renewed 1145 licenses for mortgage loan originators and mortgage loan origination companies.
- Received 584 written inquiries.
- Received 72 written complaints.
- Received 5,554 phone or walk-in inquiries.

**Recent Initiatives**

Highlights of the Division's recent initiatives include the following.

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In December 2012, the Division received accreditation from the Conference of State Bank Supervisors ("CSBS"), verifying that the Division maintains the highest standards and practices in state bank supervision established by the CSBS Accreditation Program. Through accreditation, a state banking department is recognized as having established its ability to conduct bank examinations and appropriately supervise banks throughout the year.

To achieve accreditation, DFI embarked on an 18 month strategic plan that engaged all staff to focus on the Division's mission -- to "Protect, Regulate, and Inform" licensees and consumers about licensed industry regulatory requirements and complaint filing procedures. As well, the Commissioner initiated internal training of examiners to teach them how to write exam reports, and to perform analysis in a risk-based fashion by asking appropriate follow-up questions, rather than using a simpler but less-probative check-off list approach.

The Commissioner worked closely with federal government partners and was able to persuade them to work with our state-chartered troubled banks, rather than close them. Due to resource limitations, the federal government's inclination is to close troubled banks instead of trying to rehabilitate them, so it can focus on bringing less troubled banks into regulatory compliance. In this particular instance, the Commissioner believed that closure of a state-chartered bank was unnecessary. In fact, working with the Division and the Commissioner, the bank was able to regain

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financial strength and remains operative. The Commissioner believes that a bank closure in Hawaii would have a huge negative economic impact, and seeks to avoid this when possible without putting the public at risk. Hawaii is one of only a handful of states that did not have a bank close during the financial crisis.

For the past two years, the Division has also been engaging with federal and state partners and Hawaii banks in disaster planning, and in the State disaster exercise, Makani Pahili. Through this effort, the Division and the banks can prepare to meet the challenges of a natural disaster.

To add value to licensees, the Commissioner has developed guidance/best practices information which licensees are encouraged to implement. The Commissioner has also offered educational sessions to individuals and licensee groups, focusing on regulatory compliance and best practices. Dissemination of this information is important as industry laws and rules have changed significantly over the last two years.

Within the office, staff has been utilizing technology to help the Division go paperless. This is now feasible as the Department has engaged a vendor to provide a computer backup system that can be accessed remotely.

#### **Current Issues Facing the Division**

The work of the Division is being carried out by a professional staff that includes accountants, lawyers and other specialists. Ten examiners within the Division conduct

examinations of 18 financial institutions, 42 money transmitters, 8 escrow depository companies, and 250 MLOCs.

The Commissioner believes that proper monitoring of its licensees is important to protect the public, and that it results in fewer licensees closing due to financial failure. The Division has a staffing shortage due to a revenue stream that has proven inadequate to fully fund its operations and its share of the departmental overhead. While additional staff is sorely needed, six authorized permanent positions remain vacant because the Division cannot pay for them in future years. With its current staffing shortage, the Division can provide only minimal oversight, and examine licensees with less than optimal frequency. Further, notwithstanding extraordinary efforts on the part of Division staff, its licensing staff has a 120 day backlog in processing applications for new companies, relocation of branches, and opening of new branches.

Before 2006, the licensing staff consisted of five people who processed applications for financial institution and escrow depository requests only, and they reviewed quarterly financial statements of these companies. Since 2006, three new industries have been added to DFI's oversight -- money transmitters, mortgage servicers, and mortgage loan originators ("MLO") and mortgage loan originator companies ("MLOC"). Currently, only the MLO/MLOC program is fully staffed.

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Oversight of the money transmitters and mortgage servicers programs were added to the Division's responsibilities without additional resources.

The nature of the examination, investigation and oversight provided by the Division is analytical and detail oriented. The financial institutions, escrow depository companies, money transmitters, mortgage servicers, and mortgage loan originator companies all require the Division to review and analyze sheaves of documents for each licensee, including financial statements to initially determine if capital and reserves are adequate to operate a new business; financial statements on an annual basis to determine whether the licensee has adequate capital and reserves to sustain operations; annual compliance with bonding requirements, and appropriateness of bonds; compliance with federal and state laws, and applications to add/relocate branches and delegates. Because of the detailed and analytical nature of the work, current staff simply lacks capacity to process applications faster or conduct more examinations.

At present, financial institution examinations are conducted annually by five to eight staff members, and it takes about three weeks to complete a single examination. Examinations of money transmitter companies are primarily conducted off-site with other state examiners, at mainland locations. For these mainland examinations, the Division sends one examiner for ten days. For local examinations, the Division sends one examiner for five days. Mortgage loan originator companies are also on a

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bifurcated examination schedule - for the mainland examinations, one examiner is allocated for two weeks, and for local examinations, two examiners are allocated for one week.

The Division oversees licensees that conduct billions of dollars of business in this State. To be sustainable, and to provide the public with the level of protection that it deserves and the Legislature anticipated, the Division needs an increase in its revenue stream – its statutorily allowed fees – and the financial ability to hire additional staff.

**Budget Requests for Biennial Budget**

The Division is supposed to be self-funding. As previously mentioned, revenues that the Division may collect are set out by statute for each of the programs that it oversees and regulates. With increasing financial sophistication of its regulated industries, and added numbers of licensed programs and licensees, the revenue stream structured by law is inadequate to cover the costs of overseeing and regulating its licensees. In the past two fiscal years, the Division has run a deficit of more than \$3.3 million. In FY11 and FY12, the Division's programs ran significant deficits, summarized as follows:

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**DFI Net Cost of Operation by Program**

<b>Program</b>	<b>FY11</b>	<b>FY12</b>
Financial Institutions	(1,105,188)	(1,170,349)
Escrow Depositories	(199,339)	(250,459)
Money Transmitters	(66,675)	18,941
Mortgage Servicers	(86,765)	(173,942)
MLOs/MLOCs	(172,140)	(94,321)
subtotal	(1,630,106)	(1,670,131)
Portion of the franchise tax <sup>1</sup>	2,000,000	2,000,000
Total net cost of operations	369,894	329,869

The Division uses the franchise tax to defray the costs of the entire Division; consequently, the Division is able to cover the cost of operating the five programs. The revenues received from the licensee fees do not cover the expenses for the services provided to our licensees and consumers. The Division seeks statutory fee increases so that the revenues generated by each program more closely cover the costs of operating each program, and provide a revenue stream that would allow the Division to responsibly fill vacant but approved permanent staff positions. Additional staff would in turn enable the Division to improve its oversight of these important industries, better protect the public, and improve service to licensees.

**Long Term Funding Issues**

Different industry groups report unlicensed activity. The Division, however, does not have the resources to conduct investigations in to unlicensed activity on a regular basis. Consequently, DFI conducts such investigations as time permits, which does not

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<sup>1</sup> The franchise tax revenues are provided to DFI in July of the following fiscal year to cover expenses in the previous fiscal year.



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meet the Commissioner's expectations of adequate regulation, or the expectation that consumers and properly licensed businesses should expect. In addition, the Commissioner would like to provide responsive service to licensee requests.

To help resolve this problem, the Division would like to fill its six currently allocated positions as discussed in the preceding section. The additional revenue from the five administration bills will be approximately \$375,000 a year calculated on the current number of licensees. These bills are:

CCA-02	SB1067	HB836	Relating to Escrow Depositories
CCA-03	SB1068	HB837	Relating to Money Transmitters
CCA-04	SB1069	HB838	Relating to Mortgage Loan Originators
CCA-05	SB1070	HB839	Relating to Mortgage Servicers
CCA-06	SB1071	HB840	Relating to Financial Institutions

The work of the Division is vital to consumers, to licensees who handle billions of dollars of consumer funds, and to promote confidence in the State's financial industries. At current funding levels, the Division provides a minimal level of regulatory oversight, examination and investigation, and would run a deficit of more than \$3 million operating its programs over the past two fiscal years, but for the portion of the franchise tax. The small reserve over the last two fiscal years serves to cushion the delay in receipt of the franchise

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tax into our budget. The Division submits that the public and licensees expect and deserve more. With the Legislature's support of the Administration's bills affecting program funding, the Division is prepared to enhance the level of service and protection that it provides.

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

PRESENTATION OF THE  
INSURANCE DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION  
AND  
THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE  
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**INFORMATIONAL BRIEFING**

TO THE HONORABLE ROSALYN H. BAKER AND ANGUS L.K. MCKELVEY, CHAIRS,  
AND TO THE HONORABLE BRICKWOOD GALUTERIA AND DEREK S.K.  
KAWAKAMI, VICE CHAIRS; AND MEMBERS OF THE COMMITTEES:

1. General overview of the Insurance Division.

The Insurance Division administers Chapters 431, 431K, 431L, 431M, 431N, 431P, 432, 432C, 432D, 435C, 435E, 448D, 481R, 481X, and 488 HRS, as amended, which provides the authority and sets forth the Division's regulatory duties including the licensing, supervision and regulation of all insurance transacted in the state by insurance companies, producers, vehicle protection product warrantors, life settlement-related activities, legal service plans, service contract providers and non-profit corporations and associations operating as fraternal and mutual benefit societies.<sup>1</sup>

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<sup>1</sup> The program is responsible for the regulatory oversight of the insurance industry. The major activities are: (1) analysis of approval or disapproval of policies and rate filings; (2) review of insurance entities financial, operating and tax statements; (3) field examinations of insurers, health maintenance organizations, rating organizations, mutual and fraternal benefit societies, advisory organizations, agencies, independent claims organizations, guaranty associations; (4) qualification examinations and licensing insurers, health maintenance organizations and all categories of producers to transact insurance; (5) administration of the Hawaii Joint Underwriting Plan, including the development and promulgation of motor vehicle insurance rates, and prepaid legal plans; (6) investigation of complaints by the public of alleged violations of insurance statutes and rules and other consumer requests for assistance; (7) investigation of violations and enforcement of insurance fraud laws with the exception of workers compensation insurance; (8) regulatory surveillance for market conduct and financial condition of all insurers, health maintenance organizations, and mutual and fraternal benefit societies for compliance with insurance laws, and (9) licensing, examination and regulatory oversight of the captive insurance companies and development of the captive industry in Hawaii. (10) assisting the Hawaii Health Connector to setup Hawaii's health insurance exchange under the federal Patient Protection and Affordable Care Act ("PPACA").

The Insurance Division's activities are funded by a sub-account of the Compliance Revolving Fund, the Captive Insurance Administrative Fund, and the Commissioner's Education and Training Fund.<sup>2</sup>

## 2. Recent initiatives in the past six months to a year

The Insurance Division has been at the forefront of implementing many of the provisions of the Patient Protection and Affordable Care Act (PPACA) over the past few years.

This past year, the Division continued to administer the Hawai'i Health Connector Planning and Level I Establishment grants and worked closely with the Connector to develop the Plan Management and SHOP sections of the health insurance exchange blueprint. Hawai'i received conditional approval from the federal HHS in January 2013 on its progress in establishing a viable exchange.

The Insurance Division also reviewed and compared health benefits and made a recommendation to the Governor for the selection of the "benchmark" plan to meet the ten essential health benefits required to be contained in all health plans starting in 2014. Presently, the Division is completing the study on "Basic Health Plan" as required by Act 254 and continues to assist other state agencies by providing memos of the federal ACA regulations, timelines, and other materials. Further, the Division participated in the Obesity Task Force and two working groups.

Additionally, the Insurance Division convened an uninsured motorist task force, pursuant to Senate Concurrent Resolution No. 97, S.D. 1, which has submitted a report, recommendation and bill to this Legislature.

The Division has posted on its website the first complete homeowner's premium publication comparison sheet. It is anticipated that this information will make it easier for consumers to shop and compare homeowner's insurance rates and is an excellent companion to the motor vehicle premium comparison sheet.

## 3. Current issues facing the Insurance Division.

There is increased pressure to have a viable and functioning exchange in place this year to meet the PPACA's implementation deadline. The Insurance Division, in addition to readying itself for this important milestone, is actively assisting the

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<sup>2</sup> The Driver Education Fund Underwriter's Fee (HRS §§ 431:10C-115 and 431:10G-107), Hurricane Reserve Trust Fund (HRS Chapter 431P), and Medical Malpractice Patients' Comp Fund (Act 232, SLH 1984; Act 219, SLH 1976), while administratively attached to the Insurance Division, are not used to support the Division's functions.

Connector and other agencies, wherever possible, to ensure that will be able to meet this deadline.

Another important issue is that the Captives Insurance Branch currently has a backlog of approximately 23 examinations to conduct, with another 39 examinations to be completed by FYE13. The number of exams will continue to rise due to the addition of new captives and the mandated statutory requirement to examine insurance companies every three to five years. It is essential that the Branch maintain adequate staffing levels commensurate with the growth in number of licensees to properly regulate, service and develop Hawai'i's captive insurance industry in an efficient and timely manner and will reinforce the State's commitment to this growing industry, and meet the ongoing responsibility and expectations of national and international insurance regulators.<sup>3</sup>

#### 4. Budget related requests for the Insurance Division.

The Captives Insurance Branch's examination backlog has resulted in a significant adjustment contained in the budget request submitted to this Legislature by adding four new captive insurance examiner positions. The Insurance Division aims to accommodate these positions, if the positions are approved, by transferring special funds from contractual services to personal services which will result in no additional ceiling being requested.

Completing the statutory examinations of captive insurers is a high priority. Training new rate and policy analysts, examiners, and establishing a market conduct examination process are areas of focus for the coming year and the addition of four new examiners would greatly aid the Division in its mission to meet these goals.

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<sup>3</sup> The Captives Branch has 175 active captive insurance companies licensed at the end of last fiscal year. Hawai'i is third in the U.S. of number of captive domiciles, behind Vermont and Utah. The aggregate total of the licensed captive companies' assets, premiums, and investments held in Hawai'i financial institutions exceeded that of the 27 Hawai'i domestic commercial insurers.



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**INFORMATIONAL BRIEFING  
CABLE TELEVISION DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HONORABLE ROSALYN H. BAKER AND ANGUS L.K. MCKELVEY, CHAIRS,  
AND TO THE HONORABLE BRICKWOOD GALUTERIA AND DEREK S.K.  
KAWAKAMI, VICE CHAIRS; AND MEMBERS OF THE COMMITTEES:

1. General Overview.

The Cable Television Division ("the Division") supports the Director in the regulation of wireline cable television operators throughout the State. The Division is staffed by a Cable Television Administrator, Cable Television Specialist, in-house legal counsel, secretary, and two Broadband Specialists. Funding for the Division comes from cable franchise fees that are collected by the cable television franchisees. The Division's primary function is to determine whether the initial issuance, renewal, or transfer of a cable franchise is in the public's best interest. This determination is made only after careful consideration by the Division of the public need for the proposed service, the adequacy, efficiency, and reliability of service, and the technical, financial, and operational ability of the franchisee.

After the issuance of a franchise, the Division's role in protecting the public interest continues. The Division enforces the franchisee's obligations under the franchisee

order and works to ensure compliance with State rules and regulations relating to cable operators' practices and procedures. In addition to this, the Division also responds to public inquiries, concerns, and complaints.

Another key responsibility is to oversee the expansion of the State's Institutional Network ("INET") in a manner that is efficient and effective for the State. The INET provides statewide broadband data and telecommunications capabilities among government and educational organizations and is a mandate of the current and past cable franchise agreements. While the benefits that the INET provides to the State as a whole are often taken for granted, the INET is probably the most valuable benefit of the cable franchise agreements.

The Division also monitors and participates in rulemaking on the federal level and works with our congressional delegation in Washington D.C. on any federal legislation affecting cable and broadband in Hawaii.

## 2. Recent Activities.

In 2010, the Hawaii State Legislature added broadband and telework responsibilities to the Division. As part of this responsibility, the Division convened a work group to discuss procedures for streamlined permitting functions applicable to the development of broadband technology, and convened the Broadband Assistance and Advisory Council ("BAAC") to advise the department on broadband development and promotion related matters. Workgroups within the BAAC have also been established to concentrate on permitting, adoption, and economic issues of broadband deployment. The Division continues to coordinate these efforts to streamline the provisioning of broadband infrastructure on an ongoing basis.

As part of its broadband responsibilities, the Division has been working to map the current availability of broadband service throughout the State in order to identify unserved areas. In an attempt to get more detailed information from the providers, the Division worked hard to get Act 259 passed by the 2012 Legislature. This legislation requires broadband providers to share confidential information about the areas that they served with the Division on an annual basis. In addition to this, information on the level of service available along with pricing is also required.

Another important project is the ARRA funded Broadband Strategic Plan which is scheduled to be released at the next Broadband Assistance Advisory Council meeting on January 30, 2013. This report offers a detailed view on the current broadband situation in the State detailing transpacific fiber capacity, interisland fiber networks, and the technologies used to deliver broadband service to the subscriber.

3. Current CATV Issues.

Currently, the Division is involved in cable franchise renewals on Hawaii Island and Maui. Because each of these counties has multiple franchises, this translates to a renewal of 4 franchises. The franchises for Hawaii Island are in the negotiation phase, while the renewal process for Maui started in mid-2012 and is expected to be completed by the end of 2013.

In addition to this, we are also in the process of designating a PEG entity in each of the counties, with applications from 3 of the four current PEG providers. While the Maui PEG provider, Akaku, has not yet submitted an application, they have indicated their intent to do so. While each of the applications are in different stages of the process, it should be noted that Oceanic Time Warner Cable ("Oceanic") has requested to intervene in the process, and at this time we have granted Oceanic intervenor status for the public hearings portion of the proceedings for Oahu and Hawaii Island.

The Division is also involved in other proceedings initiated directly by Oceanic, or by their actions. One of these is a contested case proceeding and the other is a disagreement over terms of recent Decisions and Order with regard to the distribution of set top boxes.

It should be noted that these efforts are in addition to the normal responsibilities that the Division carries out on a regular basis such as regulatory compliance and subscriber complaints.

4. CATV Budget Request.

As part of our ongoing broadband responsibility, and in support of the Governor's Hawaii Broadband Initiative, we have requested \$2M for FY14 for neighbor island broadband related projects. While we anticipate a base amount of \$500,000 for each county, we recognize that there are unique challenges in specific counties that would require additional funding beyond the base amount. We have already started a dialogue with all the neighbor island counties to coordinate and identify suitable broadband projects. Proceeds from the INET/Broadband fund will be utilized for these projects.

An additional increase in the Division's budget ceiling of \$300,000 is also being requested. These funds will be used to hire outside legal counsel to represent the Division in administrative hearings proceedings, initiated by Oceanic, that have a strong potential to end up before the court. DCCA has consulted with the Attorney General's Office on the pending issues and has recommended that we employ outside legal counsel for these proceedings.



The Division has concerns over the long term funding situation if Oceanic continues to rely on the hearings process to address disagreements with the terms of rulings made by the DCCA Director with regard to Cable Television Franchise Requirements. In addition to this, staffing changes may become necessary in order to deal with this situation if it evolves into a long term issue.

As the technologies advance, the Division is prepared to adapt quickly to insure that the State is well positioned for the future.

In closing, the Division is looking forward to playing a key role in advancing broadband and telecommunications technologies throughout the State.



NEIL ABERCROMBIE  
GOVERNOR

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DIRECTOR

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DEPUTY DIRECTOR

PRESENTATION OF THE  
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

AND

THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE

TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

Friday, January 25, 2013  
9:30 a.m.

**INFORMATIONAL BRIEFING**

TO THE HONORABLE ROSALYN H. BAKER AND ANGUS L.K. MCKELVEY, CHAIRS,  
AND TO THE HONORABLE BRICKWOOD GALUTERIA AND DEREK S.K.  
KAWAKAMI, VICE CHAIRS; AND MEMBERS OF THE COMMITTEES:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify concerning DCCA's status of the department's budget for fiscal year 2013. My name is Bruce Kim and I am the Executive Director of OCP and offer the following comments.

## **1. Overview of OCP.**

OCP acts on behalf of the Director of DCCA as consumer counsel for the State of Hawaii pursuant to its enabling statute, HRS Chap. 487. As such, OCP is charged with protecting the State, the respective counties, and the general public against unfair and deceptive practices in consumer transactions through enforcement of the State's consumer protection laws. OCP is the lead government agency responsible for reviewing, investigating and prosecuting allegations of unfair or deceptive trade practices in consumer transactions under Chap. 487.

Functionally, this means that OCP has jurisdiction over a wide range of businesses and activities, including both regulated and unregulated industries. OCP receives a myriad of consumer complaints every year, including but not limited to: advertising violations, door-to-door sales, solar energy devices, gift certificates, offers of gifts and prizes, going out of business sales, refunds and exchanges, collection practices, credit sales, health clubs, towing, travel offerings, and motor vehicle rentals. More recently, OCP has investigated numerous consumer fraud cases stemming from mortgage foreclosure rescue scams under HRS Chaps. 480 and 480E.

OCP is also obligated to provide information and respond to inquiries from the general public about the Residential Landlord-Tenant Code under HRS § 521-77.

OCP does not rely on general funds. It receives its funding through the DCCA. OCP underwrites its operating expenses through settlements and judgments obtained through recoveries awarded in enforcement actions. OCP has also joined in numerous

multistate cases over the years on behalf of the State. Each multistate case involves significant consumer protection issues affecting Hawaii consumers. OCP obtained over \$5.3 million in multistate recoveries in 2012. Thus OCP's ability to participate in future multistate cases is critical to maintaining its operational effectiveness.

## **2. Current Issues.**

Past budget restrictions and reductions in force have significantly impaired OCP's operational effectiveness. OCP currently operates with two staff attorneys on Oahu, four line investigators on Oahu, a single line investigator on Maui and one in Hilo, Hawaii. There are two supervising investigators located in the Oahu office. There is no investigator position for Kauai. The Oahu line investigators must devote approximately 20% of their time each week to the landlord-tenant hotline in addition to working on their assigned case load. The Maui and Hilo investigators take landlord-tenant calls in addition to their regular caseload. OCP is obligated by statute to promote the interests of consumers, including recommending new legislation in the consumer's interest, and educating consumers and businesses on consumer protection issues. However, although OCP had an educational specialist in the past, this position was eliminated some time ago. Additional staff positions, including attorneys, investigators, legal clerks, a program specialist and additional administrative personnel would help restore OCP's operational effectiveness and fulfill its statutory mandate.

### **3. Accomplishments.**

#### ***Consumer Education***

Over the past several years, OCP has educated tens of thousands of citizens by conducting workshops for senior care providers, speaking to business leaders and consumers regarding consumer protection and training Hawaii attorneys and military legal assistance personnel on consumer protection law.

Most recently, OCP has focused on the growing problems of identity theft and mortgage fraud by providing information to Hawaii consumers on how to avoid becoming a victim of such scams.

The DCCA recently addressed the need for more robust consumer education and outreach programs in the mortgage foreclosure crisis by launching its Hawaii Foreclosure Information Center. Homeowners should not be victimized by unscrupulous persons and companies who trick homeowner's into paying them thousands of dollars based upon the false promise that they can save them from foreclosure. OCP strongly supports efforts by government agencies and non-profit groups to reach out to homeowners facing foreclosure. Aggressive out-reach efforts such as the Hawaii Foreclosure Information Center to educate families facing foreclosure about legitimate existing mortgage loss-mitigation programs will help prevent these families from becoming trapped in a scam. OCP also supports the adoption of programs to furnish our local HUD-approved housing counselors with the financial resources needed to continue their important work.

In September 2012, Mrs. Holly Petraeus, the Consumer Financial Protection Bureau's ("CFPB") Assistant Director Office of Servicemember Affairs, was in Hawaii to conduct community events with servicemembers and their families to learn about the unique financial challenges they face. The DCCA Director, the Commissioner of Financial Institutions and the OCP Executive Director were invited to attend various events with Mrs. Petraeus. The OCP Executive Director participated in a roundtable discussion and town hall meeting with Mrs. Petraeus at Joint Base Pearl Harbor. Both sessions were very well attended.

#### **Cases**

OCP averages approximately 1,800 new cases a year and handles approximately 7,000 landlord-tenant hotline calls per annum.

OCP handled several significant cases in 2012 involving nearly every facet of consumer protection law. These cases involved alleged violations of Hawaii's laws governing mortgage foreclosure rescue fraud, identity theft, gift certificates, car rentals, credit practices, marketing protection, door-to-door sales, refund and exchanges, marketing and sale of travel plans, breaches of consumers' personal identification information, and unfair or deceptive trade practices. OCP's participation in several multistate cases involving unfair and deceptive marketing practices by large pharmaceutical companies promoting off-label use of various prescription medications resulted in a total recovery of over \$5.25 million together with important injunctive relief barring the companies from engaging in misleading marketing practices in the future.

OCP was fortunate to be invited by the federal Consumer Financial Protection Bureau (“CFPB”) to participate in the first ever joint consumer protection investigation between the CFPB and the states. The investigation culminated in a Stipulated Judgment entered last month in a Miami U.S. District Court against a Florida for-profit debt adjusting company who was conducting illegal for-profit debt adjusting activities in Hawaii over the internet. As part of their business, the Florida debt adjusting company, Payday Loan Debt Solutions, LLC and its president, were illegally charging Hawaii residents advance fees to pay for their services before the consumer received any help from the company. Under the judgment, the company was permanently enjoined from conducting such activities in Hawaii under HRS Chap. 446.

### ***Training***

OCP held its annual investigator training session for its investigators in November. This is the second annual investigator training session held since 2011. Investigators from throughout the DCCA also attended various portions of the training. Given the complexity and diversity of the complaints received by OCP, continued in-house training of its frontline employees is critical. OCP would like to expand in-house training programs for its legal and investigative staff if funds are made available.

### ***ABA Janet D. Steiger Fellowship***

OCP was fortunate to be awarded a 2013 summer intern from the ABA’s Section on Antitrust Law under a grant from the Janet D. Steiger Fellowship Project. This is the second consecutive year that OCP applied for and was awarded this prestigious grant

in competition with many other states. Only 34 Steiger Fellows were available this year for the entire country. The grant provides for a summer law intern which is entirely paid for by the Fellowship Project. The grants seeks to expose law students to the rewards of legal careers in public service and are awarded to consumer protection departments in the various states. OCP conducted interviews of five outstanding candidates in November 2012 and selected Cynthia Farias, a second-year law student at Western State College of Law in California.

***CFPB All Hands Training Program***

The OCP's Executive Director was invited in August to be a panel member at one of the sessions at the CFPB's first annual all hands training program in Washington, D.C. It was a good opportunity to meet and discuss issues of mutual concern with leaders of this new federal agency as well as the CFPB's interest in working with the states on financial consumer protection issues.

**4. OCP'S BIENNIUM BUDGET REQUESTS**

***Investigator I OCP Honolulu Office***

OCP is requesting an Investigator I position in OCP's Honolulu office. The requested position seeks to address critical staffing issues arising from OCP's obligation to maintain the Landlord-Tenant Hotline under HRS § 521-77. At present the existing four line investigators in the Honolulu office must devote over 20% of their time each week to responding to calls on the Landlord-Tenant Hotline. This seriously compromises these investigators' existing caseloads because of the time they must



spend each week answering calls on the Landlord-Tenant Hotline.

***Ceiling Increase to address Central Services Assessments***

OCP is requesting a ceiling increase to \$120,000 to address Central Services Assessments resulting from financial recoveries obtained by OCP from participation in multistate consumer protection cases.

***CONCLUSION***

OCP continues to receive a significant number of requests for assistance. Consumer complaints are diverse in nature and range from an isolated case to problems that affect every Hawaii citizen. Through regular training and information exchange, OCP's staff attempts to keep abreast of the latest consumer problems and scams in order to prevent them from occurring and to limit their impact. Through its efforts in taking proactive measures to prevent wide-scale consumer problems before they occur, and through its enforcement actions and consumer and business education, OCP strives to meet the consumer protection needs of this community and fulfill its mission as consumer counsel for the State.



NEIL ABERCROMBIE  
GOVERNOR

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LICENSING ADMINISTRATOR

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

AND

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2013

Friday, January 25, 2013  
9:30 a.m.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

I am Celia Suzuki, Licensing Administrator for the Professional and Vocational Licensing Division of the Department of Commerce and Consumer Affairs ("Division"). Thank you for allowing me the opportunity to share with you some of the highlights of the Division.

**1. General Overview.**

The Division is responsible for implementing the licensing regulations for forty-eight different professions and vocations. Twenty-five licensing regulatory boards and commissions are administratively attached to the Division, as well as twenty-three licensing programs (those without a board or commission). The Division provides staff support to the licensing regulatory boards, handles applications and licenses, reviews and processes renewals, and maintains license records. The Division also provides

guidance for proper implementation of the licensing laws and administrative rules for the forty-eight professions and vocations. Additionally, the Division responds to phone inquiries on whether a person or entity is properly licensed. This is a service that can assist consumers in making a decision on whether or not to utilize the services of the person or entity.

The Division prides itself on making licensing information available to licensees and the general public via the Internet. The Division continues to explore ways to enhance public accessibility to licensing information, the licensing process, and its licensee roster. The Division's webpage, provides general licensing information for all 48 licensing areas, features fillable license applications, publications, links to Hawaii Revised Statutes and Hawaii Administrative Rules, as well as a means to request an application or contact the board or program staff via e-mail.

## **2. Recent Initiatives.**

This is the thirteenth year that online renewals are being made available to licensees. This entirely paperless process enables licensees to complete, file, and pay for their license renewals electronically. A fair share of renewals are still mailed in by licensees and manually processed by the Division, but by far, a majority of the renewals are done online. We just completed the December 2012 online renewals for Electrologists, Occupational Therapists, Physical Therapists, and Real Estate Brokers and Salespersons. The online user rate for renewals was about 93.45%. Some of the licensing areas that do not have the ability to renew online include pest control operators because they are required to submit proof of a valid, current certification with

the Department of Agriculture; employment agencies because they are required to have a current bond on file; real estate appraisers are required to submit evidence of the completion of continuing education hours; and registered and certified automobile mechanics are required to submit copies of their current ASE (Automotive Service Excellence) certificates in order to renew their licenses.

Regarding Hawaii Administrative Rules, I am pleased to inform you that the Governor recently approved an amendment to Hawaii Administrative Rules - Chapter 53 (Fees for the Condominium Property Regimes). Also, the Board of Nursing will be conducting a public hearing on its rule amendments on February 7. On January 15, 2013, the Governor approved the Division's requests to hold public hearings for proposed amendments to Hawaii Administrative Rules relating to Speech Pathologists and Audiologists and relating to Professional Engineers, Architects, Surveyors, and Landscape Architects. Hawaii Administrative Rules for the Real Estate Appraiser program were promulgated in August 2012. The Hawaii Medical Board is also amending its Hawaii administrative rules regarding the section on examination and reexamination. Current rules require applicants to pass all three steps of the United States Medical Licensing Examination (USMLE) within seven years. The Board believes this to be excessively onerous as applicants not meeting this requirement must retake the steps to bring them in line with the 7-year rule in order to be licensed.

For those of you not familiar with the Division, I offer you the following comments.

The Division is divided into four branches:

The **Licensing Branch** is comprised of the Applications Section and the Records Section. The Applications Section 1) assists with the review and processing of applications for licensure; 2) issues licenses; and maintains records of licensing applications. The Applications Section staff, on behalf of the boards, commissions, and programs, conducts highly intensive reviews of all initial licensing applications, determines the status of such applications, and, in some instances, makes the final determination to either issue or defer issuing licenses. The Applications Section also performs customer service duties by answering the main public call-in line of the division which normally exceeds 5,000 calls per month. The Records Section is responsible for renewing, restoring and reactivating licenses and maintaining records of all licensees. The Records Section staff is also involved with performing customer service duties by assisting the public with licensing information at the Division's main walk-in counter. Both sections of the Licensing Branch utilize the Division's computerized licensing database to provide immediate information pertaining to applicants and licensees.

The **Examination Branch** arranges for the administration of licensing examinations on behalf of the boards, commissions, and programs, confirms the validity and reliability of exams, revises board constructed examinations to ensure their continued validity and reliability, and advises boards, when necessary, on the technical aspects of examinations. In addition, the Examination Branch transmits and verifies to various testing organizations the eligibility information of applicants seeking licensure in Hawaii who have been deemed approved to sit for the examination.

The **Administration Branch** serves as the liaison between the director of the department and the twenty-five boards, commissions, and twenty-three regulatory programs administratively attached to DCCA. On a daily basis, the Administration Branch (comprised of a Staff Attorney, Executive Officers, Program Specialists, and Secretaries) handles board affairs such as the coordinating, preparing, facilitating, and recording of board meetings; ensuring board compliance with applicable laws that guide and direct their conduct; and implementing board decisions on applications, policies and procedures, and disciplinary actions. The same activities are done for the twenty-three programs (absent the necessity of board meetings) on behalf of the director of the department.

Finally, **the Real Estate Branch** serves as the liaison between the director of the department and the Real Estate Commission, and performs the same functions as the Administration Branch for real estate licensing and regulation, and condominium property regimes. With the largest volume of applicants, licensees, and registrations, this branch (comprised of a Supervising Executive Officer, an Executive Officer, Real Estate Specialists, Condominium Specialists, Secretarial and Clerical staff) administers the Real Estate Recovery Fund, Real Estate Education Trust Fund, and the Condominium Education Trust Fund. It also administers education and research programs in the field of real estate and condominiums.

In summary, all branches within the Division work toward efficient and expedient processing of applications, licenses, and renewals to ensure the public has choices amongst competent and licensed practitioners.

### **3. Current Issues for PVL.**

I would like to briefly mention some of the Division's goals and objectives for fiscal year 2013. The Division will continue to be fiscally conscious and will continue to protect its special fund so that it remains solvent to provide accurate, efficient, and timely services.

The Division will continue to look for ways to enhance and improve its online systems for renewals, License Searches, List Builder, and the Division's webpage to be more user friendly and informative.

The Division began the regulation of Athletic Trainers on January 1, 2013. As of January 23, the Division has registered 165 athletic trainers and we hope to register more of them in the upcoming months.

The Board of Private Detectives and Guards has begun to prepare for the implementation of having the Division register approximately 10,700 security guards in the State, effective July 1, 2013. It has been an arduous task in trying to prepare for this new regulatory framework. But I am happy to announce that EO Char Tamanaha and the Board are scheduled to have the new fillable application form available by the end of this month.

The Board of Nursing is looking to implement a pilot project by offering its licensees at renewal, the ability to opt in or out of allowing the Division to provide the licensees' email addresses and/or mailing addresses to various nursing entities for surveys and other informational queries. Our plan is to implement this with the upcoming June renewals. Another effort of the Board of Nursing is to place the Hawaii

Center for Nursing's workforce survey link at the beginning and at the end of the online renewal process. The Board may also be placing a link to the workforce survey on its website.

The Division will continue to convert its downloadable application forms to online fillable application forms. This is a very tedious project and attention to detail is of utmost importance. We are also hoping that we will soon allow for the submittal of online applications. We are currently exploring different options.

The Division has been and will continue the scanning and imaging of licensee files so that new documents for a current licensee file are added as new licensee files are scanned, and will continue the reorganization of the hardcopy files.

The Real Estate Branch will continue to improve the offering and delivery of real estate pre-licensing and continuing education courses to stay in line with the increase in CE hours and the changing electronic environment. Rule making will be continued for Hawaii Administrative Rules ("HAR") Chapter 99 for real estate brokers and salespersons, Chapter 53 for fees relating to boards and commissions, and Hawaii Revised Statutes 514B. For the condominium program, the branch solicited and collected suggestions from stakeholders in the condominium community, and is currently compiling and drafting proposed rule amendments for HRS 514B and HAR Chapter 53. The branch will further work to enhance online public access to condominium projects and AOUO registrations. The Program of Work for the Real Estate Commission and the branch also includes the development and implementation of a new registration program for condominium projects.



The Division will also pursue several rule amendment initiatives through the formal rule adoption process for Mixed Martial Arts Contests and Respiratory Therapists.

The Division continues to move ahead with its initiatives to improve accessibility to licensing services and information, and to streamline the licensing process without compromising consumer protection. The Division is committed to working with licensees and the public to achieve the optimum balance between thoughtful and fair regulation, and consumer protection. The Division is mindful of the strain on Hawaii's businesses and seeks to integrate licensing measures and procedures that will facilitate business. Ultimately, the Division's objective is to achieve and facilitate a fair marketplace for the State of Hawaii.

The Division's staff and the regulatory licensing boards continue to maintain high performance standards, uphold consumer protection, work well as a team, and be responsive to increased demands.

#### **4. PVL Budget Request.**

The Division asks for your thoughtful consideration of its budget request of \$40,000 from the Contractors Education Trust Fund for a public service announcement. Select members of the Unlicensed Contractor Law Enforcement Task Force and the Working Group (namely, county prosecutors, a representative from the Attorney General's office, and a representative from the Department of Commerce and Consumer Affairs) would appear in the PSA which would warn consumers about the dangers of hiring an unlicensed contractor and reiterate that unlicensed contracting is a

crime. We are also requesting to have two temporary civil service positions converted to permanent civil service positions. The temporary positions have proven to be essential - ever since they were established in 2005 and 2007.

I would also like to mention that I am blessed to work with wonderful staff. There are 63 employees in the division and I enjoy working and interacting with every single one of them. They are loyal, dedicated, hardworking, efficient, and caring.

Thank you for the opportunity to tell you all about DCCA's Professional and Vocational Licensing Division.



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PRESENTATION OF THE  
REGULATED INDUSTRIES COMPLAINTS OFFICE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

AND

TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION AND COMMERCE

TWENTY-SEVENTH LEGISLATURE  
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Friday, January 25, 2013  
9:30 a.m.

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,  
THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

1. RICO Overview:

The Regulated Industries Complaints Office (RICO) serves as the enforcement arm for the various licensing authorities that are administratively attached to the Department of Commerce and Consumer Affairs (DCCA), Professional and Vocational Licensing Division.

RICO's Consumer Resource Center intakes complaints for both RICO and the Office of Consumer Protection. Intake Investigators answer general questions about the complaint process and direct consumers whose complaints are not within our jurisdiction. Information comes to us from a variety of sources including complaints, tips, news stories, and requests for investigation from the various boards, commissions, and programs. Intake Investigators preliminarily determine whether a matter is within RICO's jurisdiction and, if so, if there is sufficient information to investigate. About 14,500 complaint forms are provided to consumers each year. This number does not include complaint forms downloaded directly from the RICO webpage.

RICO currently has 19 Field and Supervising Investigators on four islands. These units investigate both licensing laws violations and unlicensed activity. About 1,000 complaints are investigated each year. RICO Field Investigators also issue citations for unlicensed activity and conduct sweeps and stings to address compliance issues and unlicensed activity.

Cases referred to RICO's Legal Section are evaluated for possible legal action. Through an administrative process, RICO staff attorneys seek fines and other license sanctions against licensees. Staff attorneys also prosecute unlicensed activity by filing civil lawsuits in the Circuit Courts, seeking fines, injunctions, and restitution as appropriate. About 300 legal actions are filed each year, a significant portion of which relate to unlicensed activity. Last year, 52 licenses (across all license types) were revoked and over one million dollars in fines assessed (mostly against unlicensed contractors).

Consumer education is a significant component of RICO's activities. RICO provides general tips and information on a variety of subjects, including the importance of hiring a licensed individual. RICO staff members speak at home shows and to community groups about general consumer protection issues. RICO also maintains a phone bank (its License Business and Information Section) that callers use to check to see if an individual or business is licensed. The License Business and Information Section also provides business registration information and complaint history information. In a given year, RICO answers about 57,000 calls requesting complaints history, license status and business registration information. Information is also available on line.

Neighbor island offices are an important resource for neighbor island residents, providing DCCA forms and assisting consumers with licensing, business registration, and insurance questions. About 5,700 consumers are assisted through RICO's neighbor island offices each year.

RICO also administers the State Certified Arbitration Program (SCAP) for "lemon" motor vehicle claims. The SCAP program helps consumers who buy or lease new motor vehicles and have repeated problems getting their vehicles repaired under a manufacturer's warranty. The program provides consumers with a self-help arbitration process that may be less complicated and less expensive than going to court. The Program also works to educate consumers and to get the word out about motor vehicle issues affecting consumers today.

The Compliance Resolution Fund (CRF) is the primary funding source for RICO. Funds go toward employing staff and the costs of operating RICO offices. Licensing fees assessed to each license type are fixed by administrative rule.

Additionally, varying amounts in fines and penalties are collected in licensed and unlicensed cases.

## 2. Recent Initiatives:

RICO is constantly working to address complaints and investigate and prosecute cases both fairly and expeditiously. Current initiatives include:

- Some complaints do not require live interviews or other investigation work outside of the RICO office. We are working with the Intake Investigator staff to assist with more of these types of cases. We believe it will result in improved case processing times.
- Intake Investigators will also be working to develop tip information and assist with internet investigations. We hope the recently formed Unlicensed Activity Tip Team will help locate and identify unlicensed activity and assist to develop projects and sweeps.
- We are streamlining the way in which we review healthcare related cases, bringing in a staff attorney and Field Investigator to early identify cases for fast-tracked investigation.
- We are planning for a new case management system, reviewing current procedures and streamlining, all geared toward moving cases more efficiently.
- Continuing to work with law enforcement on cases of mutual concern, especially in the areas of unlicensed activity, fraud, and elder abuse.
- And, as always, we are looking at how we get information out to the public, looking at social media and other things we can try to better reach consumers.

## 3. Current Issues:

RICO's existing Complaints Management System is an Oracle based system which will no longer be supported after 2014 and therefore must be replaced. We have an opportunity to bring in a new system and are exploring what new features could be implemented, such as online complaint filing, storing documents electronically, and taking tips about unlicensed activity online. While it is a project with much potential, we anticipate it will also be a project of some cost.

## 4. Budget Related Requests:

RICO is requesting a ceiling increase to cover fringe. Over the years, RICO has experienced increases in personnel costs.

Additionally, in 2011, the Hawaii State Legislature requested that the Director of the Department of Commerce and Consumer Affairs (DCCA) establish the Unlicensed Contractor Law Enforcement Task Force ("Task Force") to develop a collaborative enforcement strategy concerning unlicensed contractors among civil, criminal, and administrative enforcement agencies. The task force was, among other things, instructed to evaluate existing laws and propose new laws that would apply to unlicensed contractors and facilitate better enforcement.

Representatives from the various state and county prosecutor offices participated in a small working group on enforcement issues ("Working Group"). In addition to proposed legislation, the Working Group spent considerable time discussing the need for consumer education. The Task Force specifically found consumer education to be a key factor in deterring unlicensed contracting activity and recommended that RICO explore a joint, coalition message from the Department of Commerce and Consumer Affairs and law enforcement agencies warning of the risks of hiring unlicensed contractors. In conjunction, RICO could provide training for law enforcement officers about the law and risks of unlicensed contracting.

RICO thereafter approached the Contractors License Board ("Board"), requesting that the Board authorize the use of funds from the Contractor Education Fund administered by the Professional and Vocational Licensing Division. As such, PVL's budget request includes a ceiling increase to allow the expenditure of funds for this educational initiative.

Specifically, what is being proposed are 30 or 60 second public service announcements warning consumers of the risks of hiring an unlicensed contractor, if possible, including the following specific points:

- Unlicensed activity is a crime
- Repeated unlicensed contracting conduct is a felony
- Unlicensed contracting acts intended to defraud (ex. representing the unlicensed contractor is licensed or using another contractor's license) is also a felony
- May also face civil penalties
- A contractor's license is required for any project where the labor and materials exceed \$1,000 and for any project that requires a building permit
- You must hire a licensed electrician to perform any electrical work

- You must hire a licensed plumber to perform any plumbing work
- Licensed contractors have worker's compensation and liability insurance. This protects homeowners from putting their property at risk if anyone is injured on the project or if anything is damaged while the work is being done.
- To check to see if a contractor is licensed, call the DCCA's LICENSING AND BUSINESS REGISTRATION INFORMATION SECTION at (dial 587-3222, press 2) or go online to [www.businesscheck.hawaii.gov](http://www.businesscheck.hawaii.gov).

The request to increase the Contractor's Education Fund ceiling to cover the cost of producing and commercially airing this PSA was submitted by PVL at RICO's request.

#### 5. Long Term Funding Issues:

Licensing fees and fines and penalties fluctuate. Although, RICO has adopted a long-standing policy of fiscal conservation, it has experienced a steady rise in expenses, including utilities, rents, litigation costs (including travel and transcripts), and investigation costs (including records and exhibits). RICO must continue its conservative approach to cover fluctuations in revenue and increases in expenditures.



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TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION  
AND THE HOUSE COMMITTEE ON  
CONSUMER PROTECTION AND COMMERCE

THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2013

FRIDAY, JANUARY 25, 2013  
9:30 A.M.

TESTIMONY OF JEFFREY T. ONO, EXECUTIVE DIRECTOR,  
DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND  
CONSUMER AFFAIRS, TO THE HONORABLE ROSALYN H. BAKER  
AND THE HONORABLE ANGUS L. K. MCKELVEY, CHAIRS,  
AND MEMBERS OF THE COMMITTEES

### **INFORMATIONAL BRIEFING**

My name is Jeffrey T. Ono. I am the Executive Director for the Division of Consumer Advocacy ("DCA") from the Department of Commerce and Consumer Affairs. The following is my testimony for this informational briefing.

### **GENERAL BACKGROUND**

DCA represents, protects, and advances the interests of consumers of utility and transportation services before regulatory agencies, primarily the Hawaii Public Utilities Commission ("PUC"). DCA's primary goal is to insure that Hawaii's consumers receive fairly priced rates for safe and reliable utility services. DCA is also committed to promoting the administration's goals of energy sustainability and decreasing Hawaii's dependence upon foreign oil.



DCA recognizes the financial hardships that Hawaii's citizens are currently facing during this period of economic downturn. Consumers are seeing rates increase for all utility services, but none that more directly affects all citizens than the increasing cost of electricity. It is of the highest priority for DCA to do whatever is reasonably feasible to keep electricity rates fair and affordable. Moreover, it is incumbent upon DCA to carefully review applications for rate increases for other utility services, such as inter-island water transportation, private water, and private wastewater treatment. At the same time, DCA recognizes the right of regulated industry to earn a reasonable profit and the need to encourage capital investment in Hawaii's aging infrastructure.

## **ACCOMPLISHMENTS**

### **Savings and Benefits to Consumers**

In FY 2012, DCA negotiated a settlement of the Maui Electric Company, Limited ("MECO") rate case. MECO requested a rate increase of over \$23 million. Following a very aggressive discovery process and negotiations, MECO and DCA entered into a settlement agreement for a rate increase of \$13 million. This increase was accepted by the PUC on an interim basis.

Also in FY 2012, DCA negotiated a settlement with Hawaii Electric Company, Inc. ("HECO") that resulted in HECO recognizing a \$9.5 million decrease in its East Oahu Transmission Project, for which HECO had sought over \$53.5 million. This lowered the overall rates to be recovered from ratepayers from the 2011 test year.

In December 2011, DCA concluded the Young Brothers, Limited's ("YB") rate case after approximately one year of contentious litigation with Hawaii's interisland water carrier. The PUC issued a decision and order awarding YB a rate increase of \$10.5 million. In its application for a rate increase, YB requested over \$17 million based on an assumption that Pasha Hawaii would take away substantial volumes from YB ("the Pasha effect"). In the alternative, YB requested an increase of over \$14 million without the Pasha effect. Thus, DCA successfully saved ratepayers \$7 million, because the PUC ultimately rejected awarding YB anything for the Pasha effect.

In June, 2012, DCA negotiated a \$10 million payment from Larry Ellison to benefit Lanai ratepayers in exchange for the agreement not to object to the expedited review and interim approval of the transfer of the three regulated utilities on Lanai from Castle & Cooke to Ellison's newly created Lanai Holdings as part of Ellison's purchase of the Island of Lanai from David Murdoch and Castle & Cooke. The \$10 million was to

be used for capital improvements to the regulated utilities with none of that amount going into rate base.

In 2012, DCA participated in the rate increase applications filed by HECO, YB, Hawaii Water Service Company, Inc., Molokai Public Utilities, Inc., and Waiola O Molokai; in requests for approval of biofuel supply contracts involving Aina Koa Pono-Ka'u, LLC, Pacific Biodiesel, Inc. and Hawaii BioEnergy, LLC with the various utility companies; and requests for declaratory rulings regarding the exemption from the competitive bidding framework of Kalaeloa Partners, LP's and the United States Department of the Army.

DCA participates in other docketed matters which includes investigative proceedings, integrated resource planning, telecommunications mergers, and studies relating to energy efficiency, refinancing of a utility company's debt, financing and other issues.

### **RENEWABLE ENERGY**

In 2012, DCA spent a great deal of time and effort reviewing applications to the PUC by the electric utilities (HECO, MECO, HELCO, and Kauai Island Utility Cooperative) for the approval of power purchase agreements ("PPAs") and supply contracts for renewable energy projects. DCA reviewed PPA's relating to the McBryde Sugar Company, Limited; Kapolei Sustainable Energy Park; Kaheawa Wind Power, LLC; Kawaioloa Wind, LLC; Kauai Island Utilities Cooperative Renewable Solutions One LLC; MP2 Hawaii Solar, LLC; Kalaeloa Renewable Energy Park; and Honolulu Program of Waste Energy Recovery. It is anticipated that there will be the same, if not more, renewable energy projects that DCA will be reviewing for 2013.

### **NON-PUC MATTERS**

DCA assists the Department of Business, Economic Development and Tourism ("DBEDT") in administering the Electric Vehicle ("EV") Rebate Program. DCA's participation in this program is anticipated to end on January 31, 2013.

DCA is an active participant of various committees, boards, programs and advisory groups, which includes Enhanced Wireless 911 Services; One Call Center Advisory Committee; Hawaii Energy Policy Forum; and the Hawaii Clean Energy Initiative, among others.

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## **PERSONNEL**

DCA consists of 14 employees – executive director, public utilities administrator, one secretary, two attorneys, two engineers, one utilities/transportation specialist, one rate analyst, one research analyst, one education specialist, two legal clerks, and one office clerk. DCA was authorized to fill eight positions – one Public Utilities Rate Analyst VII, two Public Utilities Rate Analyst Vs, one exempt Research Analyst VII, three exempt Research Analyst Vs and one Engineer (Public Utilities) IV.

Historically, DCA has had difficulty attracting qualified applicants. With eight vacant positions, DCA is optimistic that qualified individuals will apply for the open positions. DCA has been recruiting and continues to recruit to fill the vacant positions.

## **BUDGET**

In FY 2012, DCA's personnel expenses totaled \$1,095,566 and operating expenses amounted to \$1,030,654. Therefore, total expenses were \$2,126,220. Pursuant to a directive to all State agencies by the previous administration, DCA exercised fiscal restraint by foregoing the use of outside contractors wherever possible. In order to insure the best possible results for ratepayers, DCA foresees a greater use of outside consultants in FY 2013.

## **2013 AND BEYOND**

DCA is excited to be an integral part of the State of Hawaii's move toward renewable energy and sustainability. DCA's continued participation in organizations, such as the Hawaii Clean Energy Initiative (HCEI) and the Hawaii Energy Policy Forum (HEPF) give DCA an opportunity to mold the State's policies toward lower energy usage and greater renewable energy penetration.

DCA will play a significant role in the State of Hawaii's policy decision to investigate the importation of liquefied natural gas ("LNG") to displace a substantial portion of the petroleum used in electricity generation. DCA is already in discussions with the administration, PUC, DBEDT, HECO, and Hawaii Gas as to the appropriate regulatory model for bringing LNG to the State.

DCA has agreed to be on the Hawaii Refinery Task Force that Governor Abercrombie mentioned in his January 22, 2013 State of the State address. This newly created task force that will be led by DBEDT Director, Richard Lim, will

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investigate the short and long term effects of the Tesoro refinery shutdown and the potential for Chevron also shutting down its refinery in the near future.

Furthermore, DCA will continue its participation and monitoring of the decoupling dockets filed by the HECO companies. DCA will determine whether decoupling has had the expected benefit of encouraging the HECO companies to engage more renewable energy projects into the electricity grid.

DCA will also continue to scrutinize the effect Feed-In Tariff ("FIT") and the changes to Tariff Rule 14H have in boosting distributed renewable energy (e.g., rooftop solar) projects. These types of smaller projects have the potential to not only reduce the use of petroleum for electricity generation, but also to significantly reduce ratepayers' bills.

DCA is an active participant in the On-Bill Financing Investigative docket that was recently opened by the PUC. On-bill financing has the potential to provide the incentive and ability of renters and individuals who cannot afford the up-front costs of solar water heating and energy efficiency appliances to purchase such devices that will save energy and lower customers' electricity bills.

The LNG project and Refinery Task Force will add new responsibilities to DCA that never existed before. It is not clear whether these projects will have a direct effect on DCA's budget.

Thank you for giving me this opportunity to submit this testimony on behalf of DCA and DCCA.



NEIL ABERCROMBIE  
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LT. GOVERNOR

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DEPUTY DIRECTOR

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

Date: Friday, January 25, 2013

Time: 9:30 AM

Conference Room: 229

### INFORMATIONAL BRIEFING

TO THE HONORABLE SENATOR BAKER AND REPRESENTATIVE MCKELVEY, CHAIRS, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division (Division) of the Department of Commerce and Consumer Affairs.

1. **General Overview of the Business Registration Division:** The Division has two main purposes that are very different from each other: 1) regulation of the securities industry in the State and 2) running the business registry. Our customers pay for our services in fees for applications. In addition, our prosecution of securities or franchise violations bring in penalties and fines.

a. Securities: The Division regulates the securities and franchise industries in the State which entails investigating and prosecuting securities fraud, franchise fraud and other franchise and securities violations. It also includes accepting, reviewing and processing the registration of securities, franchises, securities firms and professionals in the securities industry which include securities sales agents and investment adviser representatives. We also examine securities firms and actively outreach to the communities throughout the State to inform investors about investor education and financial literacy matters.

The Division currently oversees approximately **91,000** registered securities sales agents, **1,317** registered broker-dealer firms, **1,765** registered investment adviser representatives and **62** state registered investment adviser firms. The Division processed approximately **721** franchise offering circular filings and received approximately **3,348** Registration D notice filings for private placement securities and over **6,700** mutual fund notice filings in the past fiscal year.

On the securities enforcement side, the Division completed three preliminary orders to cease and desist, five final orders and nine consent agreements, imposing penalties of **\$2,721,491.80**. The Division has collected **\$415,991.92** in the past fiscal year.

Our securities investor education outreach completed **49** presentations, participated in **48** community events and reached an estimated **63,658** consumers in Hawaii. We have customized outreach for keiki, kupuna, military, unions, Native Hawaiian groups and many others, and our outreach includes working with communities

throughout the neighbor islands and Oahu. We also produce and distribute **90** different handouts, brochures, large-print materials for seniors, booklets, puzzles, games, CD's, DVDs and guides on topics ranging from affinity fraud, ponzi schemes, complex securities products, financial literacy for children, special services for military and more.

b. Business Registration: The Division is also charged with running the business registry for the State. This is a ministerial, purely administrative service. The registry does not do substantive review of applications, does not conduct exams nor assist with any fraud or legal matters. Business registries throughout the country do not verify information. The registry provides primarily an informational service like a large "white pages" so that businesses and customers can find addresses, check spelling and see very basic information about companies. The free business name search service we provide for searching this basic information is actually one of the most popular online services in the State and although purely administrative, has become critical to businesses nationwide.

In other states, this area is often called the "corporations division" to emphasize that it was primarily for the creation of corporations. But with the popularity of other entity types, especially the LLC, the state registries across the nation now oversee the registration of LLCs, partnerships, trade names, trademarks, and service marks along with corporations. Hawaii's business registry is the same.

Our State's business registry maintains **9** databases with over **5 million** records per database and has one of the most popular online services in the state with over **6.5 million** unique hits a year. The Division processed nearly **250,000** documents during

fiscal 2012. The registry includes company filings from the **1800's** and currently **158,000** active businesses. In light of the amount of information we store, our registry sets a priority on making the information easily available to the public and on data corruption protection.

The Division developed the documents online system three years ago to let the public order documents online with an immediate download. This has been increasingly popular with about **10,989** documents ordered online in the last fiscal year. We have made available **1,363,946** documents online for immediate download, almost double from the **700,000** available last year.

The Division also runs the Business Action Center with two permanent locations on Maui and Oahu, and one temporary location on Hilo. These offices offer face-to-face and one-on-one personalized services in assisting those wishing to do business registration filings, GET applications, certain DLIR filings and federal EIN applications. They also provide a clearinghouse of brochures and other written materials for small businesses.

**2. Recent initiatives in the past 6 months.** In the past six months, the Division has been working on securities enforcement efforts to be able to track, find, investigate and prosecute frauds perpetrated on the Internet. This includes efforts to leverage social media and other popular online activities. The Division has recently launched both a Facebook and Twitter page.

On the registration side, we are working to add features to our award-winning mobile apps for business registration. The mobile apps were completed in the middle of the



2012 legislative session (March 2012). Over the past six months, we have garnered additional recognition, including two national honors and one statewide, along with the international award we received in May 2012.

3. **Current issues facing the division.** We continue to work on improving our enforcement case management, the processing of securities applications and the efficiency of the business registry. On the securities side, we are continuing to work on implementing the changes required under the Dodd-Frank Wall Street Reform and Consumer Protection Act and are starting to prepare for the impact of the JOBS Act, in particular with the impending changes regarding Crowdfunding.

4. **Long-term funding issues:** To the extent the economy maintains its status, we do not see long-term funding issues.

Thank you for the opportunity to testify. I would be happy to answer any questions the committee members may have.

NEIL ABERCROMBIE  
Governor

SHAN S. TSUTSUI  
Lt. Governor

KEALI'I S. LOPEZ  
Director

JO ANN M. UCHIDA TAKEUCHI  
Deputy Director



**OFFICE OF ADMINISTRATIVE HEARINGS**  
**DEPARTMENT OF COMMERCE & CONSUMER AFFAIRS**  
MEDICAL CLAIMS CONCILIATION PANELS  
DESIGN CLAIMS CONCILIATION PANELS  
STATE OF HAWAII

DAVID H. KARLEN  
Senior Hearings Officer

SHERYL LEE A. NAGATA  
CRAIG H. UYEHARA  
HAUNANI H. ALM  
RICHARD A. YOUNG  
Administrative Hearings Officers

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

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

Date: Friday, January 25, 2013  
Time: 9:30 am  
Conference Room: 229

**TESTIMONY FOR INFORMATIONAL BRIEFING  
RELATING TO OFFICE OF ADMINISTRATIVE HEARINGS**

TO THE HONORABLE ROSALYN H BAKER, CHAIR & THE HONORABLE BRICKWOOD GALUTERIA,  
VICE CHAIR, AND MEMBERS OF THE SENATE COMMITTEE

AND TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR, & THE HONORABLE DEREK S.K.  
KAWAKAIM, VICE CHAIR, AND MEMBERS OF THE HOUSE COMMITTEE:

The Office of Administrative Hearings ("OAH") of the Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to offer comments for the Committees' Informational Briefing. My name is David Karlen, the Senior Hearings Officer of the OAH.

***GENERAL OVERVIEW OF THE OAH***

The OAH is part of the DCCA's Administrative Services Office. It therefore does not have a separate budget request. At present, there are no plans to increase OAH's future budgeted amount from its allocation in the present fiscal year.

Although the OAH is a small office, it has many important functions.

First, and foremost, the OAH is a support office under the DCCA Director's Office and is responsible for conducting administrative hearings and issuing recommended decisions for all divisions within DCCA that are required by law to provide contested case hearings under the provisions of HRS Chapter 91. The primary caseload of OAH is composed of cases originating from: 1) the Regulated Industries Complaints Office (RICO) and boards, commissions, and programs attached to the Professional and Vocational Licensing Division (PVL) on licensee disciplinary action and declaratory relief petitions; 2) citations issued to persons or businesses engaged in unlicensed activities; 3) trade name/trademark revocation cases; 4) proceedings to protect the public from securities laws violations that are initiated by the Securities Enforcement Branch of the Business Registration Division (BREG); 5) denials of no-fault and personal injury protection benefits; and 6) other miscellaneous matters from other divisions.

Second, by statute, OAH also is responsible for conducting administrative hearings for (1) procurement cases from all agencies and divisions of the State and the four counties that arise under the State's Procurement Code, HRS Chapter 103D; and (2) certain kinds of motor vehicle dealer, distributor and manufacturer disputes under HRS Chapter 437-A.

Third, through Memoranda of Understanding with other agencies, the OAH conducts their contested case hearings. For over nine years, the OAH has conducted due process hearings involving claims under the Individuals with Disabilities Education Act (IDEA) pursuant to an agreement with the Department of Education. This is a very important part of the special education program for Hawaii's schoolchildren. Starting in the fall of 2012, the OAH has conducted due process hearings concerning the denial of retirement benefits to members of the Employees' Retirement System of the State of Hawaii. In addition, the OAH stand ready to hear appeals of benefit determinations from the Employer-Union Health Benefits

Trust Fund under a Memorandum of Understanding with that Fund. There were, however, no such appeals filed in the last fiscal year.

Fourth, OAH also provides administrative support to the new Medical Inquiries and Conciliation Panel (MICP) and the Design Claims Conciliation Panel (DCCP) under HRS Chapters 671 and 672B respectively. The MICP program went into effect January 2, 2013, and is responsible for conducting informal conciliation hearings regarding inquiries concerning health care providers before such an inquiry can be turned into a claim that can be filed in court. lawsuits. Unlike the former program, the Medical Claims Conciliation Panel, the MICP does not issue advisory opinion on claims. The DCCP program is responsible for conducting informal conciliation hearings on claims against design professionals (engineers, architects, surveyors, and landscape architects) before such claims can be filed as lawsuits. The decisions of the DCCP panels are advisory in nature and are not binding on the parties, in the event that any party still wishes to pursue the matter via the courts. An annual report is separately produced for these program activities.

## **COMPOSITION**

The OAH staff responsible for CRF related activities are: one Senior Hearings Officer, division secretary, four additional hearings officers, two legal clerks, and an MICP/DCCP clerk. The office is physically located in the King Kalakaua Building, 335 Merchant Street, Suite 100. The OAH mailing address is: Office of Administrative Hearings, 335 Merchant Street, Suite 100, Honolulu, Hawai'i 96813; phone number: 586-2828; fax number: 586-3097; internet address: [www.hawaii.gov/dcca/oah/](http://www.hawaii.gov/dcca/oah/); and e-mail address: [oah@dcca.hawaii.gov](mailto:oah@dcca.hawaii.gov).

## ACCOMPLISHMENTS

During the 2011-2012 fiscal year, 309 cases were filed with OAH. The following table summarizes the types of cases and their relative percentage of activities conducted by OAH during that fiscal year.

<b>DCCA Divisions Referring Matters to OAH</b>	<b>Cases Filed</b>	<b>%</b>
Insurance Division (denial of personal injury protection benefits)	152	49%
Regulated Industries Complaints Office (disciplinary proceedings and citations for unlicensed activities)	86	28%
Business Registration Division (trade name revocation proceedings, corporate name abatement proceedings, violations of securities laws)	19	6%
Professional and Vocational Licensing (license denials)	12	4%
Office of Administrative Hearings (procurement protests) *	38	12%
Other CRF-related hearings	3	1%

\* Act 173 of the 2012 Legislature permanently instituted protest bond and minimum amounts in controversy requirements, effective July 1, 2012, that were not applicable during the 2011-2012 fiscal year. Accordingly, the number of procurement protests will be significantly less in the 2012-2013 fiscal year and thereafter.

Several of these matters were quite complicated and resulted in hearings taking place over several days. Overall, OAH conducted 127 hearings during the 2011-2012 fiscal year.

In addition, OAH received 107 IDEA cases from the Department of Education. Most of these cases involved multiple-day hearings.

OAH receives many inquiries about its activities from parties appearing *pro se*, attorneys, and the general public. OAH takes great care to respond to all such inquiries in a prompt and professional manner.

The primary goal and objective of the Office of Administrative Hearings has always been to conduct contested case hearings and issue recommended decisions, in a fair and impartial manner, as expeditiously as possible.

The secondary goal and objective of the Office of Administrative Hearings is to make all of the decisions issued by the Boards, Commissions, Programs, and Divisions that are part of the CRF, available to the public. A press release is issued every month listing all final decisions, including settlements, of these Boards, Commissions, Programs, and Divisions. In addition all of these final decisions are available on OAH's website free of charge. The website also contains copies of all such final decisions dating back to January of 2009. All procurement protest decisions are currently available online in a separate section of OAH's website shortly after the parties themselves are notified of the decisions. All special education decisions are made available online by the Department of Education.

#### ***PENDING LEGISLATION***

The OAH is not sponsoring any proposed legislation this session.

#### **CONCLUSION**

The Office of Administrative Hearings will continue to work closely with all interested parties to ensure that cases are processed as expeditiously as possible, and that all participating entities will have access to the OAH case data base and archives of past decisions.

Thank you for the opportunity to offer comments on OAH. I will be happy to answer any questions that the Chairpersons or members of the Committees may have.