SB 1070

Measure Title:	RELATING TO MORTGAGE SERVICERS.
Report Title:	Mortgage Servicers; Fees
Description:	Authorizes the Commissioner of Financial Institutions to conduct examinations and investigations and adjust the fees for mortgage servicer licensees to use NMLS.
Companion:	HB839
Package:	Gov
Current Referral:	CPN, WAM
Introducer(s):	KIM (Introduced by request of another party)

Sort by Date		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN, WAM.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-05-13 8:30AM in conference room 229.

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TO THE
SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH STATE LEGISLATURE
REGULAR SESSION OF 2013

Tuesday, February 5, 2013
8:30 a.m.

TESTIMONY ON S.B. NO. 1070
RELATING TO MORTGAGE SERVICERS

THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda Catalani, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of Commerce and Consumer Affairs ("DCCA") in strong support of administration bill, Senate Bill No. 1070.

This bill has two primary purposes. First, it authorizes the Commissioner to examine mortgage servicers, and provides realistic examination and investigation tools. Second, it adjusts the fees for mortgage servicer licensees registering through the NMLS system used by the Division of Financial Institutions, which regulates mortgage servicers under Chapter 454M, Hawaii Revised Statutes ("HRS"). As the Department is self-funded, the Commission seeks to have fees for mortgage servicers set at a level that covers the true costs of operating the program and providing the public the protection it needs and that the Legislature intended.

The need for meaningful mortgage servicer oversight is evident from the failure of the nation's mortgage loan systems, and in the wake of last year's landmark $25 billion joint state-federal agreement with the nation's five largest mortgage servicers over foreclosure abuses and fraud, and unacceptable nationwide mortgage servicing practices. Since these events, there has been a reevaluation of laws by every state and the federal government in an effort to address breakdowns in the mortgage servicing industry and better protect consumers.

In Hawaii, mortgage servicers serviced over 35,000 residential loans with an aggregate value of $9.78 billion, according to 2012 licensee renewal data. Mortgage servicers are responsible for billing and collecting mortgage payments from residential homeowner borrowers, and transmitting payments to owners of the mortgage loans. They also typically handle customer service, escrow accounts, collections, loan modifications, and foreclosures. Generally, the borrower has little say in the choice of mortgage servicer. Lenders frequently contract out servicing after the mortgage loan is signed. In the case of reverse mortgages, mortgage servicers make payments to the borrower.

Investigation and Examination Authority, Tools and Fees

Many mortgage loans are secured on a borrower's primary residence. Eighty-eight percent of Hawaii mortgage loans are paid on time. The other 12% are over 90 days past due, which classifies them as "delinquent" for purposes of the National Mortgage Settlement. With homes at stake, it is imperative that the Commissioner have the tools to conduct meaningful examinations and investigations of mortgage servicers, and protect consumers. HRS Chapter 454M gives the Commissioner the authority to investigate and act upon written consumer complaints, and investigate a violation of the chapter. Section 1 of this bill authorizes the Commissioner to conduct examinations, as well as investigations that do not require initiation by a consumer complaint.

The bill also provides the Commissioner with tools needed to conduct meaningful investigations and examinations. Among others, the bill gives the Commissioner power to subpoena witnesses, require the production of documents and records, take control over documents and records, and retain accountants and other professionals to assist in examinations and investigations, if necessary. It also authorizes the Commissioner to cooperate with other government officials or regulatory associations to improve efficiencies and reduce regulatory burden by sharing resources, documents, records and information.

We expect the mortgage servicers that we regulate to operate with a high level of integrity. Still, in view of what has been learned from the nationwide financial crisis, we submit that it is both realistic and important for the Commissioner to have the investigation tools that this bill provides, in order to protect consumers. As just one example, the federal government recently prosecuted a mainland company alleging that it had conducted a scheme to prepare and file more than one million fraudulently signed and notarized mortgage-related documents, many of which were used in foreclosure proceedings to force homeowners out of their homes. The Commissioner should have the authority to examine mortgage servicers suspected of improper conduct without having to await a consumer complaint, and the Commissioner should have the proper tools to conduct a meaningful investigation.

Licensure Fees, NMLS

This bill also authorizes the Commissioner to charge an examination or investigation fee and reasonable expenses incurred in the process. Under the bill, if fees and expenses are charged, they will be borne by the party being examined or investigated. This is necessary and appropriate because the Division is self-funded and generates its own revenue to carry out its responsibilities and programs to protect and inform the public, and regulate financial institutions.

NMLS Licensing System

Sections 2 and 3 of the bill update HRS Chapter 454M by changing references to the "Nationwide Mortgage Licensing System," to "NMLS," which is the system's new name. NMLS is a mortgage licensing system for state licensing and registration of state-licensed loan originators as well as other financial services providers. It changed its name when it expanded its services beyond mortgage loan originator registration. This bill also provides a definition of "NMLS."

Additionally, this bill adjusts the licensure fees to take into account the fees that NMLS charges the State for using NMLS in connection with mortgage servicer licensure. The NMLS system benefits the public which will be able to see which companies are licensed in Hawaii through the NMLS consumer access page. The on-line application and renewal process will benefit licensees who conduct mortgage servicing activities in more than one state and have the ability to use a nationwide application. The Division believes using NMLS will provide a cost-effective way for licensees to manage all of its state mortgage servicer licenses and will allow the Division to use the electronic method to review, oversee and license mortgage servicers. Note that the Division must continue to ask for items outside of the NMLS for the state specific information required by our Hawaii law. As the Division focuses its supervisory, regulatory, and examination authority on these licensees, it anticipates that the industry will be more responsive and compliant with state and federal laws, which will in turn, consumers will be protected.

Self-Funding Requirement Necessitates Requested Fee Changes

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

Overall, the Division's revenues are inadequate to fully fund its operations, including the filling of all authorized positions and covering the Division's shared of the departmental overhead. Notwithstanding the extraordinary efforts of Division staff, the Division is currently backlogged between 120 and 180 days in its licensing work due to understaffing. The Division appreciates having previously been allocated 34 staff positions to carry out its responsibilities. However, the current fee HRS fee structure generates revenue that is sufficient to fill only 28 positions. Consequently, six allocated positions, all of which are "permanent," are vacant. So while there is a clear need for additional staff to appropriately carry out the Division's mandates and to protect the public, the Division is not in a position to cover the ongoing cost of these permanent positions until its revenue streams are changed and made sustainable.

Division's staff vacancies adversely affect the State's economy and the public's security in a number of ways. Businesses that are otherwise ready to open may have to wait months to obtain approval on their initial license applications, despite best efforts of the Division and its staff. They must postpone hiring employees and generating revenue that would increase the State's tax base. Licensees who do not apply for license renewals well before the end of the year may end up in a similar predicament, unable to lawfully conduct business after their license expires, and in limbo until the Division can confirm satisfaction of license renewal requirements and issue a license renewal. For the public, the Division's personnel shortage means potentially months of delay in its examination of licensees which handle billions of dollars of consumer financial transactions annually. It also potentially means months of delay in the Division's discovery of licensees that could use benefit from the Division's assistance and monitoring to help them restore their financial viability and strength. In an extreme case, a staff shortage could mean that the Division cannot discover and investigate questionable licensee conduct and circumstances in time to avert massive financial harm to the public.

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

With specific regard to the mortgage servicer program, it ran substantial deficits in FY11 and FY12. To provide the minimum oversight, it cost the Division $114,265 to operate the program in FY2011, while it generated revenue for the Division of $27,500, leaving the Division to cover the $86,765 shortfall. In FY12, the program ran a larger deficit, this time in the amount of $173,942. The most recent results are as follows:

Mortgage Servicers Program	FY11	FY12
Program Cost to Division	$114,265	$197,942
Less Program Revenues	$27,500	$24,000
Program Deficit to Division	$86,765	$173,942

Clearly, under the fee schedule set by Chapter 454M, HRS, the mortgage servicers program is fiscally unsustainable for the Division. The minimum oversight includes review and examination of the safety and soundness of the company. The Division would like to enhance its program to: (1) provide additional oversight throughout the year to companies who may have compliance issues, (2) provide additional training to the Division's examiners to learn about the risks associated with the new compliance regulations, and (3) conduct examinations.

The Commissioner submits that the fee changes for the money transmitter program set out in this bill should enable the Division to continue to carry out its legislatively mandated duties. After having run an aggregate deficit on the program in just the past two years of more than a quarter million dollars, the Commissioner respectfully submits that requested changes in fees are both necessary and appropriate.

Effective Date and Housekeeping

Section 4 of the bill extends existing licenses for current licensees until December 31, 2013, conforming to the renewal schedule used by NMLS.

Finally, housekeeping amendments in Section 5 reflect the change in the federal regulator from the Housing & Urban Development Department to the Consumer Financial Protection Bureau ("CFPB").

For these reasons, DFI strongly supports this administration bill, Senate Bill No. 1070, and respectfully asks that the measure be passed.

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