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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

FRIDAY, FEBRUARY 22, 2013
11:30 A.M.

TESTIMONY ON SENATE BILL NO. 1370, S.D. 1
RELATING TO MEDIATION AFFECTING JUDICIAL FORECLOSURE.

TO THE HONORABLE CLAYTON HEE, CHAIR,
AND TO THE HONORABLE MAILE S.L. SHIMABUKURO, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on Senate Bill No. 1370, S.D. 1, Relating to Mediation Affecting Judicial Foreclosure. My name is Bruce B. Kim and I am the Executive Director of OCP.

OCP supports Senate Bill No. 1370, S.D. 1. As reflected in the findings and purpose found in section 1, the legislature has repeatedly, in the 2011 and 2012 sessions, indicated a desire to make dispute resolution coupled with the assistance of a HUD-certified housing counselor available to homeowners facing foreclosure.

While mediation in a judicial foreclosure may be ordered in the discretion of the court, only the Third Circuit Court (the island of Hawaii) has a dedicated foreclosure mediation program, and anecdotal evidence suggests that foreclosure mediations in other Circuits are not generally ordered. By requiring pre-foreclosure dispute resolution at the option of the mortgagor, both mortgagees and mortgagors stand to benefit from the existing the Mortgage Foreclosure Dispute Resolution ("MFDR") Program administered by the DCCA. The MFDR's counseling component helps mortgagors better appreciate their individual financial situations as well as the options available to them in terms of alternatives to foreclosure. The MFDR mediators are specifically trained in foreclosure mediation for the MFDR Program with the able assistance (in no particular order) of the Judiciary's Center for Alternative Dispute Resolution, the Mediation Center of the Pacific, Ku'ikahi Mediation Center, and West Hawaii Mediation Center.

Pre-foreclosure mediation through the MFDR program will also reduce delays and conserve judicial resources. There is emerging evidence that mediation programs in foreclosure do work in helping distressed homeowners enter into various loss mitigation remedies with their lender and avoid foreclosure. There is also ample evidence that HUD-certified housing counselors are successful in the majority of circumstances in getting some form of help to distressed homeowners and avoid foreclosure.

Thank you for the opportunity to testify in support of Senate Bill No. 1370, S.D. 1. I will be happy to answer any questions that the members of the Committee may have.



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Testimony to the Senate Committee on Judiciary and Labor
February 22, 2013

Testimony in Opposition to SB 1370 SD1, Relating to Mediation Affecting Judicial Foreclosure

To: The Honorable Clayton Hee, Chair
The Honorable Maile Shimabukuro, Vice-Chair
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 78 Hawaii credit unions, representing approximately 804,000 credit union members across the state. We are opposed to SB 1370 SD1, Relating to Mediation Affecting Judicial Foreclosure.

Approximately 60 of Hawaii's credit unions currently offer mortgages.

This bill would require mediation before a judicial foreclosure action. Credit unions often have close relationships with their members, and will do everything within reason to help keep homeowners from losing their homes when a member's mortgage loan becomes delinquent. Credit unions begin working with their members as soon as a potential default becomes apparent and provide their members with alternatives to foreclosure as a matter of course. This may include loan modification, or other alternatives.

Pre-foreclosure mediation will only duplicate these efforts. If the member has been unable to qualify for a loan modification or other alternative by that point, it is highly unlikely that pre-foreclosure mediation will do anything but delay a final resolution. Making mediation mandatory for judicial foreclosures could lengthen the foreclosure process by six to eight months. Lenders, including credit unions, will be more likely to begin the foreclosure process sooner, which is of no benefit to homeowners.

Thank you for the opportunity to provide comments.

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February 22, 2013

Senator Clayton Hee, Chair
and members of the Senate Committee on Judiciary and Labor
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: Senate Bill 1370, SD 1 (Mediation Affecting Judicial Foreclosure)
Hearing Date/Time: Friday, February 22, 2013, 11:30 a.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.

The HFSA opposes this Bill.

The purposes of this Bill are to: (1) expand the application of mandatory mortgage foreclosure dispute resolution by requiring mortgagees, at the mortgagor's election, to participate in mediation to avoid foreclosure or mitigate damages from foreclosure prior to filing a judicial foreclosure action for property that has been the mortgagor's primary residence for a specified period, and (2) apply the dispute resolution requirement to judicial foreclosure actions filed prior to the effective date of this bill and pending an initial court hearing.

A foreclosure action is the last resort for a lender when a borrower's mortgage loan is delinquent. Before commencing a foreclosure action (whether judicial or nonjudicial), a lender will consider many pre-foreclosure options, including, but not limited to, a loan modification, a short sale, or a deed in lieu of foreclosure. Requiring a lender to additionally participate in the Mortgage Foreclosure Dispute Resolution ("MFDR") program before filing a judicial foreclosure action, which is what this Bill envisions, is unnecessarily duplicative.

The existing MFDR Program, which is in Part V of Chapter 667 of the Hawaii Revised Statutes, is a pre-nonjudicial foreclosure program. That Program was designed as a pre-nonjudicial foreclosure program because non-judicial foreclosures do not have third party oversight. That Program has some flaws and an unduly lengthy timeline of about 5 months or more. In contrast to non-judicial foreclosures, judicial foreclosures have a judge overseeing the process by hearing motions, issuing orders, and at times referring the lender and the borrower to mediation.

A judicial foreclosure can take 12 to 18 months to complete. The MFDR Program will unnecessarily extend the time that it takes to complete a judicial foreclosure by up to an additional 5 months. The added time will merely increase the costs of the foreclosure process.

Thank you for considering our testimony.



MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association