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TO THE
HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE
THE TWENTY-EIGHTH STATE LEGISLATURE
REGULAR SESSION OF 2015

February 11, 2015
2:30 p.m.

TESTIMONY ON H.B. NO. 1017

RELATING TO THE SECURE AND FAIR ENFORCEMENT
FOR MORTGAGE LICENSING ACT

THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of and Consumer Affairs ("Department") on
House Bill No. 1017. The Department offers the following comments.

House Bill No. 1017 would add two new exemptions to Chapter 454F, HRS, the
Secure and Fair Enforcement for Mortgage Licensing Act, for the following individuals:

- (1) Any individual who offers or negotiates terms of a residential mortgage
loan with, or on behalf of, an immediate family member of the individual;
and

- (2) Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence, including a vacation home, or inherited property that served as the deceased's dwelling; provided that the individual does not act as a mortgage loan originator or provide financing for such sales more than three times in a calendar year."

The bill would essentially restore the exemptions that were removed from Chapter 454F through Act 198, section 2 (2014). The Division of Financial Institutions ("DFI") supported the removal of the exemption. DFI believed, and continues to believe, that consumers risk substantial harm when they obtain mortgage loans from sellers who lack the training, knowledge and qualifications required of licensed mortgage loan originators under Chapter 454F, HRS.

Even if the financing to be exempted by H.B. 1017 is limited to seller financing of the seller's own property, or performing loan origination for an immediate family member, the parties to every such transaction would be exposed to substantial risk. Mortgage loans involve substantial assets and should be handled by qualified individuals. Unlike a financing transaction with a licensed MLO who obtains the borrower a loan through an established mortgage lender, seller financed transactions most likely have no lending standards, including no underwriting standards to evaluate the borrower's ability to pay, no fee and other disclosures to help the borrower understand financial ramifications and compare loan options if any, and no standard loan documentation. In contrast, licensed MLOs must comply with laws that oftentimes were developed in response to consumer complaints. Licensed MLOs typically use lenders who provide standardized loan documents that include federally mandated disclosures to inform and protect consumers.

It appears that a number of seller financing arrangements were made between 2008 and 2011. This was during the height of the financial crisis when bank mortgage lending standards were tightened, and obtaining a mortgage loan could take months. Issues surfaced in 2012 and 2013, when parties to these financing arrangements could not, or did not want to, honor their agreements. Typically, DFI would be contacted by a borrower who was unable to pay on the mortgage loan that the seller did not want to modify, or a borrower who was objecting to a seller/mortgagee demand to accelerate loan payments. In many cases, there was no written loan agreement. DFI also received a report of a borrower who alleged he had paid off his seller-financed loan, but did not receive title to the property. DFI did not take on these cases because it had no jurisdiction over the seller, who was then exempt from Chapter 454F, HRS. DFI believes that the current law protects consumers who must use a licensed MLO for the mortgage origination.

DFI has concerns about this bill, House Bill No. 1017, and the unintended consequences that may ensue from consumers who may be harmed.

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

February 11, 2015

The Honorable Angus L.K. McKelvey

House Committee on Consumer Protection and Commerce
State Capitol, Room 325
Honolulu, Hawaii 96813

RE: H.B. 1017, Relating to the Secure and Fair Enforcement for Mortgage Licensing Act

HEARING: Wednesday, February 11, 2015, at 2:30 p.m.

Aloha Chair McKelvey, Vice-Chair Woodson and Members of the Committee:

I am Myoung Oh, Director of Government Affairs, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **strongly supports** H.B. 1017, restores the exemptions from the Secure and Fair Enforcement for Mortgage Licensing Act for individuals who offer or negotiate the terms of a residential mortgage loan with or on behalf of an immediate family member or for the individual's own residence.

During the 2014 State Legislative Session, the Legislature amended Hawaii's Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), which established the system for mortgage loan origination in Hawai'i. Act 198, removed exemptions that allowed ordinary, non-licensed property owners to provide financing for their own properties. The action was proposed by DCCA's Division of Financial Institutions (DFI) as a part of a much more complex bill affecting mortgage origination rules in the SAFE Act (HRS 454).

Owner financing is a useful tool in the credit market, as it expands the pool of potential buyers for owners and gives buyers an opportunity to make a purchase that would otherwise be out of reach, especially if they could not qualify for a traditional mortgage loan.

Additionally, it is important to note that although Hawai'i has met the minimum model state legislation that is required to comply with the SAFE Act, the Consumer Financial Protection Bureau's (CFPB) implementing regulations exclude from the definition of loan originator some sellers who provide seller financing. CFPB has provided some flexibility in the new final rule by excluding from the definition of loan originator two

categories of seller financing: those that sell 3 or fewer properties in any 12 month period and those that sell only one in any 12 month period.

Prior to Act 198, owner financing in Hawai'i was exempt. Unless owners are exempt as a mortgage loan originator under the SAFE Act, it is not usually practicable to provide seller financing directly. As such, HAR believes this measure will restore a valuable tool for both owners and buyers.

Mahalo for the opportunity to testify.