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**PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEE ON
JUDICIARY AND LABOR

AND

TO THE SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH

THE TWENTY-NINTH LEGISLATURE
REGULAR SESSION OF 2017

FRIDAY, FEBRUARY 3, 2017
9:30 a.m.

**TESTIMONY ON S.B. NO. 948
RELATING TO GOVERNMENTAL RETENTION OF ATTORNEYS**

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs
("Department") in strong support of this administration bill, S.B. No. 948, Relating to
Governmental Retention of Attorneys.

Under Haw. Rev. Stat. §28-8.3(a)(20), the Division of Financial Institutions ("DFI" or "Division") can employ and retain attorneys for any action involving the mortgage loan recovery fund. The purpose of this bill is to enable DFI to employ and retain attorneys for other purposes. This would increase DFI's efficiency and capacity and streamline the regulatory process by improving the timely completion of regulatory actions and by building dedicated subject matter expertise within DFI.

The Department believes that staff attorneys would make DFI's work more efficient, effective, and streamlined to assist with the questions and inquiries from applicants, licensees and consumers. The current limitation on the scope of work a DFI attorney may perform is problematic because almost all of DFI's needs for legal work fall outside the scope of what the statute allows. The Division has been fortunate to have had staff members at different times who happened to be attorneys, and during their tenure at DFI, their legal skills have proven to be a valuable resource. But with no official staff attorney positions in DFI, the Division cannot rely on having legal resources and talent at its disposal, nor can it count on developing a depth of specialized knowledge and skills relevant to the industries that it regulates.

DFI staff attorneys would be able to handle legal matters such as document drafting, legal research, consultation and negotiations, and others, constantly elevating the knowledge and experience base within the Division. Staff attorneys and the Commissioner would be readily available to confer on potential legal and regulatory

issues, legal research scope and development, options and recommendations for resolution, and issue disposition, all enhancing the Division's efficiency and capacity. DFI staff attorneys would also help identify and organize legal issues and provide possible solutions for discussion and consideration with the AG's office.

With DFI staff attorneys increasing the Division's efficiency and expertise, the scope of work that DFI refers to the Department of the Attorney General ("AG") may be enhanced. Currently, the Division sends drafts of legal opinions, guidance, enforcement orders and cease and desist orders. With a staff attorney, the Division can increase communication with licensees and conduct adequate enforcement activity for referral to the AG's office, commensurate with DFI's greater supervisory authority.

This bill is consistent with existing statutory authority in Section 454F-15(f), HRS, of the SAFE Act (authorization to retain attorneys to assist with examinations or investigations); Section 454M-8.5(f), HRS, of the Mortgage Servicers law (authorization to retain professionals and specialists to assist with examinations or investigations); Section 412:2-102, HRS, of the Code of Financial Institutions (authorization to hire as many professional employees as DFI requires); and Section 449-1.9, HRS, of the Escrow Depositories law (authorization to contract with or employ qualified persons to assist in exercising the Commissioner's powers and duties).

The Division notes that 40 states have staff attorneys to assist the bank departments interpret, provide guidance, and draft legislation and enforcement orders.

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Other state bank departments with less than 25 employees also have at least one staff attorney as staff to the department.

DFI strongly supports this administration bill, S.B. No. 948, and respectfully requests that it be passed.

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