

SB2062

Measure Title: RELATING TO FINANCIAL INSTITUTIONS.

Report Title: Financial Institutions; Residential Mortgage Loans; Sale

Description: Places restrictions on the ability of financial institutions to sell residential mortgage loans to other financial institutions. Defines "residential mortgage loans" as any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications of the definition.

Companion: [HB1619](#)

Package: None

Current Referral: CPH

Introducer(s): BAKER, ENGLISH, ESPERO, GREEN, KEITH-AGARAN, KIDANI, RUDERMAN, TOKUDA, Gabbard, Ihara, Inouye, Nishihara, Taniguchi



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

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Thursday, February 15, 2018
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 2062, RELATING TO FINANCIAL
INSTITUTIONS.**

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

The Department of Commerce and Consumer Affairs (“Department”) appreciates the opportunity to testify on S.B. 2062, Relating to Financial Institutions. My name is Iris Ikeda, and I am the Commissioner of Financial Institutions for the Department’s Division of Financial Institutions (“DFI”). The Department would like to share its concerns about the application of this bill which is a companion to H.B. 1619 H.D.1.

S.B. 2062 provides that financial institutions subject to Hawaii Revised Statutes (“HRS”) chapter 412 may sell residential mortgage loans only to other chapter 412 financial institutions that have an authorized place of business in the State or that designate and maintain an agent in this state that is authorized to accept service of process on behalf of the financial institution.

This bill applies to HRS chapter 412 banks, savings banks, savings and loan associations, financial services loan companies, and credit unions (collectively, “chapter 412 financial institutions”), which DFI regulates. DFI has two main concerns regarding the application of this bill to Hawaii’s six state-chartered financial institutions. First, this

bill essentially restricts them from selling residential mortgage loans unless the buyer meets certain requirements and is also a chapter 412 financial institution. Second, the restrictions in this bill will place the six chapter 412 financial institutions at a competitive disadvantage to financial institutions not subject to chapter 412.

The practical application of the bill is that it precludes chapter 412 financial institutions from selling mortgage loans to Fannie Mae and Freddie Mac, as the latter are not chapter 412 financial institutions. These two government-sponsored enterprises (“GSEs”) are very important to lender liquidity, as they buy mortgage loans from banks and other lenders and hold the loans in their portfolios, or they package the loans into mortgage-backed securities that may be sold. Approximately 80% of the residential loans originated by chapter 412 financial institutions are sold to GSEs. Through the third quarter of 2017, Fannie Mae and Freddie Mac purchased \$2.7 billion home loans nationwide, with a combined loan volume of \$620 billion.

For similar reasons, the bill’s restrictions will limit the pool of buyers for other government loan guaranty programs, such as VA loans, FHA loans, and other mortgage loans made by chapter 412 financial institutions.

The GSEs and government loan guaranty programs benefit consumers by enabling their banks and other lenders to offer lower interest rates and origination fees due to low funding costs, as well as customizable mortgage programs that can help low- to moderate-income families find more affordable home financing options.

Effectively, the six state-chartered financial institutions regulated by DFI may have to hold the residential loans they originate in their portfolios. Loans held in a bank’s portfolio generally have higher interest rates, since the bank would be unable to sell the mortgage loan to the GSEs and would have to take all the risks. In addition, the newest rule from the Dodd-Frank Act provides that banks are required to reserve the loss of the loans when they originate the loan, instead of as the loan matures. As a result, banks will be unable to originate as many loans to consumers and businesses.

The second way this bill may negatively affect chapter 412 financial institutions is by giving an advantage to federally chartered banks and credit unions, mainland lenders, and mortgage bankers. These financial institutions are not supervised by DFI

and would not be required to follow Hawaii's mortgage laws, as they would not be subject to the bill's restrictions on mortgage loan sales.

Thank you for the opportunity to share the Department's concerns.

SB-2062

Submitted on: 2/13/2018 10:12:58 PM

Testimony for CPH on 2/15/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying on behalf of OCC Legislative Priorities Committee, Democratic Party of Hawaii	Support	No

Comments:



Testimony to the Senate Committee on Commerce, Consumer Protection, and Health
Thursday, February 15, 2018, 9:00 am
State Capitol, Room 229

Comments on SB 2062, Relating to Financial Institutions

To: The Honorable Rosalyn Baker, Chair
The Honorable Jill Tokuda, 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 57 Hawaii credit unions, representing over 800,000 credit union members across the state. We offer the following comments on SB 2062, Relating to Financial Institutions.

Approximately 40 Hawaii credit unions currently offer mortgage loans. SB 2062 would restrict financial institutions covered under HRS Chapter 412 from selling a mortgage loan to another financial institution that does not have a physical presence in the State of Hawaii. This legislation would only apply to state-chartered financial institutions, however, preventing the sale of mortgages on the secondary market in this manner could have a detrimental impact on the mortgage loan and real estate industries as a whole.

Thank you for the opportunity to provide comments.

HAWAII FINANCIAL SERVICES ASSOCIATION

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February 15, 2018

Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair
and members of the Senate Committee on Commerce, Consumer Protection, and Health
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **S.B. 2062 (Financial Institutions)**
Hearing Date/Time: Thursday, February 15, 2018, 9:00 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 as drafted.

This Bill: (a) places restrictions on the ability of financial institutions to sell residential mortgage loans to other financial institutions; and (b) defines “residential mortgage loans” as any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or residential real estate upon which is constructed or intended to be constructed a dwelling, and includes refinancings, reverse mortgages, home equity lines of credit, and other first and additional lien loans that meet the qualifications of the definition.

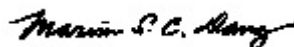
We understand that the genesis for this Bill was because a homeowner was unable to timely reach the servicer of his mortgage loan to have his insurance check endorsed so that repairs could be made to his home.

If that is the problem and if a legislative solution is determined to be appropriate, then this Bill is too broadly drafted with its restrictions. We incorporate by reference the testimonies of the Hawaii Bankers Association (HBA) and the Mortgage Bankers Association of Hawaii (MBAH) which describe how the Bill’s restrictions will reduce the availability of mortgage loans.

If this Bill as drafted becomes law, there could be negative unintended consequences. This Bill could cause unnecessary uncertainty and disruption to Hawaii’s housing market and real estate industry. Potential homeowners will be adversely impacted if they have less options available for mortgage loans to buy properties. With a smaller pool of home buyers, property owners will be negatively affected when they have difficulty selling their properties. Additionally, homeowners will discover that they won’t be able to refinance existing mortgage loans or obtain new loans at competitive interest rates and terms.

We ask that your Committee “hold” this Bill and not pass it as drafted. We are willing to work with your Committee and others (such as the HBA, the MBAH, and the Hawaii Division of Financial Institutions) to determine if there could be a more narrowly focused solution within the current regulatory framework and without the need for overly-broad legislation.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association



TO: The Honorable Roselyn Baker, Chair
The Honorable Clarence Nishihara, Vice Chair
Members of the Committee

I am Tiare Fullerton and the President of the Hawaii Association of Mortgage Professionals Association (HAMB). We are a trade association representing the residential mortgage broker industry and regulated by the Hawaii Division of Financial Institutions.

We strongly oppose SB 2062 for the following reasons:

1. Hawaii being a remote island state with high real estate prices and purchase financing, is very much dependent upon external sources of capital to make mortgage loans. This bill is very restrictive for mainland-based purchasers of Hawaii's residential mortgages who provide us with loan funds by requiring them to make large financial investments into unnecessary brick and mortar offices.
2. If passed, the result will be where many of Hawaii's mortgage originators are unable to sell their portfolio of residential mortgage loans to replenish their loan funds needed to make new mortgages with.
3. If they choose to comply, mainland investors would encounter higher operating costs which would result in higher pricing to local borrowers.
4. That the restriction imposed on the local financial institution would cause more harm to the Hawaii economy and homeownership. The effect would be detrimental.

We ask you to reconsider and not pass SB 2062.



Mortgage Bankers Association of Hawaii
P.O. Box 4129, Honolulu, Hawaii 96812

February 14, 2018

**Senate Committee on Commerce, Consumer
Protection, and Health**

The Honorable Rosalyn H. Baker, Chair
The Honorable Jill N. Tokuda, Vice Chair
Members of the Committee

February 15, 2018 at 9:00 AM
State Capitol Conference Room 229

Re: Testimony to OPPOSE SB 2062 Relating to Financial Institutions

I am Victor Brock, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii and includes banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. MBAH members originate and service, or support the origination and servicing, of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation or rules, it is related only to mortgage lending and servicing.

Hawaii homeowners and home buyers enjoy the benefits of low mortgage interest rates and easily available mortgage financing because Hawaii lenders have the flexibility to manage their balance sheets and interest rate risk, and to offer products that they might not otherwise offer, by selling mortgage loans into the national secondary market. SB 2062 would severely impact these lenders' ability to sell mortgages and, therefore, would have a disastrous negative impact on home financing in Hawaii as detailed below.

Interest-rate risk management adversely affected

Hawaii based depository mortgage lenders retain and service many of the mortgages that they originate in their portfolio without selling them. However the ability to sell their longer-term mortgages (e.g. those for 30 year terms) provides a method for them to manage the interest-rate risk of the balance sheet and to assure that the duration of their assets (loans) is not skewed relative to the average duration of their liabilities (deposits), as was the situation with the savings and loans that failed in the late 1980's. When loans are sold to Fannie Mae and Freddie Mac the sale is invisible to the borrower, as these sales are made with servicing "retained", meaning the originating lender continues to receive payments, and among other matters, respond to borrower inquiries, etc. SB 2062 would shut down sales of loans to Fannie Mae and Freddie Mac, as neither is a "financial institution that designates and maintains an agent in this State." Without the ability to manage their interest rate risk by selling these longer term loans, Hawaii lenders would be restricted in the number of long-term mortgages that they could offer and may

severely limit or discontinue offering the most affordable mortgage types for homebuyers.

Credit Risk transfer adversely affected

In addition to interest-rate risk transfer, Hawaii lenders also transfer credit risk when they originate and sell certain higher-risk mortgage loans that they might not otherwise be willing to offer homebuyers if they had to retain the loans in their portfolios. For example, Fannie Mae and Freddie Mac will both purchase mortgages with loan-to-value ratios of 97% (=3% down payment). Hawaii lenders would likely discontinue offering these loans targeted to first-time homebuyers if they could not be sold, due to the additional credit risk which they do not want to retain in their portfolio.

Loan Servicing designations and approval for government loans

Similarly, it is almost certain that the availability of certain government guaranteed/insured loan products (FHA, VA, and USDA RHS) loans, which offer low- or no-down payment purchase-money mortgage programs to first-time and/or low/moderate income borrowers, would be negatively impacted. In addition to higher credit risk to the lender, these programs require that the mortgage servicer comply with additional requirements and receive specific approvals and designation to service these types of loans. Due to cost constraints and lack of economies of scale, most Hawaii based lenders do not receive these approvals to service such loans, but, nevertheless, are able to offer these products to first-time homebuyers because they are able to sell the loans after origination to a mainland buyer who has the required servicer designation. SB 2062 would prevent these lenders from offering these products, as these mainland buyers are not also considered “a financial institution that designates and maintains an agent in this State”.

Access to funds to mortgage lenders constrained

SB 2062 would have an additional negative impact to the Hawaii based lenders in that their access to funds would be constrained or discontinued. Non-depository lenders must sell loans on a continual basis in order to stay in business, as they do not have sufficient capital or other sources of funds, such as deposits, to fund and retain mortgage loans on their balance sheets. They obtain funds from a “warehouse” line of credit to be able to temporarily fund each loan until such time that each loan can be sold, and each mortgage loan is pledged as security for this warehouse line advance. Even if they are able to find purchasers for these loans who may comply with the stipulations of SB 2062, it is likely that warehouse line lenders would no longer accept the mortgage as a pledge of security, as its liquidity as a marketable asset would be severely impaired due to the stipulations on who can purchase these mortgages. This bill will shut down many independent locally owned small business mortgage lenders who need to sell their loans in order to continue to stay in business. Similarly, Hawaii based depositories who pledge mortgage loans as security to maintain contingency funding lines of credit with the Federal Reserve Bank or Federal Home Loan Bank would be adversely impacted, as their lines would be reduced due to the impaired marketability of these pledged mortgages.

Local lenders disadvantaged

Lastly, the change to HRS412 as proposed would place all these restrictions only on Hawaii chartered lenders. Non-Hawaii based lenders, who are chartered outside of the

state or maintain a national charter, would be exempt. Therefore, SB 2062 creates an uneven competitive environment which specifically disadvantages locally based lenders.

Our position: OPPOSE

In summary, we strongly oppose this bill due to the negative impacts on the availability of mortgage loans for consumers in Hawaii and specifically first-time homebuyers in Hawaii.

Thank you for the opportunity to present this testimony.

VICTOR BROCK
Mortgage Bankers Association of Hawaii

Presentation To The
Committee on Commerce, Consumer Protection and Health
February 15, 2018 at 9:00 AM
State Capitol Conference Room 229

Testimony in Opposition to Senate Bill 2062

TO: The Honorable Rosalyn H. Baker, Chair, Committee on Commerce, Consumer Protection and Health
The Honorable Jill N. Tokuda, Vice Chair
Members of the Committee

My name is Neal K. Okabayashi, the Executive Director of the Hawaii Bankers Association (HBA). HBA is the trade association representing banks with branches in Hawaii. The HBA strongly opposes SB 2062 because it negatively affects only six Hawaii state chartered banks and three other Hawaii mortgage lenders and not the numerous other mortgage lenders making mortgage loans in Hawaii.

SB 2062 is a good faith effort to address a servicing issue of a mainland mortgage servicer who performed the servicing task but not as quickly as the customer desired. The proposed remedy is by essentially prohibiting six Hawaii banks from selling residential mortgage loans to the secondary mortgage market.

SB 2062 Will Not Address the Servicing Issue

While SB 2062 was drafted to address a servicing issue, it will not accomplish that goal because it focuses on the byproduct of the loan origination process rather than servicing which byproduct is selling the loan to another. Perhaps this inability to address the issue results from the reality that residential mortgages are a national market and that states, including Hawaii, have no jurisdiction over servicers who have no nexus to Hawaii or are federally chartered. The remedy is action by a federal agency, such as the Consumer Financial Protection Agency which has adopted national servicing rules. The servicing rules do require servicers to respond within 30 days to a written request for information, which time period can be shortened or extended depending on the circumstance. However, it is likely that the timeline in this particular servicing issue does not apply because it was not a request for information.

Another reason that SB 2062 will not accomplish its goal is, as stated before, Hawaii's jurisdiction is limited to Hawaii chartered institutions, absent a nexus to Hawaii. A substantial percentage of mortgage lenders operating in Hawaii will not be subject to SB 2062 so besides creating an unlevel playing field, SB 2062 will not accomplish its goal since those lenders will continue to operate free of the restrictions of SB 2062.

National data shows that the five largest mortgage servicers serviced about 39% of mortgages as of the end of 2016. None of the servicers will be impacted by this bill.

Mortgage servicing is generally a systemic operation consisting of receiving payment, noting the payment on the books, and paying real property taxes and homeowners insurance. It is acknowledged that the particular situation which arose from a casualty situation is rare. Being so rare, the steps proposed to harm Hawaii borrowers and banks seems like an unbalanced approach to the situation.

Consequences of SB 2062

Hawaii banks sell some of their residential loans to the secondary mortgage market (or these government agencies insure such loans), usually to Fannie Mae, Freddie Mac, FHA, VA and HUD. Hawaii benefits from such sales so it is essential that Hawaii banks have the flexibility to sell loans they make. After a bank sells the loan, it is then able to make another loan. If a bank retains a thirty year mortgage loan, it will be a while before it is repaid so it can make another loan from the same funds. If it has to retain residential loans for 30 years, eventually the monies to make loans will dry up and thus, Hawaii borrowers' access to credit will be diminished to the detriment of Hawaii homeowners and potential homeowners.

Banks are no different than parents who want to make a loan to a child to help their first child buy their first house. The money for the loan to the child comes from monies the parents have. If the parents want to make another loan to child number 2, either the funds come from a repayment of the loan to the first child or other funds the parents have or can obtain. On a larger scale, the banks are in a similar situation. To make more loans, the banks can obtain funds by having the loan being repaid by selling the loan or finding other sources of monies (either deposits or borrowing the monies). However, eventually the banks' capacity to find other sources of monies to make more loans will dry up and the banks' capacity to make loans diminishes. That means Hawaii homeowners and potential homeowners will have fewer sources of loans.

Another reason that residential loans may dry up is that residential loans are generally 30 years in duration. That means the bank's monies are tied up for 30 years. If the bank has too large a concentration of 30 year loans, the regulators may express its desire that the bank diversify its loan portfolio to include a greater mix of shorter term loans.

Besides of the decrease in available mortgage loans, Hawaii homeowners and potential homeowners will face higher costs because portfolio loans cost a little more than loans sold to the secondary market. VA and HUD loans are especially advantageous to first time homebuyers and low-to-moderate income homebuyers.

Unlevel Playing Field

Because this bill only impacts Hawaii chartered lender, it does not govern many lenders, including mainland lenders and Hawaii federally chartered lenders. Many mortgage lenders are not banks. The Washington Post reported on February 23, 2017 that the mortgage market is now dominated by non-bank lenders such as Quicken Loans, loanDepot and PHH Mortgage. Both Quicken Loans and loanDepot are very active in Hawaii as are the large money-center banks, although not as active as in the past. These non-bank lenders and large money center banks would not be encumbered by the restrictions of this bill.

Thank you for the opportunity to submit this testimony on SB 2062 and please let us know if we can provide further information.

Neal K. Okabayashi

SB-2062

Submitted on: 2/13/2018 6:52:34 PM

Testimony for CPH on 2/15/2018 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Ramirez	Individual	Comments	No

Comments:

"Consensual security interest"? Borrowers are not informed that their mortgage-backed security (MBS) becomes a mortgage bond that can be bet against. Borrowers must be informed, in 8th grade English, that the Securitized Trust drives the MBS. Additionally, as most borrowers don't have the option of securitized loans versus non-securitized loans they should be made aware of all the ways in which their MBS can be affected by a Pooling & Servicing Agreement and the Securitized Trust. If this is not explained to borrowers, it is not consensual. This nondisclosure, as we've all seen, has lead to "Unsafe and Unsound Mortgage Servicing and Foreclosure Practices."

Thank you.