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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Consumer Protection & Commerce
Monday, February 10, 2020
2:00 p.m.
State Capitol, Conference Room 329**

**On the following measure:
H.B. 2323, H.D. 1, RELATING TO THE MORTGAGE LOAN RECOVERY FUND**

Chair Takumi and Members of the Committee:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (DCCA or Department) Division of Financial Institutions. The Department supports this administration bill and suggests amendments.

The purpose of this bill is to expand the pool of persons eligible to receive restitution from the Mortgage Loan Recovery Fund. H.D. 1 amends the original bill by authorizing the Director of the DCCA, rather than the Commissioner of Financial Institutions, to issue orders for restitution to be paid by the mortgage loan recovery fund, and by clarifying that the aggravating conduct by a licensee includes fraud, misrepresentation, or deceit.

Currently, persons aggrieved by a licensee's fraud, misrepresentation, or deceit must obtain a judgment against the licensee in circuit or district court and then obtain an order from the court for payment from the fund. H.D. 1 appears to give the same

aggrieved consumers two options to obtain payment from the fund—go to court and get a judgment or make a claim with the Director of the DCCA. The Department is concerned this new option will create confusion for consumers seeking recovery for fraud, misrepresentation, or deceit by a licensee about the appropriate process to obtain payment.

More importantly, H.D. 1 does not expand the pool of individuals eligible for payment from the fund because it does not include consumers who are entitled to restitution based upon a finding of a regulatory calculation error made by the licensee. Where calculation errors are discovered by the Department, no finding of fraud, misrepresentation, or deceit is made. Accordingly, the Department suggests replacing paragraph (2) on page 2, lines 3 to 11, with the following:

“(2) Any person aggrieved by a licensee’s act, representation, transaction, or conduct in violation of this chapter and not covered by paragraph (1) may receive restitution, by order of the commissioner and to be paid from the mortgage loan recovery fund, of not more than \$25,000 per person for financial loss resulting from the violation.”

This amendment will authorize the Commissioner to provide the restitution payment to the consumer from the fund, rather than require the licensee to make the restitution payment to the former customer.

For the Committee’s information, consumers are not cashing their restitution checks primarily for two reasons: (1) receipt of the check is unexpected, and the consumer likely has not heard from the licensee for a number of years; or (2) the consumer believes the check is fraudulent or part of a scam. Restitution checks to consumers range from \$100 to \$500. In 2019, \$181,600¹ in restitution was made to 484 consumers. In 2018, \$24,700 in restitution was made to 23 consumers. The Department believes consumers are entitled to this restitution and will be more likely to deposit their restitution checks if the checks originate from the State and are accompanied by an explanation letter.

¹ One licensee (a mortgage loan originator company) had a coding error in their software, and the Commissioner ordered restitution to all consumers from 2015.

Thank you for the opportunity to testify, and we respectfully ask the Committee to pass this administration bill with the suggested amendments.