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Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Judiciary
and
Senate Committee on Ways and Means
Thursday, July 2, 2020
10:00 a.m.
State Capitol, Auditorium**

**On the following measure:
H.B. 2323, H.D. 2, S.D. 1, RELATING TO THE
MORTGAGE LOAN RECOVERY FUND**

WRITTEN TESTIMONY ONLY

Chairs Rhoads and Dela Cruz and Members of the Committees:

My name is Iris Ikeda, and I am the Commissioner of the Department of Commerce and Consumer Affairs' (Department) Division of Financial Institutions (DFI). The Department supports this administration bill and requests an amendment to the effective date.

The purpose of this bill is to expand the pool of persons eligible to receive funds in the form of restitution from the Mortgage Loan Recovery Fund.

This bill amends Hawaii Revised Statutes section 454F-41(a) to: (1) provide that a person aggrieved by licensee conduct involving fraud, misrepresentation, or deceit in violation of chapter 454F may recover from the fund through either an order or a final judgment of the court of the county where the violation occurred; and (2) include

persons the Commissioner of Financial Institutions determines is eligible to receive restitution based on the DFI's examination or investigation of the licensee.

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. This bill gives the Commissioner discretion to provide payment based upon the entry of the judgment, without a post-judgment order. The Department believes that simplification of the compensation process will save the aggrieved consumer time and money and result in a faster restitution.

In addition, at the present time, the Commissioner orders a licensee to make restitution payments to consumers when it finds a regulatory calculation error. The licensee then pays restitution to the consumer directly. This bill would authorize the DFI to pay restitution of up to \$25,000 to the affected consumer from the fund, rather than require the consumer to receive payment from the licensee. The Commissioner notes that 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. 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.

Lastly, the Department requests amending the effective date from July 1, 2050, to "upon approval," to allow the Department to implement an efficient process to make restitution payments to consumers.

Thank you for the opportunity to testify, and we respectfully ask the Committees to pass this administration bill with an "upon approval" effective date.