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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Intrastate Commerce
Wednesday, March 12, 2020
9:30 a.m.
State Capitol, Conference Room 430**

**On the following measure:
S.B. 2879, S.D. 1, RELATING TO THE MORTGAGE LOAN RECOVERY FUND**

Chair Ohno and Members of the Committee:

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.

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, aggrieved persons must obtain a judgment against the licensee 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.

Since 2011, when it commenced supervision, the DFI has been able to successfully prosecute the bad actor licensees. The Department believes the Mortgage Loan Recovery Fund can now be used for other regulatory violations, which include calculation errors resulting from not understanding the mortgage laws on mortgage origination fees. The Department believes providing restitution from the fund is appropriate.

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 Division 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.

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