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TO THE
SENATE COMMITTEES ON
JUDICIARY AND LABOR
AND
WAYS AND MEANS

THE TWENTY-FOURTH STATE LEGISLATURE
REGULAR SESSION OF 2008

Wednesday, April 2, 2008
10:30 a.m.

TESTIMONY ON H.B. NO. 2408, H.D1, S.D.1 - RELATING TO MORTGAGE BROKERS

THE HONORABLE BRIAN T. TANIGUCHI, CHAIR,
THE HONORABLE ROSALYN H. BAKER, CHAIR
AND MEMBERS OF THE COMMITTEES:

My name is Nick Griffin, Commissioner of Financial Institutions, testifying on behalf of the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to testify on House Bill No. 2408, H.D.1, S.D.1. The Department strongly supports this bill relating to mortgage brokers.

The purpose of this bill is to repeal the existing law on Mortgage Brokers and Solicitors, chapter 454, Hawaii Revised Statutes ("HRS"), and to replace it with a statute that provides for more specialized regulation of mortgage brokers and loan originators by the Division of Financial Institutions ("DFI"). The practical effects of this bill will be to transfer responsibility for regulation of the mortgage broker industry from the Professional and Vocational Licensing Division ("PVL"), in conjunction with the Regulated Industries Complaints Office ("RICO"), to DFI, and to expand and strengthen the regulation of this industry encompassing mortgage brokers and loan originators (known as "mortgage solicitors" under chapter 454, HRS) doing business in Hawaii. Presently, only some mortgage lenders are required to be licensed and regulated by DFI under provisions of the Code of Financial Institutions, chapter 412, HRS, based on available exemptions under the law on Interest and Usury, chapter 478, HRS. This bill will ensure that non-exempt mortgage lenders that may not be subject to licensing and regulation by DFI as a Hawaii financial institution under chapter 412, HRS, are nevertheless still subject to licensing and regulatory oversight by DFI with respect to the residential mortgage loans they make in this State. In addition, the current exemption under chapter 454, HRS for foreign lenders conducting business in accordance with part II of chapter 207, HRS, will be eliminated, thereby bringing out-of-state mortgage lenders, as well, under the licensing and regulatory oversight of DFI with respect to the residential mortgage loans they make in this State. These changes alone will effectively mean that a significant number of loan originators that previously went entirely unregulated by this State will now be supervised and examined by DFI.

The residential real estate boom of the past several years, which has only recently come to an abrupt end, spawned a significant number of national complaints against mortgage brokers, and those complaints continue as borrowers find that what they had understood to be a "good" loan now turns out to be anything but. Increased loan interest rates, pre-payment penalties, esoteric repayment schedules and downright fraud have all contributed to create what the U.S. Federal Bureau of Investigation has termed " ...the fastest growing white collar crime in the country". While the volume of complaints in Hawaii has not been as overwhelming as that seen on the mainland, complaints here are tracking on a continuous and disturbing upward trend line which shows little sign of declining.

The growing variety and complexity of so called "nontraditional" mortgage loan products has made it not only difficult for the consumer to understand, but equally difficult for the inexperienced mortgage broker to explain. John Dugan, Comptroller of the Currency, the primary regulator of United States national banks, stated that "...all mortgage originators should be providing prospective customers clear and balanced disclosures about the relative risks and benefits of nontraditional mortgages, including the risk of payment shock and negative amortization." From 2000 to 2005 nontraditional mortgage loans soared from 2% to roughly 30% of the market, Mr. Dugan said. In the highest-priced markets, up to half of all borrowers were taking out loans with features such as interest-only payments in the early years or an option to skip payments.

Many of the loans are being made by lenders that are not supervised by a federal regulator, he said.

"Indeed, the need for comparable action at the state level is perhaps even more acute given the volume of nontraditional mortgages made by nonfederally regulated lenders to subprime borrowers," Mr. Dugan said. "We know, for example, that recent investigations at the state level have produced evidence that some mortgage brokers have purposely steered prospective customers, often of low and moderate income or limited English-language ability, into loans that they cannot afford by using misleading tactics and, in some cases, by committing fraud."

In addition, problems stemming from inappropriate subprime mortgage lending practices that have recently come to light, and which are now well-known by regulators and borrowers alike, have now spread like a contagion to impact the prime mortgage loan sector as well, resulting in a curtailment of mortgage loans even for credit-worthy borrowers. The fact that both the Federal Reserve System and Wall Street are now grappling with the consequences of these problems in the industry only underscores the need to impose enhanced State regulatory scrutiny of the residential mortgage lending industry.

Responsibility for the licensing of mortgage brokers and loan originators (also known as mortgage solicitors) currently rests with PVL pursuant to chapters 436B and 454, HRS, and PVL's oversight of mortgage brokers and solicitors is essentially limited to registration of licensed brokers and solicitors. Mere registration no longer is adequate in light of the aforementioned industry problems that clearly demonstrate that the activities of mortgage brokers and loan originators have a direct, significant, and immediate impact upon this State's consumers. The reorganization contemplated by this bill will initiate a more thorough, unified, effective and seamless supervision of the residential mortgage industry's activities in Hawaii. Industry practices identified as harmful to the public will be monitored and addressed in a much more comprehensive and consistent fashion by the division charged with overall supervision of the financial services industry in Hawaii, rather than dividing this responsibility between three agencies (DFI, PVL, and RICO) as is presently the case. In sum, consumer interests in the financing arrangements relating to their homes, which in most cases represent their single largest investment, will now be far better protected.

Key provisions in the bill include the licensing of residential mortgage brokers and loan originators; establishment of pre-licensing criminal history background checks and testing for applicants; continuing education requirements; periodic examinations for licensees; and higher bonding requirements. Brokers and originators of non-residential property will no longer be regulated. The State will also be authorized to join and participate in a uniform multistate automated licensing system that is now being implemented nationwide for mortgage brokers and loan originators.

These changes will improve licensed residential mortgage broker and loan originator skill and experience levels, and will better ensure that licensees do not engage in unfair, deceptive, or fraudulent practices.

Mortgage loans, like all lending transactions, are "sold" to the borrower by individual persons. Predatory lending practices, which remain a problem in Hawaii, can best be addressed by an approach that ensures proper training and supervision of the individual persons selling mortgage products to the consumer, rather than selectively restricting local mortgage products themselves, as has been proposed from time to time.

This initiative will likely reduce occurrences of predatory lending by improving the professionalism, knowledge and integrity of the mortgage brokerage industry and providing for robust examination powers and sanctions to ensure compliance. At the same time, it will avoid the imposition of selective restrictions on mortgage products, thereby limiting possible unintended consequences that may occur when the local mortgage loan product is reconfigured to meet short term objectives.

Finally, we point out, and note our appreciation for the fact that S.D.1 makes adequate provision to DFI for the necessary funding, staffing and time to implement the new law, all of which are regarded as essential preconditions to the seamless and effective transfer of this regulatory program from PVL to DFI.

The Department strongly supports this bill and asks for your favorable consideration. Thank you for the opportunity to testify. I would be happy to respond to any questions you may have.

HAMB
HAWAII ASSOCIATION
OF MORTGAGE BROKERS
P.O. Box 1074
Honolulu, Hawaii 96808

April 1, 2008

To: The Honorable Brian T. Taniguchi, Chair
The Honorable Rosalyn H. Baker, Chair

Re: H. B. No. 2408, HD 1, SD1 – Relating to Mortgage Brokers

The Hawaii Association of Mortgage Brokers (HAMB), a 450+ member organization, actively works to improve the mortgage broker industry since its inception in 1992. HAMB supports passage of H. B. 2408, HD 1, SD 1 by the Senate Committee On Judiciary and Labor and the Senate Committee On Ways and Means because the bill provides significant improvement in consumer protection by establishing standards of professionalism that will reassure the public that they are dealing with knowledgeable practitioners. Additionally, it prepares Hawaii for compliance with proposed current congressional legislation, yet does not contain lending prohibitions that would be unique to Hawaii and affect available credit products.

After the 2007 State Legislature, HAMB with the other key financial industry stakeholders drafted the core concepts that are contained in HB 2408, HD1, SD1. We have the support of the Mortgage Bankers Association of Hawaii, the Hawaii Bankers Association, Hawaii Credit Union League, Hawaii Association of Realtors and other stakeholders subject to the concerns listed below. We support legislation that strikes a balance between effective new regulatory requirements without damaging the industry and borrowing public.

The bill would improve the residential mortgage broker industry and give the Department of Financial Intuitions (DFI) enforcement authority to protect consumers with the following requirements:

1. Pre-licensure examination
2. Background checks of brokers and loan originators
3. Continuing education requirements for brokers and loan originators
4. Examination audits by the DFI
5. Increase of bond amounts depending on the size of the brokerage firm
6. Clear written agreements for consumer regarding loan commitments and mortgage brokerage agreements.
7. Prohibition of certain kinds advertising considered to be misleading.
8. Prohibition of uninvited solicitations at a consumer's residence.

We continue to work with major stakeholders regarding unresolved issues such as broker fee charges, examination charges, the transition period, and reverse mortgage protection.

Sincerely,

Donald Lau

Donald Lau
HAMB President

HBA

HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203
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March 24, 2008

Senator Russell Kokubun
Chair, Committee on Consumer
Protection & Affordable Housing
415 South Beretania St., Rm. 407
Honolulu, HI 96813

Senator Roz Baker
Chair, Committee on Ways and Means
415 South Beretania St., Rm. 210
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Senator Brian Taniguchi
Chair, Committee on Judiciary and Labor
415 South Beretania St., Rm. 218
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Representative Robert Herkes
Chair, Committee on Consumer Protection
& Commerce
415 South Beretania St., Rm. 320
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Representative Marcus Oshiro
Chair, Committee on Finance
415 South Beretania St., Rm. 306
Honolulu, HI 96813

Representative Tommy Waters
Chair, Committee on Judiciary
415 South Beretania St., Rm. 302
Honolulu, HI 96813

The Honorable Senators and Representatives:

RE: MORTGAGE BROKER REGULATION – HB 2408 / SB 3010

The Hawaii Bankers Association (HBA) requests your support of the proposed recodification of the mortgage broker statute. In part, our present economic challenges stems from poorly regulated practices in the subprime lending markets. In response, federal bills have been proposed to require States to test and license mortgage brokers who are not employees of highly regulated banks, savings associations or credit unions. The President's Working Group on Financial Markets echo the federal bills. The bill supported by HBA is consistent with the pending federal legislation. We respectfully do not support the attempt to exempt employees and agents of nonfederally regulated affiliates of a bank from the licensing requirements. This would be counter to sound consumer protection.

Sincerely,

Donald G. Horner
President & CEO, First Hawaiian Bank
Chairman, Hawaii Bankers Association

c: The Honorable Colleen Hanabusa
The Honorable Calvin Say

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Presentation to the Senate Committee on Ways and Means
Senate Committee on Judiciary and Labor
Wednesday, April 2, 2008
10:30 a.m.
Conference Room 211

April 2, 2008

Testimony for HB 2408 HD1 SD1

TO: The Honorable Senator Brian Taniguchi, Chair
The Honorable Senator Clayton Hee, Vice Chair
Members of the Senate Committee on Judiciary and Labor

The Honorable Senator Rosalyn H. Baker, Chair
The Honorable Senator Shan S. Tsutsui, Vice Chair
Members of the Senate Committee on Ways and Means

I am Neal Okabayashi of First Hawaiian Bank and I testify for the Hawaii Bankers Association in support of HB 2408, HD 1, SD 1 with amendments. HBA proposes amending the bill with the attached amendments which are mainly technical. The rationale for the amendments is on the attachment.

We do expect Primerica Home Mortgage will propose exempting itself and at least 30,000 affiliates of a bank (in regulatory parlance, nonbank subsidiaries). Primerica has failed to articulate a rational reason for exempting. There appears to be congressional consensus as well as administration consensus that only employees of a bank and its subsidiaries should be exempt from any licensing framework, and that employees of bank affiliates should be licensed at the state level.

One of the contentious issues is "who should be covered" by the new mortgage broker statute. The basis framework was to follow the existing statute which divided those who interacted with borrowers into two buckets: (1) those who are subject to federal banking examination and (2) those who were not.

Those who are subject to federal banking examination are exempt under the current law and continue to be exempt under the new law. Those who are not subject to federal banking examination are subject to the current law and continue to be subject to the new law. Primerica Home Mortgage fails to articulate a reason why they should be exempted from a law they are presently subject to, just because the law is tougher.

Under HR 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, which has passed the House and is now in the United States, employees of banks, savings associations and credit unions, and their subsidiaries are exempt from state licensing requirements for mortgage brokers. All others, including employees and agents of bank affiliates, those Primerica Home Mortgage wishes to exempt, must be state licensed as mortgage brokers, pass a test as well as a background check, before allowed to engage in mortgage brokering. Any provision in Hawaii law to exempt employees and agents of Primerica as well as those of nonbank subsidiaries/affiliates will be preempted.

On March 31, 2008, the United States Treasury announced a sweeping, and perhaps radical, restructuring of this nation's regulatory structure for our commercial banks and investment banks and affiliates, under the Department of the Treasury Blueprint for a Modernized Financial Regulatory Structure ("Blueprint").

No doubt, different parts of the proposal may never be enacted and other parts of the proposal will be enacted at different times. No doubt, the attention of Congress will first focus on helping those in or on the doorsteps of foreclosure before turning to remedial or radical steps of changing our regulatory framework. However, the easiest part of the proposal to enact first are the provisions on mortgages since there is widespread consensus on those matters. What will take longer are proposals such as eliminating savings associations and requiring them (e.g., American Savings Bank) to become national banks.

The United States Treasury department, led by the former chairman of Goldman Sachs, Henry Paulson, who is the second former chairman of Goldman Sachs to lead the Treasury department in recent times (Bob Rubin, President Clinton's Treasury head, was the other) writes:

> Mortgage market participants (both brokers and lenders) with no federal supervision have been responsible for a substantial portion of the mortgages and over 50 percent of the subprime mortgages originated in the United States. These mortgage market participants are subject to uneven degrees of state level oversight (and in some cases limited or no oversight).

These mortgage market participants with little or no state oversight are some of the exact companies and agents which would escape state examination under the Primerica Home Mortgage's proposal.

Accordingly, the Treasury recommended:

> Therefore, Treasury recommends subjecting participants in the mortgage origination process that are not employees of federally regulated depository institutions (or their subsidiaries) to uniform minimum licensing qualification standards. In order to ensure a baseline consistency across state criteria for determining qualification and competencies of state licensees, federal standards should set uniform minimum standards for a qualifying state licensing system. These should include personal conduct and disciplinary history, minimum educational requirements, testing criteria and procedures, and appropriate license revocation standards.

The requirement that bank affiliate employees and agents be tested and licensed on the state level is a consistent theme in federal approaches to improving the mortgage lending industry. Should Hawaii be different?

The rationale for treating employees of federally regulated banks and subsidiaries different is seen in these words from the Blueprint.

> Federally regulated mortgage lenders and their employees are subject to an extensive scheme of federal supervision of their lending practices and compliance with applicable laws and regulations.

Any doubt on the lack of regulatory supervision of bank affiliates is laid to rest by the words of the Blueprint.

> Currently, TILA (Truth in Lending Act) enforcement authority for federally regulated depository institutions rests with the institution's primary federal banking regulator. A depository institution's federal regulator also supervises its subsidiaries, examining them as part of the parent institutions' required regular examination and subjecting them to enforcement by that regulator. This aspect of the enforcement framework of federal mortgage lending law is satisfactory.
>
> Oversight and enforcement with respect to other mortgage originators present concerns, however. These mortgage originators fall into two basic categories: affiliates of depository institutions [e.g., Primerica Home Mortgage] within a federally regulated holding company, and independent participants in the mortgage origination process [i.e., those unaffiliated with depository institutions]. Enforcement authority needs to be clarified for these types of institutions. For mortgage originators that are affiliates of depository institutions within a federally regulated holding company, mortgage lending compliance and enforcement must be clarified.
>
> The benefits of federal supervision must be applied to the mortgage origination activities of those affiliates. Treasury recommends that the appropriate state supervisory agency, in conjunction with the appropriate holding company regulator, examine the holding company affiliates' mortgage origination activities on a regular examination cycle.

In essence, the federal position is that the supervision of federally regulated banks and subsidiaries is satisfactory but the supervision of bank affiliates is inadequate and they must be supervised by both a federal agency and a state agency, which requires that they be licensed under a mortgage broker law.

The context of this bill is important to this discussion. This bill is a response to predatory lending incidents and the subprime mortgage crisis, and there is no question that mortgage brokers and companies not subject to a federal banking examination were a major factor in those incidents and this crisis.

The subprime mortgage crisis is especially troubling because of its global effect and it is the root cause of a recession that Martin Feldstein (President of the National Bureau of Economic Research and former economic advisor to President Reagan) says may be the worst since WW II.

Given that context, HBA, which knows the bank regulatory framework better than any person testifying before you, strongly opposes Primerica's attempt to exempt all agents and employees of affiliates of a bank from complying with the consumer protection measures in this bill, an exemption which is so vast that it can be taken advantage of by every individual currently a mortgage broker and permit predatory lenders and subprime lenders to escape regulation.

We should remember that Primerica Home Mortgage's situation is irrelevant to an analysis of the proposed exemption because the real question is who else can qualify for this exemption under Primerica Home Mortgage's suggested language.

HBA opposes the Primerica amendment because:

1. The exemption is contrary to the purpose of this bill which is to regulate unregulated players in the residential mortgage market – mortgage brokers – some of whom have played a substantial role in predatory and subprime lending.

2. The exemption poses an unacceptable risk of exempting predatory lenders as on its face, the exemption would exempt the three nonbank subsidiaries who paid the three largest predatory lending lawsuit settlements.

3. The exemption is contrary to the pending US. House and Senate bills regulating mortgage brokers which requires all nonbank employees, such as Primerica Home Mortgage agents to be licensed by the states. The Blueprint also recommends the same. and

4. There is no rational policy reason for exempting employees and agents of affiliates who are already subject to the current mortgage broker law.

The Exemption Is Contrary To The Intent of this Bill

It is crystal clear from many studies that predatory lending and abusive subprime lending were primarily due to acts of unregulated lenders and mortgage brokers rather than regulated lenders such as banks, savings associations and credit unions. On two occasions the State of Hawaii was one of 45 states and the District of Columbia that signed a letter from the National Association of Attorneys General to the Office of Thrift Supervision ("OTS"), that stated: "In the experience of state Attorneys General, predatory lending is perpetrated primarily by non-depository lenders and mortgage brokers. As the OTS is well aware, these "housing creditors", unlike depository institutions, are subject to little regulation by the OTS or other federal agencies." [1]

The basic provisions of this bill are to prohibit brokers from lying, cheating, stealing, defrauding and misleading. For most brokers, complying with the law will pose no problem, and it should be no problem for Primerica Home Mortgage's agents and employees.

This framework is consistent with the two pending Congressional bills (one in the House and one in the Senate) on this issue.

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[1] The State of Hawaii signed through its Office of Consumer Protection.

Nonbank Subsidiaries Are Not Regulated and Supervised by a Federal Banking Agency For Compliance or Consumer Compliance

Banks, savings associations and credit unions are regularly examined for compliance (sometimes called consumer compliance) to ensure that the banks, savings associations and credit unions are complying with consumer credit laws. Banks may be examined by the FDIC, OCC (Office of the Comptroller of the Currency) or the Federal Reserve, depending on the type of bank it is. Savings associations (also savings banks) are examined by the OTS. Credit Unions are examined by the National Credit Union Administration.

As made clear by the Blueprint, affiliates are not regularly examined by one of the federal banking agencies for consumer credit compliance.

The Language Presents An Unacceptable Risk of Predatory Lending

The exemption language will make it much too easy to evade the mortgage broker statute, especially for one intent on conducting abusive lending practices.

We must analyze who can take advantage of this exemption. We know it is for employees and agents of affiliates. How many affiliates are there?

It is safe, from regulatory numbers, to assume that there are at least 6,000 banks and more likely, closer to 7,000. Each bank has affiliates or what we properly call nonbank subsidiaries affiliated with them. Some have many. Some have few. First Hawaiian Bank has over 140 affiliates and so does Citigroup, the parent of Primerica Home Mortgage. Thus, there are thousands of employees and agents of thousands of unregulated nonbank subsidiaries that would qualify for this exemption.

We may not know all the persons that would qualify for the exemption but we do know who could: the companies that were parties to the three largest predatory lending settlements in history:

1. Household Finance for $484 million; the State of Hawaii was one of the settling states. Household became a nonbank subsidiary of HSBC, a bank holding company.

2. Ameriquest for $325 million. Parts of Ameriquest were purchased by Citigroup, the parent of Primerica Home Mortgage.

3. The Associate for $215 million. The Associates was purchased by Citigroup, the parent of Primerica Home Mortgage while they were engaged in predatory lending and while the Federal Trade Commission (FTC) was investigating Associates.

More frightening, if John Doe, a predator, wanted to start a predatory lending operation, he could easily evade Hawaii's mortgage broker law. He would find a small bank affiliate in Idaho, have them appoint him as their agent, get them licensed as a mortgage broker, and he can go out and find 100 guys with a criminal record who had their mortgage broker's license revoked elsewhere and have them appointed as agent for this small bank affiliate in Idaho and they can go out and broker mortgage loans for all kinds of companies, subprime, predatory or legitimate. Remember, Primerica Home Mortgage's language only requires the exempt individual to be an agent of a bank affiliate which means the exempt individual can be an agent for other lenders; there is no requirement for an exclusive agency.

In summary, the Primerica Home Mortgage language is so broad; it is an invitation for predatory lenders to evade the statue. In fact, even a legitimate broker can evade the statute. All he has to do is to find a bank affiliate licensed in Hawaii and have them appoint him as an agent. Since he is exempt from the statute, he is not a licensee and he can freely operate, unfettered by federal or state regulation.

There Is No Policy Reason To Exempt Nonbank Subsidiaries

Primerica has not articulated any rational policy reason to exempt nonbank subsidiaries (affiliates).

Whether there are complaints about their agents is irrelevant because that is not the criteria to determine whether one should be licensed. We should hope that there have been few complaints against existing mortgage brokers.

Let us examine Primerica Home Mortgage. Primerica Home Mortgage brags of its 100,000 licensed representative and 26,000 licensed mutual fund salespersons. We know that in Hawaii they are licensed to sell insurance and securities products.

On its website, Primerica Home Mortgage recruits salespersons to sell insurance, securities and mortgage products. It started its life as an insurance company and has morphed into a sale company, the exact type of company that needs to be regulated and licensed just as it is for insurance and mutual funds.

As a sales company, Primerica Home Mortgage is not regularly examined for consumer credit compliance and should be.

While Primerica Home Mortgage has testified that their agents only sell products of affiliated companies, that is not true. On January 29, 2008, Primerica Home Mortgage announced that is would sell mortgage products of an unrelated company in Puerto Rico and once this law passes, there is nothing to prevent Primerica Home Mortgage from permitting its agents to sell mortgage products of other companies.

Primerica Home Mortgage argues that consumers are protected because the company itself will be licensed and thus would be under an obligation to supervise its agents. Obviously, Primerica Home Mortgage has not read the bill. The duty of the company is to supervise its "licensees" and if agents of Primerica Home Mortgage are exempted, the company will have no licensees to supervise and thus the argument that the consumer will be protected is illusory. Besides, it is the individual, not the company, that interacts with the consumer and just as the federal bills would do, we need to be sure the individual is licensed.

Whether five out of 50 states (including the home state of Primerica Home Mortgage and its parent, Citigroup) have passed laws favorable to them prior to this credit crisis and the federal bills and Blueprint is irrelevant to the policy discussion in Hawaii because we do not know the policy reasons for the passage of such laws.

Summary

In summary, HBA strongly supports HB 2408, SD 1 with amendments and strongly opposes exempting affiliates of a bank from licensure.

Attachments:

HB 2408, HD 1, SD 1, proposed SD 2

Definitions.

Page 4, line 13. Insert "Soliciting" at the beginning of the sentence. A mortgage broker usually solicits a residential mortgage loan.

Exemptions.

Page 7, lines 5-9.

This partial exemption for operating subsidiaries of an insured depository institution conflicts with the definition of insured depository institution (see page 3, lines 5-8) but more importantly violates the Supremacy Clause of the United States Constitution as well as a recent United States Supreme Court decision. Watters v. Wachovia Bank, N.A., 127 S. Ct. 1559 (2007). Thus, it should be deleted.

HR 3915 treats employees of depository institution (banks, savings associations and credit unions) and its subsidiaries (not affiliates) differently than others for the simple reason operating subsidiaries are part of the parent – for example, an operating subsidiary of a bank can only engage in an activity that a bank may engage in. See HRS section 412:5-203(b). See also 5 CFR sec. 5.34(e) limiting an operating subsidiary of a national bank to only activities which the bank itself may engage in.

The Department of the Treasury Blueprint for a Modernized Financial Regulatory Structure issued on March 31, 2008 clearly views operating subsidiaries as part of the bank and not posing any regulatory concerns. The Treasury proposal says: "A depository institution's federal regulator also supervises its subsidiaries, examining them as part of the parent institutions' required regular examination and subjecting them to enforcement by that regulator. This aspect of the enforcement framework of federal mortgage lending law is satisfactory."

The reason for the language "that is an operating subsidiary under the laws and rules applicable to the insured depository institution" on page 3, lines 7 and 8, is that national banks and state banks have different rules as to requirements for an operating subsidiary; generally the requirement relates to the ownership interest required to make a subsidiary an operating subsidiary. For a Hawaii bank, it is more than 80%. Thus if an Hawaii bank owned more than 80% of a company, that company would be an operating subsidiary and could only engage in the activities permissible for the parent bank. For a national bank, I believe the threshold is 50%.

Thus the wholly owned (100%) requirement for the partial exemption on page 7, line 5, does not comport with the applicable laws.

Most importantly, the requirement that an operating subsidiary must prove that it is regularly examined for consumer compliance would be preempted by the National Bank Act and quite possibly the Home Owners Loan Act, which applies to federal savings associations.

The issue whether a state could require an operating subsidiary of a national bank to be licensed as a mortgage lender was settled by the United States Supreme Court in the Wachovia Bank case. The Supreme Court held: " . . . we hold that Wachovia's mortgage business, whether conducted by the bank itself or through the bank's operating subsidiary, is subject to OCC's superintendence, and not to the licensing, reporting, and visitorial regimes of the several States in which the subsidiary operates."

Thus, as to federally chartered insured depository institutions, the requirements on page 7 to qualify for the exemption would be preempted and out of an interest in fairness and a level playing field, this same standard should be applied to operating subsidiaries of a state bank.

I would also note that it would be very difficult for a bank to prove that it is regularly examined for consumer compliance because it is against the law for a bank to share a copy of its examination report.

It should be noted that in the 2007 legislative session, chapter 454, the existing chapter on mortgage brokers, was amended to exempt operating subsidiaries of a Hawaii bank. Thus, the language on page 7, lines 5-9, is a step backwards.

Fees.

We know that the enumerated fees in the SD 1 are excessive. Under the Commissioner's own calculations, these fees would amount to a profit of $1.266 million over six years and thus must be reduced. The mortgage brokers are engaged in discussions, which are ongoing, regarding the fees and will have a more definitive schedule by conference. In order to not lock ourselves into set fees, I suggest that the amount of the fee be left blank to be completed later.

The fees are on the following pages and lines.

18/16
19/9
23/6
24/8 and 9
50/17 and 18

Sale of Annuity

Page 35, lines 7-15.

This provision was added to the bill at the request of the commissioner with no discussion with interested parties. While conceptually, this provision has merit, there are several flaws in the language and concept, and thus this provision should be eliminated until a better drafted provision can be inserted.

There are several defects in the language. Although this provision is supposedly for the context of reverse mortgages, there is no mention of a reverse mortgage in the draft.

This provision prohibits an offer of an annuity until the expiration of the borrower's right to rescind a residential mortgage loan transaction. In the case of a refinance, the borrower's right to rescind may extend to three years beyond the closing date under certain circumstances. That seems to be an unreasonable time period.

This provision does not specify whether the annuity is a fixed annuity or a variable annuity.

A mortgage broker is not authorized to sell an annuity, fixed or variable. This provision should properly be inserted into the Insurance Code (which governs the sale of fixed annuities) and/or the Uniform Securities Act (which governs the sale of variable annuities).

For example, HRS section 431:13-104, in the insurance code, governs sale of insurance in the context of making a loan.

Appraisals

Page 36, lines 8-14.

I note that SB 2407 is now in the House of Representatives and should it pass or appear on the verge of passing, the language of this bill should be consistent with the final version of SB 2407.

Reinstatement of a revoked license

Page 37, lines 1-5.

The commissioner would have the right to reinstate a revoked or suspended license. The commissioner should have the right to reinstate a suspended license but should not have the right to reinstate a revoked license. A revoked license is just that: revoked. It no longer exists and what no longer exists, cannot be reinstated. If a mortgage broker's conduct was so egregious to warrant a revocation and not a suspension, such broker should reapply, pass a criminal background check as well as the test, in order to be licensed again. Such a provision would give the commissioner too much discretionary power.

Examination Fees

Page 38, lines 2 and 3.

We note the inconsistency of the commissioner's aversion to setting fees by chapter 91 and insisting that the fees be set by statute but as to the hourly examination fee, there is no statutory fee. HB 2408, HD 1 sets the fee by statute.

Transition

Section 13. I suggest that the effective date be July 1, 2050 for now. Clearly the present effective dates will not work because we will have two chapters on mortgage brokers until December 31, 2012 and since there are conflicting provisions in the existing law and this bill, we cannot have two mortgage broker laws on our books at the same time. The present language of section 13 would lead to such a situation.

HAWAII FINANCIAL SERVICES ASSOCATION

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April 2, 2008

Senator Brian T. Taniguchi, Chair,
and members of the Senate Committee on Judiciary & Labor
Senator Rosalyn H. Baker, Chair,
and members of the Senate Committee on Ways & Means
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2408, H.D. 1, S.D. 1 (Mortgage Brokers)**
Hearing Date/Time: Wednesday, April 2, 2008, 10:30 A.M.

I am the attorney for the **Hawaii Financial Services Association ("HFSA")**. The HFSA is the trade association for Hawaii's financial services loan companies.

The HFSA **supports the intent** of this Bill.

The purposes of this Bill are to allow the Commissioner of Financial Institutions to regulate, license, examine, and enforce laws relating to mortgage brokers and loan originators, and to repeal chapter 454, Hawaii Revised Statues, relating to mortgage brokers and solicitors.

In the latest Senate Draft 1 of this Bill, the Senate Committee on Commerce, Consumer Protection & Affordable Housing removed an exemption for employees and agents of a licensee if the licensee is an affiliate of a bank and is wholly owned by the holding company that owns the bank. The HFSA does not take a position as to whether that exemption (or a form of that exemption) should be put back into this Bill. Any such exemption should be based on its merits.

The HFSA opposes the removal of the existing exemption for financial services loan companies.

The HFSA understands that various provisions in this Bill will need to be revised. The HFSA is willing to work with interested parties and your Committees to craft an acceptable draft.

Thank you for considering this testimony.

Marvin S.C. Dang
MARVIN S.C. DANG
Attorney for the Hawaii Financial Services Association

(MSCD/hfsa)

LEGAL AID
SOCIETY OF HAWAI'I

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George J. Zweibel, Esq.
President, Board of Directors

Charles K. Greenfield, Esq.
Executive Director

The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair
Senate Committee on Judiciary and Labor

The Honorable Rosalyn H. Baker, Chair
The Honorable Shan S. Tsutsui, Vice Chair
Senate Committee on Ways and Means

Hearing : Wednesday, April 2, 2008, 10:30 a.m.
State Capitol, Conference Room 211

IN SUPPORT OF THE INTENT OF HB 2408, HD1, SD1

Chair and Members of the Committees:

My name is Ryker Wada, representing the Legal Aid Society of Hawai'i ("LASH"). I am advocating for our clients who include the working poor, seniors, citizens with English as a second language, disabled and other low and moderate income families who are consumers. We are testifying in support of the intent of HB 2408, HD1, SD1 as it would strengthen protections for consumers in the State of Hawaii.

I supervise a housing counseling program in the Consumer Unit at the Legal Aid Society of Hawaii. The Homeownership Counseling Project provides advice to individuals and families about homeownership issues. Specifically the project provides information on how to prepare yourself before purchasing a home and what to do if you are in danger of losing your home through foreclosure. In the past Fiscal Year we serviced more than 200 clients in our Project.

HB 2408 HD1, SD1 seeks to replace Chapter 454 of the HRS, the existing mortgage broker law, transferring regulation of the industry to the Department of Commerce and Consumer Affairs Division of Financial Institutions (DFI). However, by placing the burden of enforcement entirely on DFI, HB 2408 HD1, SD1 does not provide enough protection for consumers in the State of Hawaii.

In light of the current bills weaknesses, The Legal Aid Society of Hawaii proposes the following amendments:

1. Retain the current consumer protections enumerated in the current law, HRS Section 454-8. This section declares that contracts made by unlicensed mortgage brokers or solicitors are void and unenforceable. The protections were upheld by the Supreme Court in Beneficial Hawaii v. Kida. If this section is eliminated as described in HB 2408 HD1, SD1, an important protection for consumers will have been eliminated.
2. Include language cross-referencing HRS Chapter 480 clarifying that a violation of the chapter constitutes an unfair or deceptive act or practice. Clearly a violation of the prohibited acts of HB 2408 HD1, SD1 are both unfair and deceptive and thus should be actionable under HRS Chapter 480. Similar language is contained in related consumer protection statutes.

The Legal Aid Society of Hawaii supports the intent of HB 2408, HD1, SD1, and its efforts to protect the consumers in the State of Hawaii and urges the Committees to consider the suggested language.

Conclusion:

We appreciate these committees' recognition of the need to protect consumers in the State of Hawaii. HB 2408, HD1, SD1 attempts to strengthen protections for consumers. We strongly support the intent of HB 2408, HD1, SD1. Thank you for the opportunity to testify.

MORTGAGE BANKERS ASSOCIATION
Investing in communities
2004 ADJUNCT ORGANIZATION

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

April 2, 2008

The Honorable Brian Taniguchi, Chair and
Members of the Senate Committee on
Judiciary and Labor
State Capitol, Room 219
Honolulu, Hawaii 96813

The Honorable Rosalyn Baker, Chair and
Members of the Senate Committee on
Ways and Means
State Capitol, Room 219
Honolulu, Hawaii 96813

Re: House Bill 2408, HD 1, SD 1 Relating to Mortgage Brokers

Dear Chair Taniguchi, Chair Baker, members of the Senate Committee on Judiciary and Labor and members of the Senate Committee on Ways and Means:

I am Rick Tsujimura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of real estate lenders in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, and other financial institutions. The members of the MBAH originate the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The Mortgage Bankers Association of Hawaii supports HB 2408, HD 1, SD 1 Relating to Mortgage Brokers from the standpoint of consumer protection. However, we suggest that the implementation timeframe may be somewhat aggressive given what needs to be done by both sides. We would also like to ensure that we do not implement anything on the state level that would cause an additional level of regulation to what is being considered at the federal level in terms of RESPA reform.

Thank you for the opportunity to present this testimony.

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OF
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April 2, 2008

Senator Brian T. Taniguchi, Chair,
and members of the Senate Committee on Judiciary & Labor
Senator Rosalyn H. Baker, Chair,
and members of the Senate Committee on Ways & Means
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 2408, H.D. 1, S.D. 1 (Mortgage Brokers)**
<u>Hearing Date/Time: Wednesday, April 2, 2008, 10:30 A.M.</u>

I represent **Primerica Financial Services Home Mortgages, Inc. ("Primerica")**, a Hawaii licensed mortgage broker, and a subsidiary of Citigroup, Inc., a financial services holding company.

Primerica **supports the intent** of this Bill, **with an amendment.**

The purposes of this Bill are to allow the Commissioner of Financial Institutions to regulate, license, examine, and enforce laws relating to mortgage broker and loan originators, and to repeal chapter 454, Hawaii Revised Statutes, relating to mortgage broker and solicitors.

Primerica and its Exclusive Representatives have a significant interest in this Bill. There are about 500 Primerica Exclusive Representatives who are currently licensed as Hawaii mortgage solicitors. Primerica's Exclusive Agents comprise roughly 1 out of every 12 licensees in the State.

The House Draft 1 version of this Bill, as it passed the House, had a limited exemption supported by Primerica. It was for "*employees and agents of a licensee if the licensee is an affiliate of a bank and is wholly owned by the holding company that owns the bank*".

This original limited exemption provision ("original limited exemption") was removed in this Bill by the Senate Committee on Commerce, Consumer Protection & Affordable Housing ("CPH") in the current Senate Draft 1.

However, it should be noted that this original limited exemption language was in Senate Bill 3010, Senate Draft 2 (Residential Mortgage Practices), a similar bill which crossed over to the House. This limited exemption was also in the original version of Senate Bill 3010 (an Administration bill) and in the original version of House Bill 3088 (a companion Administration bill).

<u>Primerica has now reworded the original limited exemption to address the consumer protection concerns expressed by legislators. Primerica urges your Committees to adopt the following proposed revised limited exemption ("proposed revised limited exemption"), which narrows the scope of the original limited exemption and adds enhanced consumer protection provisions:</u>

"§ -2 **Exemptions**. This chapter does not apply to the following:

. . .

(10) Employees and exclusive agents of a licensee if the licensee is an affiliate of a bank or banks, is wholly owned by the holding company that owns the bank or banks, and originates loans only for the affiliated bank or banks; provided that:

(A) The employee or exclusive agent has not been convicted of a crime involving dishonesty;

(B) The employee or exclusive agent has not had a license, substantially equivalent to a mortgage broker license or a loan originator license under this chapter and issued by any state or jurisdiction under the control of the United States, that was denied, revoked or suspended under the laws of such state or jurisdiction under the control of the United States;

(C) The licensee provides a business plan satisfactory to the commissioner that sets forth the licensee's plan to provide education to its employees and exclusive agents, to handle consumer complaints relating to its employees and exclusive agents, and to supervise the mortgage broker activities of its employees and exclusive agents; and

(D) The licensee shall deposit with the commissioner, prior to doing business, a bond in the amount of $1,000,000, executed by the licensee as principal and by a surety company authorized to do business in this state as a surety."

The Commissioner of Financial Institutions has stated that he does not oppose the above wording as drafted.

This testimony discusses the following:

1. Why the original limited exemption supported by Primerica should not have been removed if the removal was because of pending federal legislation;

2. The organization of Primerica and the limited duties of its Exclusive Representatives;

3. How this Bill as currently drafted already provides significant regulatory controls over

exempt individuals; and

4. How Primerica's proposed revised limited exemption contains additional enhanced consumer protection provisions to protect its clients.

1. <u>The original limited exemption supported by Primerica should not have been removed if the removal was because of pending federal legislation.</u>

A. <u>Even without the original limited exemption supported by Primerica, various other exemptions in this Bill do not "correspond" with pending federal legislation.</u>

It appears that CPH removed the original limited exemption supported by Primerica because CPH: "*recognizes the federal legislation regarding the regulation of mortgage brokers currently pending in Congress, and has considered amending language in the submitted proposed drafts of this measure to ensure that, if enacted, this measure will correspond with the federal legislation.*" Senate Standing Committee Report No. 3082.

However, if this Bill is enacted with the exemptions that are remaining in Senate Draft 1, *<u>this Bill will still not "correspond</u>*" with the <u>pending</u> federal legislation, namely H.R. 3915 (Mortgage Reform and Anti-Predatory Lending Act of 2007) and S. 2595 (S.A.F.E. Mortgage Licensing Act of 2008) ("<u>pending</u> federal legislation"). That is because even without the original limited exemption supported by Primerica, this Bill still has at least 7 types of exempt individuals who would not be exempt from state licensing under the <u>pending</u> federal legislation. In fact, should the <u>pending</u> federal legislation and Senate Draft 1 version of this Bill both become law as written today, the Hawaii mortgage broker law would need to be revised to "correspond" with the Hawaii mortgage broker licensing scheme.

The 7 types of exempt individuals in the Senate Draft 1 (on page 7, line 10) who would not correspondingly be exempt from state licensing in the <u>pending</u> federal legislation, are:

1. Employees of a trust company;
2. Employees of an insurance company;
3. Employees of a financial services loan company;
4. Employees of a federally licensed small business investment company;
5. An individual who is an exclusive agent of a single bank or savings association;" (the federal legislation allows "employees" but on its face is silent about "exclusive agents" of banks);
6. Attorneys; and
7. A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests as an authorized representative of, and on behalf of a time share plan developer that is licensed as a mortgage broker.

For this Bill to "correspond" with the <u>pending</u> federal legislation, all of the above types of exempt individuals would need to be removed as well.

However, we are <u>not</u> advocating removing these individuals from this Bill. In fact, we <u>oppose</u> removing any of those 7 exemptions. We are merely pointing out the fact if the justification for removing the original limited exemption of Primerica's employees and agents from the House Draft 1 was to "correspond" with the <u>pending</u> federal legislation, there are still other exemptions that were left in which do not "correspond".

B. Hawaii legislation should not be drafted based on pending federal legislation or on speculation about future events.

Hawaii legislation should not be drafted based on pending federal legislation or on speculation about future events. The pending federal legislation might never become law or its contents may change during the congressional legislative process before it becomes law. Even under the current draft of the pending federal legislation, if that legislation was to become a federal law, Hawaii and other states will have 18 months to amend their statutes to be in compliance with the federal law.

A more appropriate approach would be to draft Hawaii legislation on federal laws that are enacted. Accordingly, Primerica urges your Committees to consider any exemption, including Primerica's proposed revised limited exemption, on its merits ... and not based on pending federal legislation.

2. Organization of Primerica and the limited duties of its Exclusive Representatives.

To understand the merits of Primerica's proposed revised limited exemption, it is important to know about the organization of Primerica and the limited duties of its Exclusive Representatives (employees and exclusive agents).

A. Organization of Primerica.

Primerica is an affiliate of two banks and is wholly owned by the same bank holding company (Citigroup, Inc.) which also owns the banks[1]. Primerica's Exclusive Representatives are exclusive agents of Primerica for the purpose of brokering mortgage loans. Primerica, as an exclusive agent of its affiliate banks, can broker those mortgage loans in Hawaii and in other states to those affiliate banks.

Primerica is licensed as a Hawaii mortgage broker. Primerica's Exclusive Representatives are licensed as Hawaii mortgage solicitors.

B. Limited duties of Primerica's Exclusive Representatives.

Under the Primerica business model, Primerica's Exclusive Representatives do not engage in many of the practices that precipitated the mortgage lending crisis and which call for stronger regulation of mortgage brokers. Primerica's Exclusive Representatives originate only 15 and 30 year fixed rate mortgages - not the adjustable rate mortgages (ARMs) and exotic loan products that have been so controversial. In

[1] Primerica is a wholly owned second tier subsidiary of Citigroup Inc. ("Citigroup"), a publicly traded bank holding company. Citigroup is the ultimate parent of Primerica and various other entities including Citicorp Trust Bank, FSB ("CTB"), a federal savings bank, and CitiMortgage, Inc. ("CMI"), an operating subsidiary of Citibank, NA., a national bank. Primerica is an affiliate and an exclusive agent of both CTB and CMI. Primerica brokers debt consolidation home loans and refinancing of home loans exclusively for CTB. It brokers conventional purchase money mortgage loans exclusively for CMI.

Hawaii and other states, they sell only affiliated bank products (Citigroup mortgage loan products) and are identified only with Citigroup.

Primerica's Exclusive Representatives in Hawaii have limited duties of: counseling potential borrowers on different loan options and how these options may affect the borrowers; obtaining mortgage loan applications; providing state and federally mandated disclosures; and assisting potential borrowers in producing and collecting the materials required by the lender to begin underwriting the loan.

Primerica's Exclusive Representatives in Hawaii do not hire appraisers, do not obtain credit reports, do not verify employment and/or income of applicants, do not shop loans to banks outside of Citigroup, and do not underwrite loans. The banks that are affiliated with Primerica perform these functions. The Exclusive Representatives do not collect fees from borrowers or handle the borrowers' funds. Primerica compensates the Exclusive Representatives only after the loans close.

Importantly, Primerica's Exclusive Representatives are subject to required background screening and internal training programs with Primerica.

Again, Primerica's Exclusive Representatives are not the type of mortgage solicitors or loan originators that have been targeted by mortgage broker legislation for inappropriate loans and tactics. Primerica has a pristine record of compliance in Hawaii and is unaware of any regulatory complaints against it or its nearly 500 Exclusive Representatives in Hawaii over the past 8 years.

3. This Bill as currently drafted already provides significant regulatory controls over exempt individuals.

A. The state regulatory supervision of Primerica (and its employees and agents) would be similar to that of Hawaii state chartered banks (and their employees and agents).

Under the original limited exemption (which was removed by CPH) and under Primerica's proposed revised limited exemption, Primerica needs to be licensed as a Hawaii mortgage broker in order for Primerica's Exclusive Representatives to be exempt as employees and agents (Exclusive Representatives).

Primerica's Exclusive Representatives perform exactly the same functions for their affiliated Citigroup banks as do loan originators who are employees and agents for their Hawaii banks. With the limited exemption of Primerica's Exclusive Representatives, the approach in this Bill for the regulatory supervision of Primerica (and its employees and agents) would be similar to the approach under the Hawaii Code of Financial Institutions for the regulatory supervision of state banks (and their employees and agents). A Hawaii state bank is chartered and regulated by the Commissioner of Financial Institutions. Under the Code of Financial Institutions (Sec. 412:2-100 of the Hawaii Revised Statutes), the Commissioner is "the primary regulator of Hawaii financial institutions" including Hawaii state banks.

Hawaii state bank's employees and agents are not individually licensed. Similarly, under the original limited exemption and under the proposed revised limited exemption, neither would Primerica's employees and agents be individually licensed.

But Primerica, as a licensee, would be responsible for the regulated activities involving its employees and agents, who would be exempt from licensing ... just as a Hawaii state bank is responsible for the regulated activities involving its bank employees and bank loan officers who are exempt from licensing. Thus, there is similarity between the licensing and regulatory supervision of Primerica (and its employees or agents) under this Bill and the licensing and regulatory supervision of Hawaii state banks (and their employees or agents) under the Hawaii Code of Financial Institutions.

On a national basis, <u>32 states totally exempt Primerica's Exclusive Representatives from licensing or registration.</u> In fact, during the past 2 years, 4 of those 32 states enacted laws with concepts similar to the original limited exemption or the proposed revised limited exemption. Those states include Georgia (in 2006), New York (in 2006), Washington (in 2006), and Texas (in 2007). The original limited exemption provision, which was in the Administration bills, was modeled after the Idaho law.

B. <u>This Bill as currently drafted already gives the Commissioner significant regulatory controls over exempt individuals.</u>

This Bill as currently drafted already provides significant regulatory controls over not just Primerica (as a licensee) but also over exempt employees and agents of a licensee (Primerica).

Entities such as Primerica can only act through its employees and agents. Under this Bill, the Commissioner of Financial Institutions (who would be the regulator of mortgage brokers and loan originators) can issue a cease and desist order and can assess an administrative fine against <u>any</u> person that has or is about to engage in any act or practice in violation of the mortgage broker law or applicable rule (see page 38, line 14 of this Bill). The definition of "person" is not limited to only a licensee. "Person" includes "an individual" (see page 5, line 5 of this Bill). <u>Thus, under this Bill, even if Primerica's Exclusive Representatives are exempt from being individually licensed, they would be subject to regulatory actions by the Commissioner who can issue cease and desist orders and can impose administrative fines.</u>

Additionally, under this Bill, if the Commissioner needs to conduct examination of a licensee (like Primerica) for the purpose of determining whether the licensee is in compliance with applicable laws, rules, and orders, all "employees" and "agents" of the licensee are required to cooperate fully with the Commissioner and to provide access to books, records and documents (Page 37, Line 6 of this Bill). <u>Under this Bill, even if Primerica's Exclusive Representatives are exempt from being individually licensed, they must still cooperate fully with examinations of the Commissioner and must provide access to books, records, and documents.</u>

4. <u>Primerica's proposed revised limited exemption contains additional enhanced consumer protection provisions to protect its clients.</u>

Primerica urges your Committees to put into a Senate Draft 2 of this Bill the proposed revised limited exemption as worded on page 1 of this testimony. This proposed revised limited exemption narrows the scope of the original limited exemption and adds enhanced consumer protections provisions. Specifically, the proposed wording would:

1. Narrow the limited exemption to "employees and exclusive agents" of a licensee (Primerica);

2. Restrict the limited exemption to employees and exclusive agents of a licensee (Primerica) which "originates loans only for the affiliated bank or banks" of the licensee;

3. Require that to be exempt, the employee or exclusive agent of a licensee (Primerica) must not have been convicted of a crime involving dishonesty;

4. Require that to be exempt, the employee or exclusive agent of a licensee (Primerica) must not have had a mortgage broker or loan originator license which was denied, revoked or suspended in any state or jurisdiction of the United States;

5. Mandate that the licensee (Primerica) provide a business plan satisfactory to the Commissioner of Financial Institutions setting forth the licensee's plans to:

a. Provide education for its employees and exclusive agents,

b. Handle consumer complaints relating to its employees and exclusive agents, and

c. Supervise the mortgage broker activities of its employees and exclusive agents; and

6. Require that the licensee (Primerica) deposit a $1,000,000 bond with the Commissioner.

This proposed revised limited exemption would provide significant safeguards in the interests of consumer protection. For that reason and for the other reasons stated in this testimony, Primerica urges your Committees to put the proposed revised limited exemption into a Senate Draft 2 of this Bill.

Thank you for considering this testimony.

Marvin S.C. Dang
MARVIN S.C. DANG
Attorney for Primerica Financial Services Home Mortgages, Inc.

SENATE COMMITTEE ON
JUDICIARY AND LABOR

and

SENATE COMMITTEE ON
WAYS AND MEANS

April 2, 2008

<u>HB 2408, HD 1, SD 1 Relating to Mortgage Brokers</u>

Chair Taniguchi and Chair Baker, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Ways and Means, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders.

State Farm supports House Bill 2408, HD 1, SD 1 Relating to Mortgage Brokers. House Bill 2408, SD 1 acknowledges recent opinions issued by the Office of Thrift Supervision and federal district court cases which disallow state regulation of State Farm Bank and the exclusive agents which offer its products.

State Farm respectfully requests the incorporation of the following clarifying language in the joint committee report:

> "The exemption for an individual who is an exclusive agent of a single bank or savings association is intended to exempt exclusive agents of an insurer and a bank or savings association, such as State Farm Insurance Co. and State Farm Bank. This is consistent with federal court cases such as *State Farm Bank, F.S.B. v. Burke,* Case No. 3:05CV808 (JBA), 2006 WL 1728919 (D. Conn. June 21, 2006) based upon the rulings of the Office of Thrift Supervision, which preempts state regulation of State Farm bank operations conducted through State Farm agents."

We believe the addition of this language will help confirm the legislative intent of House Bill 2408, HD 1, SD 1.

Thank you for the opportunity to present this testimony.

Dear Senator Baker,

I live in Waikele and I am a representative of Primerica Financial Services, a subsidiary of Citigroup. The Senate Committees on Judiciary and Labor and Ways and Means will shortly be considering HB 2408, SD 1. I am writing to urge you to reinsert the exemption from individual licensing for Primerica exclusive representatives that was removed from the House draft of the bill. The subsection to be reinserted immediately after line 21 on page 9 is:

> "(10) Employees and agents of a licensee if the licensee is an affiliate of a bank and is wholly owned by the holding company that owns the bank."

As an exclusive representative of Primerica I can originate loans only for Citigroup banks. This means I perform the same functions for Citigroup banks as a loan originator employee does for his or her Hawaii bank. Since I am subject to the same degree of control for regulatory purposes, I should be subject to the same licensing treatment as a Hawaii bank loan originator.

Under HB 2408, SD 1, loan originators for Hawaii banks are not required to be individually licensed; reinserting subsection (10) gives me equivalent treatment. Unlike a Hawaii bank, which is totally exempt from regulation under the bill, Primerica would be licensed as a mortgage broker under HB 2408, SD 1.

Thank you for preserving equitable treatment by reinserting subsection (10).

Lori Ann Almeida
677-5544

April 01, 2008

Honorable JDL/WAM Chairs and
Committee Members

RE: Testimony regarding HB 2408

I Relyn Bonilla, client of Primerica for quite some time. I am very satisfied with Smart Loan program. I was given the option to pay off my mortgage within 21 years.

Please support Primerica's request for a limited exceptions for its agents.

Thank you for your kind consideration in reading my testimony.

Sincerely,

Relyn Bonilla
544-3346

testimony

From: surrogatepv@aol.com
Sent: Tuesday, April 01, 2008 10:24 AM
To: testimony
Subject: HB 2408

Dear Honorable JDL/WAM Chairs

Aloha, my husband and I just completed a SMART mortgage with Primerica Financial Services. Primerica was able to complete this loan without any out of pocket expenses. They are also helping us to pay our loan off faster than our original mortgage. Primerica actually helped us to cut the time in half. We had twenty seven years left on our mortgage, today we have 16 years left to pay. This is saving us a lot of money in interest payments. The convienence of working with the agents was another benefit. They worked when we were available. They came to us at the right time because we were looking to refinance anyways.

We feel fantastic that we will one day we will be financial debt free. This is sooner than we would have with our previous mortgage company.

Please support Primerica's request for a limited exemption for it's agents.

Thank You,

Joslyn Egdamin
2623 Nonohe Street
Wahiawa, Hawaii 96786

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testimony

From: lyndon fines [lcf_pr@yahoo.com]

Sent: Monday, March 31, 2008 3:28 PM

To: testimony

Subject: Testimony Regarding HB2408, April 2, 2008 @ 10:30 am, Confrence Room 211

Honorable JDL/WAM Chairs & Committee Members, 03/31/2008

I would like to inform you that Primerica has helped me and my family signicantly with there SMART Loan Program. They were able to free up over $1,400 of debt payments and with there Equity Builder Program I'm able to cut my loan down from 30 years to 19 years and save over $150,000 in cost. I'm very happy with what they have done for us and it has changed the Quality of our life. They have also help our friends and other family members as well.
So Please Support Primerica's Request for a Limited Exemption for it's Agents.

Thank You for reading my testimony,

Lyndon C Fines

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testimony

From: Lily Horio [horiolym@gmail.com]

Sent: Monday, March 31, 2008 4:51 PM

To: testimony

Subject: Testimony HB2408

TESTIMONY REGARDING HB2408

April 2, 2008 at 10:30 a.m.
Conference Room 211

Honorable JDL/WAM Chairs & Committee members,

Through the help of Primerica's SMART loan, I was able to ease my mortgage burden 100%.
I am able to cut short my payments and the total loan amount will be less than what is usually quoted by other mortgage lenders, including the leading banks here.
I am very satisfied by the way everything was expedited in a very professional manner. What impressed me most was the philosophy of Primerica in their efforts to get clients our of debt and making this the last loan ever.
Please support Primerica's request for a limited exemption for its agents.

Sincerely,
Lily Y. Horio (s)
19 Gartley Place
Honolulu, Hawaii 96817

3/31/08

To Whom It May Concern:

I am writing this letter to inform you that I have a Mortgage Loan with that I got through Primerica Home Mortgages, Inc. I am very pleased with their service especially the way they educate us on mortgages in general.

My mortgage is a fixed mortgage and thanks to Primerica I will never have to deal with any lending practices that will affect me negatively.

Thank You,

Henry George Kalahiki
3003 Ala Ilima St 101
Honolulu HI 96818

P.S. THIS IS REGARDING
HB 2408 ON APRIL 2, 2008
CONFERENCE ROOM 211

3/31/08

To Whom It May Concern:

Testimony regarding HB2408

April 2, 2008 at 10:30am
Conference Room 211

I have the privilege of being a client of Citicorp Trust Bank which I got the loan through Primerica Home Mortgages, Inc. here in Hawaii

My mortgage is a fixed mortgage and thanks to Primerica I will never have to deal with any lending practices that I read about and have put the economy on it behind.

My dealing with Primerica Home Mortgages, Inc. have only been positive and by educating me first about good lending practices and favorable fixed notes my family will be debt free in 22 years.

Thank You,

Lawrence Kaneshiro
45 507 Mahinui Rd
Kaneohe HI 96744

testimony

From: Karen Kashimoto [kkkashimoto@hotmail.com]

Sent: Tuesday, April 01, 2008 8:00 AM

To: testimony

Subject: RE: HB2408

Honorable JDL/WAM and Committee Members,

I am a client of Primerica Financial Services and what they have done for me and my family through their SMART mortgage program has been tremendous. Their program helped us to pay off our credit card debts and we will be able to pay our mortgage off nine years earlier, saving thousands of dollars in interest. Without our Primerica agent helping us, we probably would not have found a debt solution that would get us out of debt sooner and be able to save money.

I am writing you to ask, "Please support Primerica's request for a limited exemption for its agents."

Thank you for reading my testimony.

Karen Kashimoto
1481 Ala Hekili Place
Honolulu, HI 96819

3/31/08

To Whom It May Concern:

RE:

Testimony regarding HB2408

April 2, 2008 at 10:30am
Conference Room 211

I have a loan with Citicorp Trust Bank that we got through Primerica Home Mortgages Inc. is a fixed loan that has been very good to us. We have saved thousands of dollars of interest as this program has gotten us out of debt and consolidated our revolving credit into one payment. I don't know what we would have done if they didn't come along to help us.

I have heard about all the lending practices that has put our economy in turmoil but this product and its agents have saved us from financial ruin.

Thank You,

Matthias Manalo
91216-A Hoewa'a St
Kapolei HI 96701

testimony

From: Moani Perreira [Moani.Perreira@hilton.com]
Sent: Tuesday, April 01, 2008 9:53 AM
To: testimony
Cc: Joseph Almeida

Testimony regarding HB2408

April 2, 2008 at 10:30am
Conference Room 211

Honorable JDL / WAM Chairs & Committee members,

Aloha,

I am a very, very happy customer of Primerica and of a SMART Loan. We have owned 3 homes/condo's and the SMART loan was the best loan that we have ever had. The interest rate that we received is low and we saved money on top of that. It actually changed our lives. We could put my daughters through college. Honestly, my husband and I will not go to any other mortgage loan company. We just refinanced out loan again with Primerica. When you have a company that is willing to take that extra step to help you it shows and we the customer see's that.

Please support Primerica's request for a limited exemption for its agents.

Thank you for reading my testimony.

Moani Perreira
1581 Wailele Street
Honolulu, HI 96819

Senate Ways & Means Committee
Senate Judiciary Committee

April 1, 2008

Re: HB 2408

Dear Senator:

I am a client who has benefited from having a PRIMERICA Financial Services SMART (Save Money and Reduce Taxes) loan. For years, I had struggled to pay my first mortgage with Countrywide Home Loans as well as my loan with the Bishop Estate which was basically a second mortgage. That second mortgage would have been due in 2009 with a huge balloon payment which I would not be able to pay.

In 2004, my PRIMERICA representative helped me to apply for a SMART loan which would consolidate both mortgages. I was thrilled to be approved for this loan and now pay a lower monthly amount than I did when I had to pay two mortgages. My home will also be paid off in almost the same amount of time as my previous loan with Countrywide and I have over $400 a month more for myself and my family.

With my current loan, I make bi-monthly payments (every other week) that are automatically deducted from my checking account. There is no additional fee for this payment method although many other lenders charge one. There are no stamps or envelopes to buy and mailing a check is not necessary so there are no late fees. In addition, using this payment method reduces my interest by .25%.

I am very happy with my current mortgage and would not be enjoying its benefits if not for the assistance of a PRIMERICA representative. Only agents associated with PRIMERICA can get people this type of loan with Citibank.

I understand that the members of your committees are considering a bill which would cause PRIMERICA representatives to be treated differently than local bank employees who are not required to be individually licensed. Please support PRIMERICA's request for a limited exemption for its agents so they can help others to save money.

Thank you for your time and consideration.

Jacqueline Phillips
98-1382 B Hinu Place
Pearl City, HI 96782-3000

testimony

From: dpushaw@juno.com
Sent: Monday, March 31, 2008 8:20 PM
To: testimony
Subject: Testimony Regarding HB2408

Testimony Regarding HB2408

April 2, 2008 at 10:30 am
Conference Room 211

Honorable JDL / WAM Chairs and Committee members

Because my husband and I now live in Kamuela (Waimea) on the Big Island, I want to send this testimony via e-mail. I do wish that I could be there in person, but this will have to do. First of all, we both are very satisfied with the mortgage loan as well as the other information we got from Primerica about 4 years ago. We were totally blown away when we found out that our 30-year fixed rate mortgage with them could actually be paid off in just 21 years and a few months! What that means is that we will not have to make about 105 monthly payments! With our payment at $1,418.06, that translates to us having around $149,000 back in our own pockets! So since our loan was a debt consolidation loan, not only will we be done paying off our mortgage early, but now we will be totally debt free early as well. No other company had ever offered us anything like this before, that's for sure, and I sincerely feel that everyone can really use this kind of a mortgage. Please help them continue their important work.

Please support Primerica's request for a limited exemption for its agents. And thank you for reading my testimony.

Donna Hanako Pushaw
64-629 Puu Noho St
Kamuela, HI 96743

To: Honorable JDL / WAM Chairs & Committee members

From: Sandra A. T. Sumbry

April 1, 2008

Re: PRIMERICA **Testimony regarding HB2408**

April 2, 2008 at 10:30am
Conference Room 211

Honorable JDL / WAM Chairs & Committee members,

I am proud to say that I'm a very satisfied Primerica SMART customer. The varied products offered especially the debt consolidation option have made my monthly bill payments and mortgage repayment a seamless option as well as an opportunity to be released from mortgage debt much earlier.

Upon considering a new mortgage company I can say I am very satisfied with the customer service aspect of the local Primerica representative as well as the services requested via phone. Questions were answered in a timely non threatening manner, and I felt very comfortable throughout the enrollment process. I look forward to a continued positive relationship with PRIMERICA.

I appreciate being given an opportunity to share my satisfaction for service through PRIMERICA.

Please support Primerica's request for a limited exemption for its agents.

Thank you for reading my testimony.

Arwin & Liezel Tumaneng

86-198 Moeha St.
Waianae, HI 96792

April 1, 2008

Testimony regarding HB2408
April 2, 2008 at 10:30am
Conference Room 211

Dear Honorable JDL/WAM Chairs & Committee members:

We, Arwin & Liezel Tumaneng are Primerica Financial Services Clients as well as Agents. We would like to inform you that Primerica Financial Services is a company that does what's right 100% of the time for consumers like ourselves. We do not market ARMs or any kind of creative financing. We are very much thankful for what Primerica Financial Services have done to help us with our previous mortgage. They were able to cut 10 years of payments off of our mortgage and lower our monthly payment as well. If it weren't for Primerica Financial Services, we would have never thought that there was any company out there that would do such goodness for consumers. Please support Primerica's request for a limited exemption for its agents.

Thank you for reading our testimony.

Sincerely,

Arwin P. Tumaneng
Liezel B. Tumaneng

LAW OFFICE OF GEORGE J. ZWEIBEL
45-3590A Mamane Street
Honoka'a, Hawaii 96727
(808) 775-1087
(808) 775-1089 (facsimile)

Senate Committee on Judiciary and Labor
Senate Committee on Ways and Means

Hearing: Wednesday, April 2, 2008
10:30 a.m.

IN SUPPORT OF HB 2408 HD1 SD1, WITH MODIFICATIONS

Chair Taniguchi, Chair Baker, Vice Chair Hee, Vice Chair Tsutsui, and Committee Members:

My name is George Zweibel. I am an attorney in private practice on the Island of Hawai'i. For the past seven years, I have represented victims of abusive mortgage practices living on the islands of Hawaii, Oahu, Kauai and Maui. Earlier, I helped enforce federal consumer credit laws at the Federal Trade Commission and represented low-income borrowers as a legal aid lawyer. In and outside the government, I have been actively involved in consumer protection for some 30 years.

HB 2408 HD1 SD1 ("HB 2408 SD1") would replace chapter 454, the existing mortgage brokerage law, with a new chapter and transfer industry oversight to the Division of Financial Institutions. The Hawai'i Legislature originally enacted chapter 454 "to safeguard the public interest with respect to mortgage brokerage activities," based on finding that there were frequent abuses in mortgage brokerage activities and that exorbitant and hidden charges were being exacted from unwary consumers.[1] Unfortunately, these problems have persisted and helped create the current subprime lending crisis around the country and here in Hawai'i.

Clearly, chapter 454 has long been in need of revision and this is now more important than ever. In terms of improving government oversight of the mortgage

[1] SCRep. 3 on H.B. No. 32, Housing and Consumer Protection Committee, Journal of the House of Representatives of the Fourth Legislature State of Hawaii, General Session of 1967.

brokerage industry and increasing consumer protections – for example, requiring completion of a written mortgage brokerage agreement – HB 2408 SD1 has the potential of effecting positive change in the troubled mortgage marketplace.

However, by placing the burden of enforcement entirely on the government, HB 2408 SD1 does not adequately ensure that widespread compliance will occur. Two modifications would substantially increase voluntary compliance and help injured consumers obtain relief:

(1) **Retain the current language declaring that contracts made by unlicensed parties are void.** Section 454-8 declares that contracts made by unlicensed mortgage brokers or mortgage solicitors ("loan originators" in HB 2408 SD1) are void and unenforceable. This provision is self enforcing, requiring no government enforcement or court action, and provides a strong incentive for voluntary compliance. It was upheld by the Hawai'i Supreme Court in the case of Beneficial Hawaii v. Kida, 96 Haw. 289 (2001), and is similar to "void contract" language found in other Hawai'i consumer protection statutes, e.g., those concerning door-to-door sales (§ 481C-4(b)) and telemarketing fraud (§ 481P-8). By omitting this provision, HB 2408 SD1 unnecessarily eliminates one means of maximizing compliance and assisting victims of fraud.

(2) **Add language clarifying that a violation of the chapter constitutes an unfair or deceptive act or practice under chapter 480.** At least 14 other Hawai'i consumer protection statutes contain such provisions. Like HB 2408 SD1, several concern consumer credit, e.g., collection agencies (§443B-20), credit discrimination based on marital status (§ 477-E), and credit repair organizations (§ 481B-12(c)).[2] The practices prohibited by HB 2408 SD1 are undoubtedly "unfair or deceptive" and therefore actionable under chapter 480. Including the suggested cross-reference language would notify potential violators that, in addition to government enforcement, they could face lawsuits filed by injured consumers. This too would deter

[2] Others concern franchises (§ 482E-9(a)), telemarketing (§ 481P-6), used motor vehicle sales (§ 481J-5(c)), motor vehicle leases (§ 481L-4), time sharing plans (§ 514E-11.1), contractors (§ 444-25.5(d)), lease-purchase agreements (§ 481M-9), health clubs (§ 486N-11(a)), check cashing (§ 480F-6(a)), going out of business sales (§ 481D-5), and unaccredited degree granting institutions (§ 446E-3).

noncompliance with the mortgage broker law.

It is also requested that your Committees consider making the following modifications to HB 2408 SD1:

- In § -17(b), add to the described prohibited practices: (1) delaying closing of a residential mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower; and (2) acquiring any interest, directly or indirectly or through an associate, in a residence in foreclosure from an owner with whom the mortgage broker or mortgage solicitor has discussed arranging a new residential mortgage loan.
- In the § -14(3) preamble, change "not later than the time the notice is required under the notice provision contained in 12 C.F.R. section 226.31(c), as amended" to "at least three business days prior to consummation of the transaction." The current reference to 12 C.F.R. section 226.31(c) does not work because it will not apply to most residential mortgage loans covered by § -14.

In conclusion, HB 2408 SD1 has the potential of meaningfully increasing consumer protection in the mortgage marketplace, but to do so it should not depend solely on government enforcement. It is respectfully requested that your Committees amend HB 2408 HD1 SD1 as described above. Thank you for the opportunity to testify on this important consumer issue.