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CONSUMER PROTECTION AND COMMERCE
AND
JUDICIARY

THE TWENTY-FIFTH STATE LEGISLATURE
REGULAR SESSION OF 2009

Monday, February 9, 2009
2:00 p.m.

TESTIMONY ON H.B. NO. 1438 - RELATING TO MORTGAGE LOAN ORIGINATORS

THE HONORABLE ROBERT N. HERKES, CHAIR,
THE HONORABLE JON RIKI KARAMATSU, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Nick Griffin, Commissioner of Financial Institutions ("Commissioner"),
testifying on behalf of the Department of Commerce and Consumer Affairs ("Department").
We appreciate the opportunity to testify on House Bill No. 1438. The Department opposes
the bill, and believes it to be unnecessary.

In each of the past five years, the Department has submitted (or, in one case, supported) legislative proposals to this committee that it believed would address problems in the mortgage broker industry and the Hawai'i housing market. We have worked steadily over that time to bring various industry and interest groups together to try to reach consensus on a revised approach to mortgage broker regulation. Consensus, however proved elusive, and, as a result, legislation did not pass. This past summer, securitized mortgages (promoted largely by mortgage brokers) lost their value, and the United States housing and financial markets spiraled downward.

Mortgage brokers no longer play a central role in the nation's or Hawai'i's housing market. Residential real estate appears largely once again, under the control of lenders, who define the market and effectively limit the operation of mortgage brokers. In addition, Congress has addressed the subject by enacting the *Secure and Fair Enforcement for Mortgage Licensing Act* (the "SAFE Act"), Public Law 110-289, Part V which endorses the Nationwide Mortgage Licensing System (NMLS) for residential mortgage loan originators and provides important tools to establish a more robust nationwide mortgage broker (*aka* mortgage loan originator) regulatory and supervisory infrastructure.

The SAFE Act provides that, with few exceptions, everyone who performs mortgage loan originator functions should be licensed. The law also requires federal banking regulators to "register" mortgage loan originators that work for federally regulated depository institutions – e.g., banks, S&Ls etc. – which will provide the "even

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playing field” for which mortgage broker industry groups have been calling. If states do not implement laws consistent with the SAFE Act by federally established deadlines, mortgage loan originators in those states will fall under regulation to be provided by the federal Department of Housing and Urban Development (“HUD”).

Although the Department previously advocated regulatory reform of the State’s mortgage broker industry, a State sponsored initiative now is untimely, arguably irrelevant, and an inappropriate use of State funds in the midst of a significant economic slowdown.

The stated purpose of the bill is to allow the Commissioner of Financial Institutions to regulate, license, examine and enforce laws regulating mortgage brokers and loan originators, and to repeal Hawaii Revised Statutes (“HRS”) Chapter 454, which presently governs the licensing of Mortgage Brokers and Solicitors. The Department opposes the bill for the following five reasons:

Relevance – The issues addressed by the proposal are no longer pressing. Lenders no longer offer the dangerous “sub-prime”, “non-traditional”, pay option, teaser rate mortgage loans which were the products that needed to be addressed. In addition, mortgage lenders are now extremely cautious about accepting mortgage loans brokered to them from the marketplace and, in most instances, utilize a very discreet number of specific, pre-screened, pre-qualified, and closely supervised mortgage loan originators (either employed or independently contracted) to provide loans for their mortgage pipe

lines. The days of accepting brokered mortgage transactions from unvetted sources have ended for the foreseeable future.

Expense – Parallel State/federal programs would be costly for both the State and the significantly diminished number of active mortgage loan originators that would be regulated by such a program. Estimates made during the 2008 session showed an initial cost of \$672,374 to mobilize for program implementation (e.g., hire initial staff, conduct training, purchase furniture, fixtures and equipment, establish the requisite administrative infrastructure, etc.). That \$672,374 did not include either the cost or the time required to join the Nationwide Mortgage Licensing System, both of which will be considerable, and may not run concurrently with the mobilization phase of program implementation. Incidentally this bill entirely fails to address these and related program implementation costs.

Staffing – In order to implement a parallel state statute, the Department would hire up to seven staff members in order to administer the program in accordance with federal standards. The new staff would be particularly specialized and outside recruitment would likely be needed to fill the majority of the positions. We estimate ongoing annual costs for these new staff members would be approximately \$545,000.

Deadlines – Adopting a parallel State statute to address the issue would impose deadlines that can no longer be met. During the 2008 legislative session, the Department pointed out that, in order to ensure timely State compliance if Hawaii

wished to adopt a State program to regulate its mortgage loan originators, it was critical to take immediate steps to enact a State-sponsored mortgage loan originator program that conformed to the federal SAFE Act, then soon to be passed. As the 2008 Session Administration bills failed to obtain passage, neither the initial federally mandated deadlines for compliance with the SAFE Act nor the extended federal deadlines potentially available to those states that can demonstrate that they are making a good faith effort to comply with the federal law, can be met, making the proposed bill moot.

Alternatives – Since the proposed measure clearly fails to make adequate provisions to establish a viable State mortgage loan originator regulatory and supervisory program that can comply with SAFE Act requirements within the timeframes permitted under federal law, under the provisions of the SAFE Act, a mortgage loan originator regulatory and supervisory program will automatically be established and administered for the State of Hawaii by HUD. The HUD federal mortgage loan originator regulatory and supervisory program will:

- end the protracted and essentially unproductive debates over what is or is not appropriate as far as a State mortgage broker statute is concerned;
- result in significant cost savings for the State, which already reportedly anticipates a budget shortfall of almost two billion dollars over the next several years; and

- provide a professionally staffed, up-and-running program that will immediately benefit both regulated mortgage loan originators as well as Hawaii's consumers.

The Department also opposes this measure because it would adversely impact the priorities set forth in the Executive Biennium Budget for Fiscal Years 2009-2010.

The Department therefore recommends that your committees defer this unnecessary measure, allowing Hawaii's consumers, mortgage brokers and mortgage lenders to immediately benefit from a professionally staffed, up-and-running federal regulatory and supervisory initiative, while at the same time saving Hawaii's taxpayers from funding a costly and potentially inadequate State administered program, which in the near term is arguably not needed to address problems that no longer exist in the marketplace and in the long term diverts critical funding from more productive uses in these troubled times.

Thank you for the opportunity to testify I would be happy to respond to any questions you may have.



HB 1438 Relating to Mortgage Loan Originators

Committee on Consumer Protection & Commerce

Committee on Judiciary

February 9, 2009
Room 325

2:00 p.m.

The Office of Hawaiian Affairs supports the purpose and intent of HB 1438..

Consumer protection laws benefit all of Hawaii's residents which include the beneficiaries of the Office of Hawaiian Affairs.

Mortgage Brokers and Loan Originators working with first time homebuyers need to be very unique individuals committed to doing more than expected for the benefit of the homebuyer. However, many are inexperienced and need laws to regulate their activities to the benefit of the homebuyer. The first time homebuyer is also inexperienced in the process of purchasing a home and these consumer protection laws benefit their education in this process as well.

We recognize that physical solutions by themselves will not solve social and economic problems, but neither can economic vitality, community stability, and environmental health be sustained without a coherent and supportive physical framework like these consumer protection laws.

Mahalo nui loa for the opportunity to provide this testimony and we urge your support.

**HOUSE COMMITTEE ON
CONSUMER PROTECTION AND COMMERCE
and
HOUSE COMMITTEE ON JUDICIARY**

February 9, 2009

House Bill 1438 Relating to Mortgage Loan Originators

Chair Herkes, Chair Karamatsu, members of the House Committee on Consumer Protection and Commerce, and members of the House Committee on Judiciary, I am Rick Tsujimura, representing State Farm Insurance Companies, a mutual company owned by its policyholders. State Farm has the following comments to House Bill 1438 Relating to Mortgage Loan Originators.

First we believe the reference and definition "National mortgage licensing system and registry" should be revised to read "Nationwide Mortgage Licensing System and Registry," to conform to the HUD approved model act, and to conform all references thereto in the bill, since the reference in some instances are inconsistent.

Second, we believe an additional definition, "Individual" should be included which also conforms to the definition in the model act. The definition would read: "Individual" means a natural person.

On page 7, line 6, the word "dead" should be "deed".

On page 9, line 11, the "and" at the end of subsection (6) should be an "or".

We believe a new subsection (b) should be added to section 3 on page 10, following the text of subsection (a) which would clarify that loan processors or underwriters who are independent contractors must also obtain a license as contained under the model act. The subsection would read as follows:

“(b) A loan processor or underwriter who is an independent contractor may not engage in the activities of loan processor or underwriter unless such independent contractor loan processor or underwriter obtains or maintains a license under this chapter. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry.”

On page 17, lines 9-10, the phrase should be reworded to read as follows:

“...if the individual achieves a test score of seventy-five percent of the correct answers to questions or better.”

Prohibited Practices

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
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- (2) Engage in any unfair or deceptive practice toward any person;
- (3) Obtain property by fraud or misrepresentation;
- (4) Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this Act may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- (5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
- (6) Conduct any business covered by this Act without holding a valid license as required under this Act, or assist or aide and abet any person in the conduct of business under this Act without a valid license as required under this Act ;
- (7) Fail to make disclosures as required by this Act and any other applicable state or federal law including regulations thereunder;
- (8) Fail to comply with this Act or rules or regulations promulgated under this Act, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this Act;
- (9) Make, in any manner, any false or deceptive statement or representation [optional add on: including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan, or engage in bait and switch advertising];
- (10) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the Nationwide Mortgage Licensing System and Registry or in connection with any investigation conducted by the Commissioner or another governmental agency;
- (11) Make any payment, threat or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or make any payment threat or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
- (12) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by this Act;
- (13) Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
- (14) Fail to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

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

M. Nalani Fujimori, Esq.
Interim Executive Director

The Honorable Robert N. Herkes, Chair
The Honorable Glenn Wakai, Vice Chair
House Committee on Consumer Protection and Commerce

The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
House Committee on Judiciary

Hearing : Monday, February 9, 2009, 2:00 p.m.
State Capitol, Conference Room 325

IN SUPPORT OF HB 1438 WITH AMENDMENTS

Chair and Members of the Committee:

My name is Ryker Wada, representing the Legal Aid Society of Hawaii ("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 HB 1428 with amendments as it may 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 and more than 70 in the past 2 months.

HB 1438 seeks to delete and make useless Chapter 454 of the HRS, the existing mortgage broker law, transferring regulation of the industry solely to the Department of Commerce and Consumer Affairs (DCCA) under a new Chapter. However, by placing the burden of enforcement entirely on DCCA, HB 1438, eliminates significant tools for wronged persons and does not provide enough protection for consumers in the State of Hawaii. HB 1438 also seeks to regulate mortgage loan originators.

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



HAWAII BANKERS ASSOCIATION

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PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the House Committee on
Consumer Protection & Commerce and
House Committee on Judiciary
Monday, February 9, 2009, at 2:00PM

Testimony for HB 1438 Relating to Mortgage Loan Originators

TO: The Honorable Robert N. Herkes, Chair
The Honorable Glenn Wakai, Vice Chair
Members of the House Committee on Consumer Protection & Commerce

TO: The Honorable Jon Riki Karamatsu, Chair
The Honorable Ken Ito, Vice Chair
Members of the House Committee on Judiciary

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association in support of HB 1438. I have worked with certain mortgage brokers for some time on repeated efforts to reform the present licensing system, which efforts included my participation on a task force put together by the Division of Financial Institutions.

On a national level, there has been concern over the lack of regulatory oversight of mortgage brokers, whether reflected in the HUD-Treasury report or the report of the President's Working Group of March 2008. No doubt hastened by the economic crisis visited upon us, last summer, the US Congress passed and the President signed the SAFE Act (Secure and Fair Enforcement for Mortgage Licensing Act of 2008). The purpose of the SAFE Act was not to relieve Hawaii of the costs of implementing a testing, licensing and regulatory oversight framework for mortgage brokers. Quite to the contrary, the purpose of the SAFE Act, in its own words, was "to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry . . ."

Passage of the bill will not impact the State's treasury at all for the simple reason as stated in the report of DCCA to this legislature: "Because the Department is specially funded, it has no access to general funds. Revenue is program specific, and arrives throughout the year." In fact, one of the major stumbling blocks to passage of last year's bill was a dispute over the fees necessary to make the program self-sustaining and thus it cannot be credibly argued that the State's economic situation should justify non-passage of this bill.

Under the SAFE Act, states have until July 31, 2009 (unless a state's legislature meets every other year) to adopt legislation implementing the SAFE Act unless such state already has a

law that complies with SAFE. Accordingly, to date, 25 other states (including Washington D.C.) have introduced legislation to adopt a regulatory scheme to comply with SAFE.

The consequence of not adopting this legislation is that Hawaii will forfeit its right to regulate mortgage brokers in Hawaii. Under the SAFE Act, if a state does not enact a law (or regulation) by July 31, 2009 implementing SAFE, the Housing and Urban Development (“HUD”) was granted backup authority to implement a regulatory scheme for that state. The SAFE Act specifically refers to HUD’s authority as backup authority, signifying the intent of Congress that each and every state live up to its responsibility to enact such legislation.

The consequences of failure to act would mean that Hawaii would lose control of laws regulating mortgage brokers when it was the specific intent of Congress that regulation of brokers should be done by the states and federal intervention is necessary only if a state fails to do so.

If Hawaii fails to pass a measure compliant with SAFE, then the mortgage brokers in Hawaii will be faced with two competing regulatory schemes – the existing Chapter 454 and whatever scheme HUD drafts. Clearly, the brokers will have to comply with the testing and licensing rules of HUD but that leaves great ambiguity whether a broker would be subject to the limited consumer protections in Chapter 454 and other provisions of Chapter 454. I should also note that under the SAFE Act, there is only one category of a broker, now called mortgage loan originator, which flies in the face of Chapter 454 which has two categories: mortgage broker and solicitor. We can avoid this confusion by simply passing this bill and rescinding Chapter 454.

The Conference of State Bank Supervisors (the accrediting agency of DFI) and American Association of Residential Mortgage Regulators have prepared a model act which is compliant with SAFE. Large parts of this bill are taken verbatim from the model act.

It is not until section 16 of the bill that this bill supplements the model act by requiring that a written agreement should be executed between the mortgage loan originator and a borrower. This provision was in last year’s bill.

Both the model act and this bill do have a section on prohibited practices. The drafted words may differ but conceptually, they address the same issues: fraud, dishonesty, theft, and undue appraiser influence. However this bill goes further to address two areas of local concerns based on past and current untoward practices: misleading advertisement and door-to-door sales of mortgages.

The bill also includes a section on preventing elder abuse, which is in existing law because of the efforts by DFI, a protection which may disappear if we abdicate to HUD the right to control mortgage brokering in this State.

I note that HB 31 seeks to prohibit using credit reports to make employment decisions. This bill will shortly be before this committee. The SAFE Act, and thus the model act, specifically envisions the use of credit reports by the licensing authority and care should be taken to insure that HB 31 does not detract from the ability of the State to comply with the SAFE Act.

We recognize that the bill is a work in progress and technical amendments may be made.

For these reasons, we strongly support this bill.



February 6, 2009

To: The Honorable Robert N. Herkes, Chair Committee on Consumer Protection and Commerce
The Honorable Jon Riki Karamatsu, Chair Committee on Judiciary
Members of the House Committees on Consumer Protection & Commerce and Judiciary

Re: H.B. 1438 – Relating to Mortgage Loan Originators

I am Greg Ravelo, President of the Hawaii Association of Mortgage Brokers. The Hawaii Association of Mortgage Brokers (HAMB), a 200+ member organization, actively works to improve the mortgage broker industry since its charter in 1992.

After the close of the 2008 Hawaii legislative session, the US Congress passed legislation known as the Title V – the SAFE Act, which when fully implemented will register all mortgage loan originators in the United States. It establishes a national registry of mortgage loan originators (MLOs) and will issue a permanent ID that will remain with individual MLOs through out their working careers. For MLOs not employed by government supervised depositories (e.g. Banks and S & Ls), the legislation requires background checks, pre-licensing education, testing and ongoing continuing education. This program will be will be administered by state regulators in most cases, however the federal Department of Housing and Urban Development (HUD) is required to implement the program in any state that does not adopt the federal program.

HB 1438 provides the legislative authority and direction to allow the Hawaii DCCA to modify the existing state program dealing with Mortgage Brokers (HRS Chap. 454) and expand it to include other covered MLOs while meeting the standards of the SAFE Act.

In addition to meeting the standards of SAFE, the legislation codifies certain actions by MLOs that represent good business practices, including a requirement for a MLO Agreement that sets expectations in regard to the lending process for the consumer when dealing with a covered MLO.

We believe it is in the interest of the consumers of Hawaii to have the program operated by the state, rather than a federal agency.

Sincerely,

Greg Ravelo
President