

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

Fax No.: (808) 521-8522

LATE TESTIMONY

February 9, 2009

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Jon Riki Karamatsu, Chair
and members of the House Committee on Judiciary
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 1438 (Mortgage Loan Originators)**
Hearing Date/Time: Monday, February 9, 2009, 1:30 P.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 which are regulated by the Hawaii Commissioner of Financial Institutions under the Code of Financial Institutions (Chapter 412, Article 9 of the Hawaii Revised Statutes).

The HFSA opposes this Bill as drafted.

The purpose of this Bill is to allow the Commissioner of Financial Institutions to regulate, license, examine, and enforce laws regulating mortgage brokers and loan originators. This Bill repeals Chapter 454 of the Hawaii Revised Statutes ("HRS").

Background:

This Bill is an expansion of an effort that began a few years ago to regulate mortgage brokers. The most recent activity was during the 2008 legislative session with House Bill 2408, HD 1, SD 2 (Mortgage Brokers). Because of irreconcilable differences among the testifiers in 2008 regarding that 62 page mortgage broker bill, that bill did not move out of the Conference Committee.

After the 2008 Hawaii Legislative Session adjourned, Congress passed and President Bush later signed into law on July 30, 2008 the Housing and Economic Recovery Act of 2008 (Public Law 110-239). One component of that Act is the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 ("SAFE Act"). The SAFE Act establishes a uniform licensing and registration system for all loan originators, including mortgage brokers and loan officers. All loan originators at depository institutions will have to be registered (but not licensed) through the nationwide system. All other loan originators will be required to be licensed by a state or through a Housing and Urban Development ("HUD")-backup system if a state does not establish a licensing system.

Under the SAFE Act, a "loan originator" is an individual who for compensation or gain takes a residential mortgage loan application or offers or negotiates the terms of a residential mortgage loan. Loan originators fall into two categories:

1. One category is an individual who, simply stated, is an employee of a depository institution (such as a bank or a credit union). That individual is called a "registered loan originator" and will need to be registered with the Nationwide Mortgage Licensing System and Registry ("NMLSR").
2. The other category is an individual who is a loan originator but is not an employee

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Jon Riki Karamatsu, Chair
and members of the House Committee on Judiciary

February 9, 2009

Page 2

of a depository institution. That individual will need to be licensed by a state or by HUD and registered with the NMLSR. This individual is called a "licensed loan originator". An example of a licensed loan originator is an individual who is a mortgage broker or mortgage solicitor. Mortgage brokers and solicitors are currently regulated in Hawaii under Chapter 454, Hawaii Revised Statutes.

Another example of a "licensed loan originator" is an employee of a non-depository financial services loan company. It should be noted that HRS Chapter 454, relating to mortgage brokers, does not currently apply to employees of financial services loan companies which are exempt from that Chapter. However with the passage of the SAFE Act, an individual who is a loan originator and is an employee of a non-depository financial services loan company would be put in the same category as an individual who is a mortgage broker or mortgage solicitor. That individual would need to be licensed by the state or by HUD.

Within 12 months from the July 30, 2008 enactment of the SAFE Act, Hawaii and other states should develop licensing requirements to ensure applicants meet minimum standards including educational requirements, background checks, and testing. However, if a state does not establish a licensing system that meets the minimum requirements, HUD is directed to establish a licensing system for loan originators in the state.

In conjunction with the passage of the SAFE Act, two organizations of regulators, the Conference of State Bank Supervisors ("CSBS") and the American Association of Residential Mortgage Regulators ("AARMR"), prepared model legislation for states to consider enacting. Other groups such as the American Financial Services Association, of which the Hawaii Financial Services Association is a member, have proposed various amendments to the CSBS/AARMR model state legislation.

Because the SAFE Act was enacted after Hawaii's 2008 Legislative Session adjourned in May, 2008, perhaps it's fortunate that the Legislature had the foresight not to pass the 2008 Hawaii mortgage broker bill. If that 2008 bill had become law, a substantial portion of it would have to be changed and rewritten during this 2009 legislative session.

Concerns about this Bill:

This Bill before you consists of 51 pages. The first 29 pages up through Sec. -15 are nearly identical to the CSBS/AARMR model state legislation. However, there are some minor variations in those first 29 pages from the CSBS/AARMR model state legislation and also some typographical errors.

But this Bill contains more than just the CSBS/AARMR model state legislation provisions. The remaining 22 pages of this Bill beginning with Sec. -16 on page 29 appears to be a recycling of selected provisions from the 2008 mortgage broker legislation.

There are some people who are advocating the passage of this Bill as drafted even though their employees are exempt from this Bill under Sec. -2. On the other hand, financial services loan companies (the members of the Hawaii Financial Services Association) have a sincere and genuine interest in this Bill because any of their employees who are loan originators are covered by this Bill.

We oppose the approach taken in this Bill as drafted. Instead, here are two preferred alternate

Rep. Robert N. Herkes, Chair
and members of the House Committee on Consumer Protection & Commerce
Rep. Jon Riki Karamatsu, Chair
and members of the House Committee on Judiciary
February 9, 2009
Page 3

approaches that your Committee should consider taking:

1. This Bill should be redrafted. As stated above, this Bill generally tracks the CSBS/AARMR model state legislation up to page 29. To that extent, this Bill is generally acceptable. However this Bill can be improved with the addition of amendments that the American Financial Services Association is nationally proposing.

However, beginning with page 29, this Committee should redraft the written agreements provision (Sec. -16) and the prohibited practices provision (Sec. -17). Those are not worded from the CSBS/AARMR model state legislation. Parts of those provisions are from the existing mortgage broker law (HRS Chapter 454), but many other parts are taken from last year's mortgage broker bill.

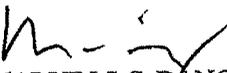
In this regard, your Committee should revise Sec. -16 (written agreements) to mirror HRS Sec. 454-3.1 (written agreements) of the mortgage broker law. Your Committee should delete (3) which is not in HRS Sec. 454-3.1. Also (2) needs to be reworded. This way, Sec. -16 will be identical to the existing HRS Sec. 454-3.1. Nothing more. Nothing less.

Similarly, your Committee should revise Sec. -17 (prohibited practices) to be identical to what is in HRS Sec. 454-4 (a) of the existing mortgage broker law. Your Committee should delete the following provisions in Sec. -17 which are not in the existing law: (6), (7), (8), (9), (10), and (11). This way, Sec. -17 will be identical to the existing HRS Sec. 454-4. Again, nothing more, nothing less.

2. There is an alternate approach that your Committee can take. This approach is to not pass this Bill and instead let loan originators be licensed through the HUD-backup system as permitted by the SAFE Act. We understand that the Hawaii Department of Commerce & Consumer Affairs, which would license loan originators under this Bill, opposes this Bill as drafted and prefers to have licensing through the HUD-backup system.

We want to point out that even as your Committee is deliberating this Bill, CSBS/AARMR is asking HUD to delay the licensing date for loss mitigation specialists employed by servicers. See the attached February 5, 2009 letter from CSBS/AARMR. The CSBS/AARMR model state legislation, and any Hawaii legislation, would have to be revised to address this recent development. Conceivably there could be other national developments which could impact any state legislation.

Thank you for considering our testimony.


MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)
Enclosure



LATE TESTIMONY



February 5, 2009

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street, S.W.
Washington, DC 20410

Dear Secretary Donovan:

The S.A.F.E. Mortgage Licensing Act of 2008 (SAFE), signed into law on July 30, 2008, establishes federal minimum standards of licensing or registration for individuals meeting the definition of loan originator or registered loan originator. SAFE provided that States have a period of time to update their laws to meet the new federal standards, and allocated responsibility to HUD to determine if a state meets the minimum requirements.

The Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) supported the passage of SAFE and shared Congress' desire to set minimum standards that would apply nationwide. CSBS and AARMR developed a model state act to provide states with a template to update their mortgage legislation as soon as possible in a uniform fashion and in a manner consistent with SAFE. CSBS and AARMR have appreciated HUD's rapid consideration of the CSBS/AARMR model state law and HUD's December 24, 2008 interpretation of SAFE as it would apply to the model state law. This collaboration has enabled states to begin legislative efforts to update their laws and implement SAFE requirements.

CSBS and AARMR are committed to meaningful loss mitigation efforts to assist homeowners in modifying the terms of their existing mortgages. States have been leading advocates in the area of home loss prevention, calling for aggressive action by servicers, and more focused attention by regulators at both the state and federal level.

Concerns have been raised that immediate application of SAFE licensing requirements to servicer loss mitigation specialists assisting homeowners experiencing problems might seriously curtail such activity at a time of unprecedented numbers of mortgage delinquencies and defaults. In response, some states are finding it necessary to address this situation through their SAFE legislation. CSBS and AARMR are concerned that in these attempts, state exemptions from SAFE may inadvertently violate SAFE requirements and put states in non-compliance with the federal law. Therefore, we request greater clarification of your interpretation of SAFE and request a reasonable delay in the licensing requirements for certain individuals.

The passage of SAFE was made possible under the Housing and Economic Recovery Act of 2008 (HERA). SAFE and HERA together were designed to provide consumer protection while fostering recovery of the nation's housing market. These goals are not mutually exclusive, however full implementation of all SAFE requirements on loss mitigation specialists in the midst of a significant need for loan modifications could delay assistance to homeowners who are in trouble.

The consumer protection gains achieved through licensing or registering loan originators specializing in foreclosure mitigation efforts would be offset in this time of crisis by the potential loss of capacity of servicers to conduct loan workouts. The need to resolve this conflict presents itself to not only State licensing agencies, but Federal registering agencies as well.

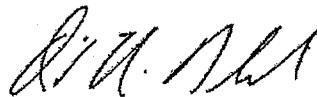
Pursuant to HUD's December 24, 2008 interpretive letter, Section D. Delayed Effective Date of Requirement to Obtain and Maintain a License, "HUD may approve a later date only upon a state's demonstration that substantial numbers of loan originators (or of a class of loan originators) who require a state license face unusual hardship, through no fault of their own or of the state government, in complying with the standards required by the SAFE Act to be in the state legislation and in obtaining state licenses within one year." Based on this interpretation, CSBS and AARMR propose an effective licensing date of July 31, 2011, or such later date as approved by the Secretary of HUD, for loss mitigation specialists employed by servicers.

CSBS and AARMR appreciate HUD's efforts to date in providing guidance for states in implementing the SAFE Act. We thank you for your consideration of this request and look forward to working with HUD in the coming year to further the goals of consumer protection and improved supervision.

Sincerely,



Neil Milner
President and CEO
Conference of State Bank Supervisors



David Bleicken
President
American Association of Residential
Mortgage Regulators