

STAND. COM. REP. NO.

833

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1438  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1438, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MORTGAGE LOAN ORIGINATORS,"

begs leave to report as follows:

The purpose of this bill is to protect homebuyers by replacing the existing Mortgage Brokers and Solicitors Law under Chapter 454, Hawaii Revised Statutes, with a new law regulating mortgage loan originators.

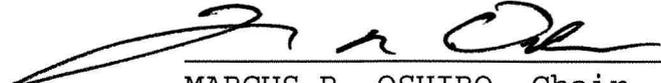
The Office of Hawaiian Affairs, Hawaii Bankers Association, and the Hawaii Association of Mortgage Brokers supported this bill. The Department of Commerce and Consumer Affairs and Hawaii Financial Services Association opposed this bill.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1438, H.D. 1, and recommends that it pass Third Reading.

HB1438 HD1 HSCR FIN HMS 2009-2668



Respectfully submitted on  
behalf of the members of the  
Committee on Finance,

  
MARCUS R. OSHIRO, Chair







- 1 (5) Broadcasting commercials by airwave or Internet
- 2 transmission; or
- 3 (6) Transmitting any written communication, including:
  - 4 (A) A letter or a postcard that encourages a person
  - 5 to borrow from or through a mortgage loan
  - 6 originator; or
  - 7 (B) A written communication that encourages a person
  - 8 to refinance the person's existing residential
  - 9 mortgage loan and mentions that a new residential
  - 10 mortgage loan will reduce the monthly payment the
  - 11 borrower will pay on the new residential mortgage
  - 12 loan or reduce the interest rate on the
  - 13 borrower's existing residential mortgage loan.

14 "Agent" means a person who acts with the consent and on  
15 behalf of a mortgage loan originator, and is subject to the  
16 mortgage loan originator's direct control.

17 "Applicant" means a person applying for the issuance of a  
18 license or a renewal of a license under this chapter.

19 "Borrower" means a person who has applied for or obtained a  
20 residential mortgage loan from or through a mortgage loan  
21 originator, or from or through a person required to be licensed  
22 as a mortgage loan originator under this chapter.



1 "Clerical or support duties" include subsequent to the  
2 receipt of an application:

- 3 (1) The receipt, collection, distribution, and analysis of  
4 information common for the processing or underwriting  
5 of a residential mortgage loan; and  
6 (2) Communicating with a borrower to obtain the  
7 information necessary for the processing or  
8 underwriting of a loan, to the extent that the  
9 communication does not include offering or negotiating  
10 loan rates or terms or counseling borrowers about  
11 residential mortgage loan rates or terms.

12 "Commissioner" means the director of the department of  
13 commerce and consumer affairs, or the director's designee.

14 "Federal banking agencies" means the Board of Governors of  
15 the Federal Reserve System, the Comptroller of the Currency, the  
16 Office of Thrift Supervision, the National Credit Union  
17 Administration, and the Federal Deposit Insurance Corporation.

18 "Immediate family member" means a spouse, child, sibling,  
19 parent, grandparent, grandchild, stepparent, stepchild,  
20 stepsibling, and adoptive relationships.

21 "Insured depository institution" means the same as in 12  
22 United States Code Section 1813(c)(2); provided that it also



1 includes any credit union whose deposits are insured by the  
2 National Credit Union Association.

3 "Loan processor or underwriter" means an individual who  
4 performs clerical or support duties as an employee at the  
5 direction, of and subject to the supervision and instruction of  
6 a mortgage loan originator or a person who is exempt from  
7 licensing as a mortgage loan originator under the this chapter.

8 "Mortgage loan origination agreement" means a written  
9 agreement under which a mortgage loan originator agrees to  
10 obtain a residential mortgage loan for the borrower or assist  
11 the borrower in obtaining a residential mortgage loan and does  
12 not include a promissory note and mortgage or any other document  
13 or instrument evidencing or securing the residential mortgage  
14 loan.

15 "Mortgage loan originator" means an individual who for  
16 compensation or gain or in the expectation of compensation or  
17 gain:

- 18 (1) Takes a residential mortgage loan application; or  
19 (2) Offers or negotiates terms of a residential mortgage  
20 loan.

21 "National mortgage licensing system and registry" means a  
22 mortgage licensing system developed and maintained by the



1 Conference of State Bank Supervisors and the American  
2 Association of Residential Mortgage Regulators for the licensing  
3 and registration of licensed mortgage loan originators.

4 "Nontraditional mortgage product" means any mortgage  
5 product other than a thirty-year fixed rate residential mortgage  
6 loan where the interest rate is fixed for the thirty year term.

7 "Person" means an individual, sole proprietorship,  
8 partnership, corporation, limited liability company, limited  
9 liability partnership, or other association of individuals,  
10 however organized.

11 "Real estate brokerage activity" means any activity that  
12 involves offering or providing real estate brokerage services to  
13 the public, including:

14 (1) Acting as a real estate agent or real estate broker  
15 for a buyer, seller, lessor, or lessee of real  
16 property;

17 (2) Bringing together parties interested in the sale,  
18 purchase, lease, rental, or exchange of real property;

19 (3) Negotiating on behalf of any party, any portion of a  
20 contract relating to the sale, purchase, lease,  
21 rental, or exchange of real property (other than in



1 connection with providing financing with respect to  
2 any such transaction);

3 (4) Engaging in any activity for which a person engaged in  
4 the activity is required to be registered or licensed  
5 as a real estate agent or real estate broker by the  
6 State; and

7 (5) Offering to engage in any activity, or act in any  
8 capacity, described in paragraphs (1), (2), (3), or  
9 (4).

10 "Registered mortgage loan originator" means any individual  
11 who:

12 (1) Meets the definition of mortgage loan originator and  
13 is an employee of:

14 (A) An insured depository institution;

15 (B) A subsidiary that is:

16 (i) Owned and controlled by an insured  
17 depository institution; and

18 (ii) Regulated by a federal banking agency; or

19 (C) An institution regulated by the Farm Credit  
20 Administration; and



1 (2) Is registered with, and maintains a unique identifier  
2 through, the Nationwide Mortgage Licensing System and  
3 Registry.

4 "Residential mortgage loan" means any loan primarily for  
5 personal, family, or household use that is secured by a  
6 mortgage, deed of trust, or other equivalent consensual security  
7 interest on a dwelling as defined in section 103(v) of the Truth  
8 in Lending Act or residential real estate upon which is  
9 constructed or intended to be constructed a dwelling.

10 "Residential real estate" means any real property located  
11 in this state, upon which is constructed or intended to be  
12 constructed a dwelling.

13 "Unique identifier" means a number or other identifier  
14 assigned by protocols established by the nationwide mortgage  
15 licensing system and registry.

16 **§ -2 Exemptions.** This chapter shall not apply to the  
17 following:

18 (1) A registered mortgage loan originator, when acting for  
19 an insured depository institution, a subsidiary of an  
20 insured depository institution regulated by a federal  
21 banking agency, or an institution regulated by the  
22 Farm Credit Association;



- 1           (2) Any individual who offers or negotiates terms of a  
2           residential mortgage loan with, or on behalf of an  
3           immediate family member of the individual;
- 4           (3) Any individual who offers or negotiates terms of a  
5           residential mortgage loan secured by a dwelling that  
6           served as the individual's residence;
- 7           (4) A licensed attorney who negotiates the terms of a  
8           residential mortgage loan on behalf of a client as an  
9           ancillary matter to the attorney's representation of  
10          the client, unless the attorney is compensated by a  
11          lender, a mortgage broker, or other mortgage loan  
12          originator or by any agent of a lender, mortgage  
13          broker, or other mortgage loan originator;
- 14          (5) An individual engaging solely in loan processor or  
15          underwriter activities; provided that an independent  
16          contractor who performs the services of a loan  
17          processor or underwriter shall not represent to the  
18          public, through advertising or other means of  
19          communicating or providing information, including the  
20          use of business cards, stationery, brochures, signs,  
21          rate lists, or other promotional items, that the  
22          individual can or will perform any of the activities



1 of a mortgage loan originator, and any loan processor  
2 or contractor who advertises that the individual can  
3 or will perform any of the activities of a mortgage  
4 loan originator shall not be exempt under this  
5 chapter;

6 (6) A person or entity that only performs real estate  
7 brokerage activities and is licensed or registered by  
8 the State unless the person or entity is compensated  
9 by a lender, a mortgage broker, or other mortgage loan  
10 originator or by any agent of the lender, mortgage  
11 broker, or other mortgage loan originator; and

12 (7) A person or entity solely involved in extensions of  
13 credit relating to timeshare plans, as the term is  
14 defined in Section 101(53D) of title 11, United States  
15 Code.

16 § -3 Requirement of licensure. An individual, unless  
17 specifically exempted from this chapter shall not engage in the  
18 business of a mortgage loan originator with respect to any  
19 dwelling located in this state without first obtaining and  
20 maintaining annually, a license under this chapter. Each  
21 licensed mortgage loan originator shall register with, and  
22 maintain a valid unique identifier issued by the nationwide



1 mortgage licensing system and registry, and submit to the  
2 nationwide mortgage licensing system and registry reports that  
3 shall be in a form and contain information as the nationwide  
4 mortgage licensing system and registry may require.

5       **§ -4 License and registration; application; issuance.**

6 (a) Applicants for a license shall apply in a form as  
7 prescribed by the commissioner. Each form shall be prescribed  
8 by rule, instruction, or procedure by the commissioner and may  
9 be amended as necessary by the commissioner to carry out the  
10 purposes of this chapter.

11 (b) To fulfill the purposes of this chapter, the  
12 commissioner may establish relationships or contracts with the  
13 nationwide mortgage licensing system and registry or other  
14 entities designated by the nationwide mortgage licensing system  
15 and registry to collect and maintain records and process  
16 transaction fees or other fees related to licensees or other  
17 persons subject to this chapter.

18 (c) For the purpose and the extent necessary to  
19 participate in the nationwide mortgage licensing system and  
20 registry, the commissioner may waive or modify, in whole or in  
21 part, by rule or order, any or all of the requirements of this  
22 chapter and to establish new requirements as reasonably



1 necessary to participate in the nationwide mortgage licensing  
2 system and registry.

3 (d) In connection with an application for licensing as a  
4 mortgage loan originator, the applicant, at a minimum, shall  
5 furnish to the nationwide mortgage licensing system and registry  
6 information concerning the applicant's identity, including:

7 (1) Fingerprints for submission to the Federal Bureau of  
8 Investigation, and any governmental agency or entity  
9 authorized to receive the fingerprints for a state,  
10 national and international criminal history background  
11 check; and

12 (2) Personal history and experience in a form prescribed  
13 by the nationwide mortgage licensing system and  
14 registry, including the submission of authorization  
15 for the nationwide mortgage licensing system and  
16 registry and the commissioner to obtain:

17 (A) An independent credit report obtained from a  
18 consumer reporting agency described in section  
19 603(p) of the Fair Credit Reporting Act; and

20 (B) Information related to any administrative, civil,  
21 or criminal findings by any governmental  
22 jurisdiction.



1 (e) The commissioner may use the nationwide mortgage  
2 licensing system and registry as an agent for requesting  
3 information from and distributing information to the Department  
4 of Justice or any governmental agency.

5 (f) The commissioner may use the nationwide mortgage  
6 licensing system and registry as an agent for requesting and  
7 distributing information to and from any source directed by the  
8 commissioner.

9 **§ -5 Issuance of license.** The commissioner shall not  
10 issue a mortgage loan originator license unless the commissioner  
11 makes at a minimum the following finding:

12 (1) The applicant has never had a mortgage loan originator  
13 license revoked in any governmental jurisdiction,  
14 except that a subsequent formal vacation of a  
15 revocation shall not be deemed a revocation;

16 (2) The applicant has not been convicted of, or pled  
17 guilty, nolo contendere, or been granted a deferred  
18 acceptance of a guilty plea under chapter 853 to a  
19 felony in a domestic, foreign, or military court:

20 (A) During the seven year period preceding the date  
21 of the application for licensing and  
22 registration; or



1 (B) At any time preceding the date of application, if  
2 the felony involved an act of fraud, dishonesty,  
3 a breach of trust, or money laundering;  
4 provided that any pardon of a conviction shall not be  
5 a conviction for purposes of this section;

6 (3) The applicant has demonstrated financial  
7 responsibility, character, and general fitness to  
8 command the confidence of the community and to warrant  
9 a determination that the mortgage loan originator  
10 shall operate honestly, fairly, and efficiently  
11 pursuant to this chapter.

12 For purposes of this section, a person is not  
13 financially responsible when the person has shown a  
14 disregard in the management of the person's financial  
15 condition. A determination that an individual has not  
16 shown financial responsibility may be based on:

17 (A) Current outstanding judgments, except judgments  
18 solely as a result of medical expenses;

19 (B) Current outstanding tax liens or other government  
20 liens and filings;

21 (C) Foreclosures within the past three years; and



1 (D) A pattern of seriously delinquent accounts within  
2 the past three years;

3 (4) The applicant has completed the pre-licensing  
4 education requirement described in section -6;

5 (5) The applicant has passed a written test that meets the  
6 test requirements in section -7; and

7 (6) The applicant has met the surety bond requirement as  
8 required in section -13.

9 **§ -6 Pre-licensing and re-licensing; education of**  
10 **mortgage loan originators.** (a) A person shall complete at  
11 least twenty hours of pre-licensing education approved in  
12 accordance with subsection (b) that includes:

13 (1) Three hours of federal law and regulations;

14 (2) Three hours of ethics, that shall include instruction  
15 on fraud, consumer protection, and fair lending  
16 issues; and

17 (3) Two hours of training related to lending standards for  
18 the nontraditional mortgage product marketplace.

19 (b) Pre-licensing education courses shall be reviewed and  
20 approved by the nationwide mortgage licensing system and  
21 registry based upon reasonable standards. Review and approval



1 of a pre-licensing education course shall include review and  
2 approval of the course provider.

3 (c) Nothing in this section shall prohibit the use of any  
4 pre-licensing education course approved by the nationwide  
5 mortgage licensing system and registry that is provided by the  
6 employer of the applicant or an entity that is affiliated with  
7 the applicant by an agency contract, or any subsidiary or  
8 affiliate of the employer or entity.

9 (d) Pre-licensing education may be offered either in a  
10 classroom, online, or by any other means approved by the  
11 nationwide mortgage licensing system and registry.

12 (e) The pre-licensing education requirements approved by  
13 the nationwide mortgage licensing system and registry in  
14 subsection (a) for any state shall be accepted as credit towards  
15 completion of pre-licensing education requirements in this  
16 state.

17 (f) A person previously licensed under this chapter and  
18 applying to be licensed under this chapter shall prove to the  
19 satisfaction of the commissioner that the person has completed  
20 all of the continuing education requirements for the year in  
21 which the license was last held.



1           **§ -7 Testing of mortgage loan originators.** (a) To meet  
2 the written test requirement in section -5, an applicant  
3 shall pass, in accordance with the standards established under  
4 this section, a qualified written test developed by the  
5 nationwide mortgage licensing system and registry and  
6 administered by a test provider approved by the nationwide  
7 mortgage licensing system and registry based upon reasonable  
8 standards.

9           (b) A written test shall not be treated as a qualified  
10 written test for purposes of subsection (a) unless the test  
11 adequately measures the applicant's knowledge and comprehension  
12 in appropriate subject areas, including:

- 13           (1) Ethics;
- 14           (2) Federal law and regulations pertaining to mortgage  
15 origination;
- 16           (3) State law and regulations pertaining to mortgage  
17 origination; and
- 18           (4) Federal and state law and regulations, including  
19 instruction on fraud, consumer protection, the  
20 nontraditional mortgage marketplace, and fair lending  
21 issues.



1 (c) Nothing in this section shall prohibit a test provider  
2 approved by the nationwide mortgage licensing system and  
3 registry from providing a test at the location of the employer  
4 of the applicant or the location of any subsidiary or affiliate  
5 of the employer of the applicant, the location of any entity  
6 with which the applicant holds an exclusive arrangement to  
7 conduct the business of a mortgage loan originator.

8 (d) An individual shall have passed a qualified written  
9 test if the individual achieves a test score of seventy-five per  
10 cent or better. An individual may retake a test three  
11 consecutive times with each consecutive taking occurring at  
12 least thirty days after the preceding test. After failing three  
13 consecutive tests, an individual shall wait at least six months  
14 before taking the test again. A licensed mortgage loan  
15 originator who fails to maintain a valid license for a period of  
16 five years or longer shall retake the test, not taking into  
17 account any time during which the individual is a registered  
18 mortgage loan originator.

19 **§ -8 Standards for license renewal.** (a) The minimum  
20 standards for license renewal for mortgage loan originators  
21 shall include the following:



- 1 (1) The mortgage loan originator continues to meet the  
2 minimum standards for licensure under section -5;
- 3 (2) The mortgage loan originator has satisfied the annual  
4 continuing education requirements in section -9;  
5 and
- 6 (3) The mortgage loan originator has paid all required  
7 fees for renewal of the license.

8 (b) The license of a mortgage loan originator failing to  
9 satisfy the minimum standards for license renewal shall expire.  
10 The commissioner may adopt procedures for the reinstatement of  
11 expired licenses consistent with the standards established by  
12 the nationwide mortgage licensing system and registry.

13 **§ -9 Continuing education; mortgage loan originators.**

14 (a) A licensed mortgage loan originator shall complete at least  
15 eight hours of education approved in accordance with subsection

16 (b) that shall include at least:

- 17 (1) Three hours of federal law and regulations;
- 18 (2) Two hours of ethics that shall include instruction on  
19 fraud, consumer protection, and fair lending issues;  
20 and
- 21 (3) Two hours of training related to lending standards for  
22 the nontraditional mortgage product marketplace.



1 (b) For purposes of subsection (a), continuing education  
2 courses shall be reviewed, and approved by the nationwide  
3 mortgage licensing system and registry based upon reasonable  
4 standards. Review and approval of a continuing education course  
5 shall include review and approval of the course provider.

6 (c) Nothing in this section shall prohibit the use of any  
7 education course that is approved by the nationwide mortgage  
8 licensing system and registry and provided by the employer of  
9 the mortgage loan originator or an entity that is affiliated  
10 with the mortgage loan originator by an agency contract, or any  
11 subsidiary or affiliate of the employer or entity.

12 (d) Continuing education may be offered either in a  
13 classroom, online, or by any other means approved by the  
14 nationwide mortgage licensing system and registry.

15 (e) A licensed mortgage loan originator:

16 (1) May only receive credit for a continuing education  
17 course in the year in which the course is taken,  
18 except for continuing education credits received  
19 pursuant to this chapter; and

20 (2) May not take the same approved course in the same or  
21 successive years to meet the annual requirements for  
22 continuing education.



1 (f) A licensed mortgage loan originator who is an approved  
2 instructor of an approved continuing education course may  
3 receive credit for the course taught at the rate of two hours  
4 credit for every one hour taught.

5 (g) Continuing education courses approved by the  
6 nationwide mortgage licensing system and registry in subsection  
7 (a) for any state, shall be accepted as credit towards  
8 completion of continuing education requirements in this state.

9 (h) A licensed mortgage loan originator who subsequently  
10 becomes unlicensed shall complete the continuing education  
11 requirements for the last year in which the license was held  
12 prior to issuance of a new or renewed license.

13 (i) A person meeting the requirements of section -  
14 8(a)(1) and (3) may make up any deficiency in continuing  
15 education as established by rule adopted by the commissioner.

16 **§ -10 Authority to require license.** In addition to any  
17 other duties imposed upon the commissioner, the commissioner  
18 shall require mortgage loan originators to be licensed and  
19 registered through the nationwide mortgage licensing system and  
20 registry. The commissioner is authorized to participate in the  
21 nationwide mortgage licensing system and registry. The



1 commissioner may establish by rule pursuant to chapter 91,  
2 qualifications for mortgage loan organizations, including:

3 (1) Background checks of:

4 (A) Criminal history through fingerprint or other  
5 databases;

6 (B) Civil or administrative records;

7 (C) Credit history; or

8 (D) Any other source deemed necessary by the  
9 nationwide mortgage licensing system and  
10 registry;

11 (2) The payment of fees to apply for, or renew licenses  
12 through the nationwide mortgage licensing system and  
13 registry;

14 (3) The setting or resetting as necessary of renewal or  
15 reporting dates; and

16 (4) Requirements for amending or surrendering a license or  
17 any other activity the commissioner deems necessary to  
18 participate in the nationwide mortgage licensing  
19 system and registry.

20 **§ -11 Nationwide mortgage licensing system; registry**

21 **information; challenge process.** The commissioner shall

22 establish a process whereby mortgage loan originators may



1 challenge information entered into the nationwide mortgage  
2 licensing system and registry by the commissioner.

3       **§ -12 Enforcement authorities; violations; penalties.**

4 (a) To ensure the effective supervision and enforcement of this  
5 chapter, the commissioner may, pursuant to chapter 91:

6       (1) Deny, suspend, revoke, condition, or decline to renew  
7           a license for a violation of this chapter, rules,  
8           order, or directive entered under this chapter;

9       (2) Deny, suspend, revoke, condition, or decline to renew  
10           a license if an applicant or licensed mortgage loan  
11           originator fails at any time to meet the requirements  
12           of section -6 or section -8, or withholds  
13           information or makes a material misstatement in an  
14           application for a license or renewal of a license;

15       (3) Order restitution against persons subject to this  
16           chapter for violations of this chapter;

17       (4) Impose fines on persons subject to this chapter  
18           pursuant to this section; and

19       (5) Issue orders or directives under this chapter as  
20           follows:

21           (A) Order or direct persons subject to this chapter  
22               to cease and desist from conducting business,



1 including immediate temporary orders to cease and  
2 desist;

3 (B) Order or direct persons subject to this chapter  
4 to cease any harmful activities or violations of  
5 this chapter, including immediate temporary  
6 orders to cease and desist;

7 (C) Enter immediate temporary orders to cease  
8 business under a license or interim license  
9 issued pursuant to the authority granted under  
10 this chapter if the commissioner determines that  
11 the license was erroneously granted or the  
12 licensee is currently in violation of this  
13 chapter; or

14 (D) Order or direct any other affirmative action as  
15 the commissioner deems necessary.

16 (b) The commissioner may impose a civil penalty on a  
17 mortgage loan originator or person subject to this chapter, if  
18 the commissioner finds on the record after notice and  
19 opportunity for hearing that the mortgage loan originator or  
20 person subject to this chapter has violated or failed to comply  
21 with any requirement of this chapter or any regulation



1 prescribed by the commissioner under this chapter or order  
2 issued under the authority of this chapter.

3 (c) The maximum penalty for each act or omission described  
4 in subsection (b) shall be \$25,000.

5 (d) Each violation or failure to comply with any directive  
6 or order of the commissioner is a separate and distinct  
7 violation.

8 **§ -13 Surety bond; required.** (a) Each mortgage loan  
9 originator shall be covered by a surety bond in accordance with  
10 this section. In the event that the mortgage loan originator is  
11 an employee or exclusive agent of a person subject to this  
12 chapter, the surety bond of the person may be used in lieu of  
13 the mortgage loan originator's surety bond.

14 (b) The surety bond shall provide coverage for each  
15 mortgage loan originator in an amount prescribed in subsection  
16 (b). The surety bond shall be in a form as prescribed by the  
17 commissioner. The commissioner may adopt rules with respect to  
18 the requirements for the surety bonds necessary to accomplish  
19 the purposes of this chapter.

20 (c) The penal sum of the surety bond shall be maintained  
21 in an amount that reflects the dollar amount of loans originated  
22 as determined by the commissioner.



1 (d) When an action is commenced on a licensee's bond the  
2 commissioner may require the filing of a new bond.

3 (e) Immediately upon recovery of any action on the bond  
4 the commissioner may require the filing of a new bond.

5 **§ -14 Confidentiality.** (a) Except as otherwise  
6 provided in Public Law 110-289, Section 1512, the requirements  
7 under any federal law regarding the privacy or confidentiality  
8 of any information or material provided to the Nationwide  
9 Mortgage Licensing System and Registry, and any privilege  
10 arising under federal or state law, including the rules of any  
11 federal or state court, with respect to the information or  
12 material, shall continue to apply to the information or material  
13 after the information or material has been disclosed to the  
14 nationwide mortgage licensing system and registry. The  
15 information and material may be shared with all state and  
16 federal regulatory officials with mortgage industry oversight  
17 authority without the loss of privilege or the loss of  
18 confidentiality protections provided by federal or state law.

19 (b) For these purposes, the commissioner is authorized to  
20 enter into agreements or sharing arrangements with other  
21 governmental agencies, the Conference of State Bank Supervisors,  
22 the American Association of Residential Mortgage Regulators or



1 other associations representing governmental agencies as  
2 established by rule or order of the commissioner.

3 (c) Information or material that is subject to a privilege  
4 or confidentiality under subsection (a) shall not be subject to:

5 (1) Disclosure under any federal or state law governing  
6 the disclosure to the public of information held by an  
7 officer or an agency of the federal government or a  
8 state; or

9 (2) Subpoena or discovery, or admission into evidence, in  
10 any private civil action or administrative process,  
11 unless with respect to any privilege held by the  
12 nationwide mortgage licensing system and registry with  
13 respect to the information or material, the person to  
14 whom the information or material pertains waives, in  
15 whole or in part, that privilege.

16 (d) Notwithstanding chapter 92F, the examination process  
17 and related information and documents, including the reports of  
18 examination, are confidential and are not subject to discovery  
19 or disclosure in civil or criminal lawsuits.

20 (e) Notwithstanding any law to the contrary, the  
21 disclosure of confidential supervisory information or any  
22 information or material described in subsection (a) that is



1 inconsistent with subsection (a) shall be superseded by the  
2 requirements of this section.

3 (f) This section shall not apply to information or  
4 material relating to the employment history of, and publicly  
5 adjudicated disciplinary and enforcement actions against,  
6 mortgage loan originators that is included in the nationwide  
7 mortgage licensing system and registry for access by the public.

8 **§ -15 Investigation and examination authority.** (a) In  
9 addition to any other authority under this chapter, the  
10 commissioner shall have the authority to conduct investigations  
11 and examinations, The commissioner may access, receive and use  
12 any books, accounts, records, files, documents, information or  
13 evidence including but not limited to:

- 14 (1) Criminal, civil, and administrative history  
15 information, including nonconviction data as in  
16 chapter 853;
- 17 (2) Personal history and experience information including  
18 independent credit reports obtained from a consumer  
19 reporting agency described in section 603(p) of the  
20 Fair Credit Reporting Act; and
- 21 (3) Any other documents, information, or evidence the  
22 commissioner deems relevant to the inquiry or



1 investigation regardless of the location, possession,  
2 control or custody of the documents, information, or  
3 evidence.

4 (b) For the purposes of investigating violations or  
5 complaints arising under this chapter, or for the purposes of  
6 examination, the commissioner may review, investigate, or  
7 examine any licensed mortgage loan originator, individual, or  
8 person subject to this chapter, as often as necessary to carry  
9 out the purposes of this chapter. The commissioner may direct,  
10 subpoena, or order the attendance of, and examine under oath all  
11 persons whose testimony may be required about the loans or the  
12 business or subject matter of any examination or investigation,  
13 and may direct, subpoena, or order the person to produce books,  
14 accounts, records, files, and any other documents the  
15 commissioner deems relevant to the inquiry.

16 (c) Each licensed mortgage loan originator, individual or  
17 person subject to this chapter shall provide to the commissioner  
18 upon request, the books and records relating to the operations  
19 of the licensee, individual, or person subject to this chapter.  
20 The commissioner shall have access to the books and records and  
21 interview the officers, principals, mortgage loan originators,  
22 employees, independent contractors, agents, and customers of the



1 licensed mortgage loan originator, individual, or person subject  
2 to this chapter concerning their business.

3 (d) Each licensed mortgage loan originator, individual, or  
4 person subject to this chapter shall make or compile reports or  
5 prepare other information as directed by the commissioner to  
6 carry out the purposes of this section, including:

7 (1) Accounting compilations;

8 (2) Information lists and data concerning loan  
9 transactions in a format prescribed by the  
10 commissioner; or

11 (3) Other information deemed necessary to carry out the  
12 purposes of this section.

13 (e) The commissioner may charge an examination fee based  
14 upon the cost per hour per examiner for all mortgage loan  
15 originators examined by the commissioner or the commissioner's  
16 staff. The hourly fee shall be \$40 or an amount as the  
17 commissioner shall establish by rule pursuant to chapter 91.

18 **§ -16 Written agreements.** For any transaction between  
19 a mortgage loan originator and a borrower, the following  
20 requirements shall apply:

21 (1) A mortgage loan originator shall comply with all  
22 provisions of the Real Estate Settlement Procedures



1 Act, the Truth in Lending Act, and the Equal Credit  
2 Opportunity Act, as those laws currently exist or as  
3 they may be amended;

4 (2) Any written commitment letter to make a residential  
5 mortgage loan with specified terms, including loan  
6 amount, interest rate, points, and payment terms that  
7 is issued by a mortgage loan originator and accepted  
8 by a borrower, shall be honored by the mortgage loan  
9 originator if the borrower has completely satisfied  
10 all of the conditions of the commitment in a timely  
11 manner and prior to the specified expiration date of  
12 the commitment. A written commitment letter shall  
13 specify the conditions precedent to closing the  
14 residential mortgage loan and the lender that has the  
15 ultimate authority to fund and close the residential  
16 mortgage loan;

17 (3) Within three business days of receipt of a borrower's  
18 completed residential mortgage loan application by the  
19 licensee, and before the borrower gives the mortgage  
20 loan originator any moneys except for an application  
21 fee, the mortgage loan originator shall sign a  
22 mortgage brokerage agreement with the borrower. The



1 mortgage brokerage agreement shall be with the person  
2 employing the mortgage loan originator or the mortgage  
3 loan originator if the mortgage loan originator is not  
4 an employee. The mortgage brokerage agreement shall  
5 be in writing and signed and dated by both the  
6 borrower and the mortgage loan originator. The  
7 mortgage brokerage agreement shall include a clear and  
8 conspicuous statement:

9 (A) Explaining that a copy shall be made available  
10 upon request, to the borrower or the borrower's  
11 attorney for review prior to signing;

12 (B) Explaining whether the mortgage loan originator  
13 is a fiduciary for the borrower;

14 (C) Explaining the nature of the mortgage loan  
15 originator's compensation, and if the mortgage  
16 loan originator is an employee, explaining the  
17 compensation of the person that the mortgage loan  
18 originator is employed by, and whether the  
19 mortgage loan originator may receive compensation  
20 from the borrower, the lender, or both;

21 (D) Describing the services the mortgage loan  
22 originator will perform for the borrower;



1 (E) Setting forth the conditions under which the  
 2 borrower is obligated to pay fees to the mortgage  
 3 loan originator, the manner in which the borrower  
 4 may cancel the mortgage brokerage agreement, the  
 5 borrower's liabilities for fees and costs, and  
 6 the mortgage loan originator's contact  
 7 information for dispute resolution; and

8 (F) Explaining that, if the mortgage loan originator  
 9 makes materially false or misleading statements  
 10 or omissions in the mortgage brokerage agreement,  
 11 the borrower, upon written notice, may void the  
 12 mortgage brokerage agreement and recover moneys  
 13 paid to the mortgage loan originator by the  
 14 borrower for which no services have been  
 15 performed.

16 A copy of the fully signed mortgage brokerage agreement  
 17 shall be given to the borrower by the mortgage loan originator  
 18 immediately after signing the mortgage brokerage agreement.

19 **§ -17 Prohibited practices.** It shall be a violation of  
 20 this chapter for a mortgage loan originator to:



- 1           (1) Make a false promise likely to influence, defraud, or  
2           mislead a borrower or lender, or to defraud any  
3           person;
- 4           (2) Pursue a pattern or practice of making false promises,  
5           including through an agent, mortgage loan originator,  
6           advertising, or otherwise;
- 7           (3) Misrepresent or conceal any material fact with respect  
8           to any residential mortgage loan transaction resulting  
9           in injury to any party;
- 10          (4) Fail to disburse funds in accordance with an  
11          agreement, or fail to account or deliver to any person  
12          any personal property including money, funds, a  
13          deposit, a check or draft, a mortgage or other  
14          document or thing of value that has come into the  
15          mortgage loan originator's hands and that is not the  
16          mortgage loan originator's property or that the  
17          mortgage loan originator is not, at law or equity,  
18          entitled to retain, and at the time that has been  
19          agreed upon, or is required by law, or, in the absence  
20          of a fixed time, upon demand by the person entitled to  
21          the accounting or delivery;



- 1 (5) Fail to place in escrow, within a reasonable time upon  
2 receipt, any money, fund, deposit, check, or draft,  
3 entrusted to the mortgage loan originator by any  
4 person dealing with the mortgage loan originator  
5 pursuant to a written agreement, or to deposit the  
6 funds in a bank account maintained by the mortgage  
7 loan originator in a bank located, and doing business  
8 in the state, wherein the funds are kept until  
9 disbursement is authorized;
- 10 (6) Deliver a misleading or deceptive communication or  
11 advertising, whether written, electronic, or oral,  
12 when marketing or soliciting a residential mortgage  
13 loan. A communication or advertisement that uses the  
14 name or trademark of a financial institution, as  
15 defined in section 412:1-109, or its affiliates or  
16 subsidiaries, or infers that the communication or  
17 advertisement is from, endorsed by, is related to, or  
18 is the responsibility of the financial institution is  
19 a misleading or deceptive communication. Advertising  
20 that a specific interest rate, points or other  
21 financial terms are available when either the rates,



- 1 points or financial terms are not actually available  
2 is a misleading or deceptive communication;
- 3 (7) Solicit or arrange for a residential mortgage loan or  
4 engage in the activity of a mortgage loan originator  
5 as a direct result of arranging or soliciting a  
6 residential mortgage loan at the dwelling of a  
7 borrower without a prearranged appointment initiated  
8 by and at the invitation of the borrower;
- 9 (8) Fill in or complete, without the consent of the  
10 borrower, any blank on a residential mortgage loan  
11 application that requests material information,  
12 including financial information;
- 13 (9) Fill in or complete, without the consent of the  
14 borrower, any blank on any instrument evidencing or  
15 securing the residential mortgage loan, which blank  
16 relates to the amount, interest rate, or monthly  
17 payment of the residential mortgage loan;
- 18 (10) Make a payment, directly or indirectly, of any kind,  
19 to any appraiser licensed or certified under chapter  
20 466K to influence the valuation of the residential  
21 real property that will secure a residential mortgage  
22 loan;



- 1 (11) Condition compensation of an appraiser on establishing  
2 a certain value for a residential real property; or  
3 (12) Fail to comply with this chapter or any order or rule  
4 made under the authority of this chapter.

5 **§ -18 Powers of commissioner.** The commissioner may  
6 adopt rules pursuant to chapter 91 as the commissioner deems  
7 necessary for the administration of this chapter.

8 In addition to any other powers provided by law, the  
9 commissioner may:

- 10 (1) Administer and enforce the provisions and requirements  
11 of this chapter;  
12 (2) Adopt, amend, or repeal rules and issue declaratory  
13 rulings or informal nonbinding interpretations;  
14 (3) Develop requirements for licensure through rules,  
15 including establishing the content of the written  
16 tests required under section -7;  
17 (4) Investigate and conduct hearings regarding any  
18 violation of this chapter or any rule or order of, or  
19 agreement with, the commissioner;  
20 (5) Create fact-finding committees that may make  
21 recommendations to the commissioner for the  
22 commissioner's deliberations;



- 1           (6) Require an applicant or any of its officers,  
2           directors, employees, partners, members, managers, and  
3           agents to disclose their relevant criminal history and  
4           request a criminal history record check in accordance  
5           with chapter 846;
- 6           (7) Contract with qualified persons, including  
7           investigators who may be exempt from chapter 76 and  
8           who shall assist the commissioner in exercising the  
9           commissioner's powers and duties;
- 10          (8) Require that all fees, fines, and charges collected by  
11          the commissioner under this chapter be deposited into  
12          the compliance resolution fund established pursuant to  
13          section 26-9(o);
- 14          (9) Subpoena witnesses and documents, administer oaths,  
15          and receive affidavits and oral testimony, including  
16          telephonic communications, and do any and all things  
17          necessary or incidental to the exercise of the  
18          commissioner's power and duties, including the  
19          authority to conduct contested case proceedings under  
20          chapter 91; and
- 21          (10) Require a mortgage loan originator to comply with any  
22          rule, guidance, guideline, statement, supervisory



1 policy or any similar proclamation issued is adopted  
2 by the Federal Deposit Insurance Corporation to the  
3 same extent and in the same manner as a bank chartered  
4 by the State or in the alternative, any policy  
5 position of the Conference of State Bank Supervisors.

6 **§ -19 Fees and costs.** (a) Each application for a  
7 mortgage originator license shall be accompanied by an  
8 application fee of \$ , or an amount as the commissioner  
9 shall establish by rule pursuant to chapter 91.

10 (b) Upon obtaining approval for a license, an initial  
11 license fee shall be paid to the commissioner in the amount of  
12 \$ or such other amount as the commissioner shall establish  
13 by rule pursuant to chapter 91.

14 (c) By December 31 of each year, every mortgage broker and  
15 loan originator licensed under this chapter shall pay an annual  
16 license renewal fee of \$ , or other amount as the  
17 commissioner shall establish by rule pursuant to chapter 91.

18 **§ -20 Elders.** (a) Any person who, in the course of  
19 engaging in conduct that requires a license under this chapter,  
20 commits a violation of this chapter or the rules adopted  
21 pursuant to this chapter, and the violation includes conduct  
22 that is directed towards, targets, or is committed against an



1 elder, may be fined an amount not to exceed \$10,000 for each  
2 violation in addition to any other fine or penalty assessed  
3 against that person.

4 (b) As used in this section, "elder" means a consumer who  
5 is sixty-two years of age or older."

6 SECTION 2. Section 412:3-502, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§412:3-502 Foreign financial institution.** No foreign  
9 financial institution shall receive deposits, lend money, or pay  
10 checks, negotiate orders of withdrawal or share drafts from any  
11 principal office, branch, agency, automatic teller machine, or  
12 other location in this State, unless expressly authorized by  
13 this chapter, other laws of this [~~State,~~] state, or federal law;  
14 provided that nothing in this section shall prohibit any foreign  
15 financial institution from participating in the disbursement of  
16 cash through an automatic teller machine network or from  
17 operating from any location in this [~~State~~] state as a mortgage  
18 broker licensed under chapter [~~454,~~] , or as a real estate  
19 collection servicing agent."

20 SECTION 3. Section 454-3, Hawaii Revised Statutes, is  
21 amended by amending subsection (e) to read as follows:



1           "(e) All fees shall be established and adopted by the  
2 director in accordance with chapter 91 and shall be deposited  
3 into the compliance resolution fund established pursuant to  
4 section 26-9(o) [-]; provided that, to establish regulatory  
5 practices for residential mortgage lending, a surcharge of \$400  
6 shall be charged to every mortgage broker that shall be due on  
7 December 31, 2009, and a surcharge of \$100 shall be charged to  
8 every mortgage solicitor that shall be due on December 31, 2009.  
9 Failure of any mortgage broker or mortgage solicitor to pay the  
10 biennial renewal fee on or before December 31 of an even-  
11 numbered year or the surcharge shall constitute an automatic  
12 forfeiture of the license. The forfeited license may be  
13 restored; provided that application for restoration is made  
14 within six months of the forfeiture and a penalty fee is paid in  
15 addition to the delinquent license fee. A licensee who fails to  
16 restore a license as provided in this subsection shall apply as  
17 a new applicant."

18           SECTION 4. Section 477E-2, Hawaii Revised Statutes, is  
19 amended by amending the definition of "creditor" to read as  
20 follows:

21           "Creditor" means any bank; savings and loan association;  
22 trust company; financial services loan company; credit union;



1 mortgage banker, [~~broker, or solicitor,~~] mortgage loan  
2 originator; pawnbroker; mutual benefit society or fraternal  
3 benefit society; debt adjuster; the issuer of a credit card as  
4 defined in section 708-800; any person who initiates, extends,  
5 renews, or continues loans of money or credit; any person who  
6 regularly arranges for the initiation, extension, renewal, or  
7 continuation of a loan of money or credit; or any assignee of an  
8 original creditor who participates in the decision to grant,  
9 extend, renew, or to continue [~~such~~] a loan of money or credit."

10 SECTION 5. Section 667-21, Hawaii Revised Statutes, is  
11 amended by amending subsection (b) to read as follows:

12 "(b) As used in this part:

13 "Borrower" means the borrower, maker, cosigner, or  
14 guarantor under a mortgage agreement.

15 "Foreclosing mortgagee" means the mortgagee that intends to  
16 conduct a power of sale foreclosure; provided that the mortgagee  
17 is a federally insured bank, a federally insured savings and  
18 loan association, a federally insured savings bank, a depository  
19 financial services loan company, a nondepository financial  
20 services loan company, a credit union insured by the National  
21 Credit Union Administration, a bank holding company, a foreign



1 lender as defined in section 207-11, or an institutional  
2 investor [~~as defined in section 454-1~~].

3 "Mailed" means to be sent by regular mail, postage prepaid,  
4 and by certified, registered, or express mail, postage prepaid  
5 and return receipt requested.

6 "Mortgage" means a mortgage, security agreement, or other  
7 document under which property is mortgaged, encumbered, pledged,  
8 or otherwise rendered subject to a lien for the purpose of  
9 securing the payment of money or the performance of an  
10 obligation.

11 "Mortgage agreement" includes the mortgage, the note or  
12 debt document, or any document amending any of the foregoing.

13 "Mortgaged property" means the property that is subject to  
14 the lien of the mortgage.

15 "Mortgagee" means the current holder of record of the  
16 mortgagee's or the lender's interest under the mortgage, or the  
17 current mortgagee's or lender's duly authorized agent.

18 "Mortgagor" means the mortgagor or borrower named in the  
19 mortgage and, unless the context otherwise indicates, includes  
20 the current owner of record of the mortgaged property whose  
21 interest is subject to the mortgage.



1 "Open house" means a public showing of the mortgaged  
2 property during a scheduled time period.

3 "Power of sale" or "power of sale foreclosure" means a  
4 nonjudicial foreclosure under this part when the mortgage  
5 contains, authorizes, permits, or provides for a power of sale,  
6 a power of sale foreclosure, a power of sale remedy, or a  
7 nonjudicial foreclosure.

8 "Property" means property, [(-)real, personal, or mixed(+)],  
9 an interest in property, [(-)including fee simple, leasehold,  
10 life estate, reversionary interest, and any other estate under  
11 applicable law(+)], or other interests that can be subject to the  
12 lien of a mortgage.

13 "Record" or "recorded" means a document is recorded or  
14 filed with the office of the assistant registrar of the land  
15 court under chapter 501 or recorded with the registrar of  
16 conveyances under chapter 502, or both, as applicable.

17 "Served" means to have service of the notice of default  
18 made in accordance with the service of process or the service of  
19 summons under the Hawaii rules of civil procedure, and under  
20 sections 634-35 and 634-36."

21 SECTION 6. Section 846-2.7, Hawaii Revised Statutes, is  
22 amended by amending subsection (b) to read as follows:



- 1           (b) Criminal history record checks may be conducted by:
- 2           (1) The department of health on operators of adult foster  
3           homes or developmental disabilities domiciliary homes  
4           and their employees, as provided by section 333F-22;
- 5           (2) The department of health on prospective employees,  
6           persons seeking to serve as providers, or  
7           subcontractors in positions that place them in direct  
8           contact with clients when providing non-witnessed  
9           direct mental health services as provided by section  
10          321-171.5;
- 11          (3) The department of health on all applicants for  
12          licensure for, operators for, and prospective  
13          employees, and volunteers at one or more of the  
14          following: skilled nursing facility, intermediate  
15          care facility, adult residential care home, expanded  
16          adult residential care home, assisted living facility,  
17          home health agency, hospice, adult day health center,  
18          special treatment facility, therapeutic living  
19          program, intermediate care facility for the mentally  
20          retarded, hospital, rural health center and  
21          rehabilitation agency, and, in the case of any of the  
22          above-related facilities operating in a private



- 1 residence, on any adult living in the facility other  
2 than the client as provided by section 321-15.2;
- 3 (4) The department of education on employees, prospective  
4 employees, and teacher trainees in any public school  
5 in positions that necessitate close proximity to  
6 children as provided by section 302A-601.5;
- 7 (5) The counties on employees and prospective employees  
8 who may be in positions that place them in close  
9 proximity to children in recreation or child care  
10 programs and services;
- 11 (6) The county liquor commissions on applicants for liquor  
12 licenses as provided by section 281-53.5;
- 13 (7) The department of human services on operators and  
14 employees of child caring institutions, child placing  
15 organizations, and foster boarding homes as provided  
16 by section 346-17;
- 17 (8) The department of human services on prospective  
18 adoptive parents as established under section 346-  
19 19.7;
- 20 (9) The department of human services on applicants to  
21 operate child care facilities, prospective employees  
22 of the applicant, and new employees of the provider



- 1 after registration or licensure as provided by section  
2 346-154;
- 3 (10) The department of human services on persons exempt  
4 pursuant to section 346-152 to be eligible to provide  
5 child care and receive child care subsidies as  
6 provided by section 346-152.5;
- 7 (11) The department of human services on operators and  
8 employees of home and community-based case management  
9 agencies and operators and other adults, except for  
10 adults in care, residing in foster family homes as  
11 provided by section 346-335;
- 12 (12) The department of human services on staff members of  
13 the Hawaii youth correctional facility as provided by  
14 section 352-5.5;
- 15 (13) The department of human services on employees,  
16 prospective employees, and volunteers of contracted  
17 providers and subcontractors in positions that place  
18 them in close proximity to youth when providing  
19 services on behalf of the office or the Hawaii youth  
20 correctional facility as provided by section 352D-4.3;
- 21 (14) The judiciary on employees and applicants at detention  
22 and shelter facilities as provided by section 571-34;



1 (15) The department of public safety on employees and  
2 prospective employees who are directly involved with  
3 the treatment and care of persons committed to a  
4 correctional facility or who possess police powers  
5 including the power of arrest as provided by section  
6 353C-5;

7 (16) The department of commerce and consumer affairs on  
8 applicants for private detective or private guard  
9 licensure as provided by section 463-9;

10 (17) Private schools and designated organizations on  
11 employees and prospective employees who may be in  
12 positions that necessitate close proximity to  
13 children; provided that private schools and designated  
14 organizations receive only indications of the states  
15 from which the national criminal history record  
16 information was provided as provided by section 302C-  
17 1;

18 (18) The public library system on employees and prospective  
19 employees whose positions place them in close  
20 proximity to children as provided by section 302A-  
21 601.5;



- 1           (19) The State or any of its branches, political  
2                   subdivisions, or agencies on applicants and employees  
3                   holding a position that has the same type of contact  
4                   with children, vulnerable adults, or persons committed  
5                   to a correctional facility as other public employees  
6                   who hold positions that are authorized by law to  
7                   require criminal history record checks as a condition  
8                   of employment as provided by section 78-2.7;
- 9           (20) The department of human services on licensed adult day  
10                   care center operators, employees, new employees,  
11                   subcontracted service providers and their employees,  
12                   and adult volunteers as provided by section 346-97;
- 13           (21) The department of human services on purchase of  
14                   service contracted and subcontracted service providers  
15                   and their employees serving clients of the adult and  
16                   community care services branch, as provided by section  
17                   346-97;
- 18           (22) The department of human services on foster grandparent  
19                   program, retired and senior volunteer program, senior  
20                   companion program, and respite companion program  
21                   participants as provided by section 346-97;



1           (23) The department of human services on contracted and  
2                   subcontracted service providers and their current and  
3                   prospective employees that provide home and community-  
4                   based services under Section 1915(c) of the Social  
5                   Security Act (Title 42 United States Code Section  
6                   1396n(c)), or under any other applicable section or  
7                   sections of the Social Security Act for the purposes  
8                   of providing home and community-based services, as  
9                   provided by section 346-97;

10          (24) The department of commerce and consumer affairs on  
11                   proposed directors and executive officers of a bank,  
12                   savings bank, savings and loan association, trust  
13                   company, and depository financial services loan  
14                   company as provided by section 412:3-201;

15          (25) The department of commerce and consumer affairs on  
16                   proposed directors and executive officers of a  
17                   nondepository financial services loan company as  
18                   provided by section 412:3-301;

19          (26) The department of commerce and consumer affairs on the  
20                   original chartering applicants and proposed executive  
21                   officers of a credit union as provided by section  
22                   412:10-103;



1 ~~[(27)]~~ The department of commerce and consumer affairs on:

2 (A) Each principal of every non-corporate applicant  
3 for a money transmitter license; and

4 (B) The executive officers, key shareholders, and  
5 managers in charge of a money transmitter's  
6 activities of every corporate applicant for a  
7 money transmitter license,

8 as provided by section 489D-9; ~~[and]~~;

9 (28) The department of commerce and consumer affairs on the  
10 applicant for a mortgage loan originator's license as  
11 provided by section -10 or the applicant's officers,  
12 directors, partners, members, managers, employees, or  
13 agents;

14 ~~[(28)]~~ (29) Any other organization, entity, or the State, its  
15 branches, political subdivisions, or agencies as may  
16 be authorized by state law."

17 SECTION 7. Chapter 454, Hawaii Revised Statutes, is  
18 repealed.

19 SECTION 8. A mortgage broker or mortgage solicitor  
20 licensed under chapter 454, Hawaii Revised Statutes, on July 1,  
21 2009, shall not be required to be re-licensed under this Act  
22 until such later date approved by the Secretary of the United



1 States Department of Housing and Urban Development, pursuant to  
2 the authority granted under Public Law 110-289, Section 1508(a).

3 SECTION 9. There is appropriated out of the compliance  
4 resolution fund established pursuant to section 26-9(o) the sum  
5 of \$ or so much thereof as may be necessary for fiscal  
6 year 2009-2010 to carry out the purposes of this Act.

7 The sum appropriated shall be expended by the department of  
8 commerce and consumer affairs for the purposes of this Act.

9 SECTION 10. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

11 SECTION 11. This Act shall take effect on January 1, 2020.



**Report Title:**

Mortgage Brokers

**Description:**

Allows the commissioner of financial institutions to regulate, license, examine, and enforce laws regulating mortgage brokers and loan originators. Repeals chapter 454. Effective 01/01/2020. (HB1438 HD1)





LINDA LINGLE  
GOVERNOR  
JAMES R. AIONA, JR.  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: 586-2850  
Fax Number: 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION

THE TWENTY-FIFTH STATE LEGISLATURE  
REGULAR SESSION OF 2009

Monday, March 23, 2009  
10:00 a.m.

TESTIMONY ON H.B. NO. 1438, H.D.1 - RELATING TO MORTGAGE LOAN  
ORIGINATORS

THE HONORABLE ROSALYN H. BAKER, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

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, H.D. 1. 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 Hawaii'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 who work for federally regulated depository institutions – e.g., banks, S&Ls etc. – which will provide the "even 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 appears untimely, arguably irrelevant, and a questionable use of State funds in the midst of a significant economic slowdown.

The stated purpose of the bill is to allow the Commissioner to regulate, license, and examine mortgage brokers and loan originators, to enforce laws pertaining to those professions, 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:

**Initial Funding Expenses** – While Department programs, once established, have historically been self sustaining, initial funds required to start a new program obviously need to come from sources outside the “to-be-established” program. Estimates show an initial cost of \$470,000 to mobilize for program implementation (e.g., hire initial staff, conduct training, purchase furniture, fixtures and equipment, establish the requisite administrative infrastructure, etc.). That \$470,000 does 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. This bill fails to address these and related initial program

implementation costs, for which provision must be made. In addition, it should be noted that a SAFE Act compliant State program, if established, would be expensive for the significantly diminished number of active mortgage loan originators that would be regulated by such a program. We note here that, according to records of the Department's Professional and Vocational Licensing Division, of 688 licensed mortgage brokers eligible to renew their licenses by the December 31, 2008 year end renewal deadline under HRS Chapter 454, only 378 had actually renewed by year end, and of 5,987 mortgage solicitors eligible to renew their licenses at the same time, only 1,693 solicitors in fact renewed by the deadline.

**Functionality** – While House Bill No. 1438, H.D. 1 has been touted as delivering a SAFE Act compliant State statute, it does not, for several critical reasons. First and foremost, it is not functional. States that have enacted and implemented SAFE Act compliant state statutes have done so by providing for the licensing of both mortgage brokers – that is, those entities that employ mortgage loan originators – as well as the mortgage loan originators themselves. The regulatory statute being proposed by Senate Bill No. 1438, H.D. 1 neglects that critical element and thus, if passed, would deliver a cumbersome, expensive, and possibly unworkable framework for regulating the mortgage brokerage industry in Hawaii. Other components of the bill – its title, for example – do not comply with the language of federal Public Law 110-289, Title V –

S.A.F.E. Mortgage Licensing Act and thus may arguably not pass HUD scrutiny when reviewed by that federal agency for SAFE Act compliance.

**Deadlines** – Adopting a SAFE Act compliant 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, appear realistically achievable.

**Staffing** – In order to implement a SAFE Act compliant State statute, the Department would be required to hire up to five new staff members in order to administer the program in accordance with federal standards. The new staff would be particularly specialized and an extended schedule of selective outside recruitment would likely be needed to fill the majority of the positions. This staffing plan, while less costly than that projected in the 2008 Administration bill which was based on 6,000+ licensees, will still necessitate higher fees to cover ongoing fixed costs for the diminished community of mortgage originators than the current HRS Chapter 454 fee

schedule. We estimate ongoing annual costs for these new staff members would be approximately \$375,000.

**Relevance** – The issues addressed by the proposal are no longer immediate. Lenders, and thus brokers, no longer offer the dangerous “sub-prime”, “non-traditional”, pay option, teaser rate mortgage loans. 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.

**Alternatives** – Since the proposed measure clearly fails on multiple levels 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 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 debate over what is or is not appropriate as far as a State mortgage broker statute is concerned;

- result in 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 program that will benefit both regulated mortgage loan originators as well as Hawaii's consumers.

The Department therefore recommends that your committee hold this unnecessary measure, allowing Hawaii's consumers, mortgage brokers and mortgage lenders to benefit from a professionally staffed, federal regulatory and supervisory initiative, while at the same time saving Hawaii's taxpayers from initially 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 which 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, HD 1 Relating to Mortgage Loan Originators**  
Senate Committee on Commerce and Consumer Protection

March 23, 2009  
Room 229

10:00 a.m.

---

The Office of Hawaiian Affairs supports the purpose and intent of HB 1438 , HD 1.

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.

# 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

March 23, 2009

Senator Rosalyn H. Baker, Chair  
and members of the Senate Committee on Commerce and Consumer Protection  
Hawaii State Capitol  
Honolulu, Hawaii 96813

Re: **House Bill 1438, H.D. 1 (Mortgage Loan Originators)**  
**Hearing Date/Time: Monday, March 23, 2009, 10:00 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 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 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 110-289). 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 are placed 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 ("NMLS").

2. The other category is an individual who is a loan originator but is not an employee of a depository institution. That individual will need to be licensed by a state or by HUD and registered with the NMLS. 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

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 2

Revised Statutes (“HRS”).

Another example of a “licensed loan originator” is an employee of a non-depository financial services loan company. Financial services loan companies are Hawaii financial institutions under the Code of Financial Institutions (HRS Chapter 412). Financial services loan companies make mortgage loans and personal loans just like other Hawaii financial institutions under HRS Chapter 412. It should be noted that HRS Chapter 454, relating to mortgage brokers and solicitors, does not currently apply to employees of financial services loan companies which are exempt from HRS Chapter 454. 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, i.e. by July 31, 2009, Hawaii and other states can 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 (“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.

**Comparison between this Bill and Senate Bill 1218, S.D. 2:**

S.B. 1218 (Mortgage Loan Originators) as introduced, is identical to this Bill as introduced. Both bills generally followed CSBS/AARMR model state legislation. But there were about a half dozen substantive differences from the CSBS/AARMR model state legislation. The author of the bills omitted substantive provisions which were in the CSBS/AARMR model state legislation. And the author of the bills added substantive provisions which were not in the CSBS/AARMR model state legislation. There were also typographical errors in the bills.

For S.B. 1218, the Senate made revisions in S.D. 1 by putting in 5 provisions from the CSBS/AARMR model state legislation which had been omitted by the author of that bill. But the Senate left in certain additions made by the bill’s author which are not in the CSBS/AARMR model state legislation. Those additions are described below. S.D. 2 put in a “defective” effective date.

For this Bill, in the interest of continued discussion, the House didn’t make any changes except to put in a “defective” effective date in H.D. 1.

**How this Bill should be improved:**

Section 1 of this Bill from pages 1 through 38 contain provisions to implement the SAFE Act’s registration and licensing provision for mortgage loan originators who are not employed by

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 3

a depository institution. Much, but not all, of what is in the first 38 pages of this 51 page bill is identical to the CSBS/AARMR model state legislation.

Regarding the CSBS/AARMR model state legislation, HUD said on January 5, 2009:

“HUD has reviewed this model legislation and finds that it meets the minimum requirements of the SAFE Act. **State legislation that follows the provisions of the model state law will not be determined by HUD to be noncompliant with SAFE Act.**”  
(Emphasis added.)

For that reason, we support the portions of this Bill which are identical to the CSBS/AARMR model state legislation. We oppose the portions that are not in the CSBS/AARMR model state legislation. The portions that are not in the model state legislation . . . those “add ons” by the author of this Bill. . . can be dealt with in a later session since we are unaware of any provision in the SAFE Act or in any HUD rule that prevents amendments once the basic state law is in place.

Here are our suggestions for improving this Bill:

1. Because the S.D. 2 version of S.B. 1218 is closer to the CSBS/AARMR model state legislation than this Bill, we recommend that you replace the contents of this Bill with the S.D. 2 version of S.B. 1218, but that you also make changes to the S.D. 2 version as described below. In my testimony, I will refer to the S.D. 2 version of S.B. 1218 as “S.D. 2”.

2. In S.D. 2, the title of the new chapter is “Mortgage Brokers and Loan Originators” (see page 1, line 5). Yet there is no definition of “mortgage brokers” anywhere nor does this new chapter purport to register or license “mortgage brokers”. Only “mortgage loan originators” are covered. The CSBS/AARMR model state legislation suggested using the title of “[State] Secure and Fair Enforcement of Mortgage Licensing Act of 2009”. We recommend that the title of the new chapter read: “Hawaii Secure and Fair Enforcement of Mortgage Licensing Act.”

3. There are some people within the banking community who are advocating the passage of this Bill as drafted even though bank employees who are mortgage loan originators would be totally exempt from this Bill under Sec. -2. In fact, the author of both this Bill and S.B. 1218 is an officer of a Hawaii state bank who has been submitting testimony on behalf of the Hawaii Bankers Association in “strong support” of both bills.

On the other hand, non-depository financial services loan companies (the members of the Hawaii Financial Services Association) have a sincere and genuine interest in this Bill because they employ mortgage loan originators who would be covered by this Bill.

Under this Bill, the mortgage loan originators working for non-depository financial services loan companies are subject to the prohibited practices provisions in this Bill. However, under this Bill, the mortgage loan originators working for state banks would not be subject to the same prohibited practices.

As a matter of public policy, to protect Hawaii’s consumers, all mortgage loan originators, whether or not employed by a bank or other depository institution, must be subject to the same prohibited practices listed in Sec. -18 beginning on page 33 of S.D. 2. Even if a bank’s mortgage loan originator employees are to be exempt from the licensing and continuing education provisions

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 4

of this Bill, to protect consumers, a bank's mortgage loan originator employees must be made to comply with the same prohibited practices provisions that others must comply with. Prohibited practices must apply equally to the extent possible to all mortgage loan originators regardless of their employer.

The federal SAFE Act does not preempt or prohibit states from establishing prohibited practices that apply to all mortgage loan originators.

The Hawaii Bankers Association's written testimony before the House Finance Committee on March 2, 2008 was in "strong support" of this Bill. On page 2 of their testimony, the Hawaii Bankers Association said that Section 17 of this Bill, which contains the prohibited practices:

"...is the section prohibiting fraudulent activity and basically is a: be honest, do not lie, cheat or steal provision. They are the heart of the anti-fraud provisions which are integral to one of the goals of the SAFE Act which is to promote consumer protection. ... **It is not a burden to comply with an "act honestly" provision.**" (Emphasis added.)

If, as the Hawaii Bankers Association says, it's not a burden for mortgage loan originators who are employed by financial services loan companies and by other companies to comply with the prohibited practices provision (i.e. the "act honestly" provision), it should not be a burden for a bank's mortgage loan originators to comply with an "act honestly" provision.

The SAFE Act, the CSBS/AARMR model state legislation, and this Bill focus on individuals ... and on not their employers. We have complete confidence in the honesty of Hawaii banks. But there have been publicized incidents in which individuals working for more than one bank committed dishonest acts such as stealing monies from elderly customers and were charged with embezzlement, bank fraud, theft or identity theft. It is not inconceivable that an individual mortgage loan originator working for a bank will act dishonestly. That is why prohibited practices ("act honestly" practices) should apply to all individuals who are mortgage loan originators regardless of their employer.

Accordingly, S.D. 2 should be revised by adding two references to mortgage loan originators in the Code of Financial Institutions, which is in HRS Chapter 412. Here is how the two revisions should read:

SECTION \_\_\_\_ . Section 412:1-109, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Mortgage loan originator" means an individual who for compensation or gain or in the expectation of compensation or gain:

- (1) Takes a residential mortgage loan application; or
- (2) Offers or negotiates terms of a residential mortgage loan."

SECTION \_\_\_\_ . Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 5

**“§412-\_\_\_\_\_ Mortgage loan originator employed by financial institution.**

A mortgage loan originator employed by a financial institution shall comply with the written agreements requirements in chapter -16 and shall not do any of the prohibited practices in chapter -18, provided that paragraphs (6), (8) and (19) of chapter -18 do not apply.”

4. S.D. 2 deviates from the CSBS/AARMR model state legislation in Sec. -18 which is the prohibited practices section.

To ensure that S.D. 2 follows the CSBS/AARMR model state legislation, Sec. -18 beginning on page 33 should only have the 14 prohibitions in the model state legislation. Those model prohibitions are in paragraphs (1) through (14) of Sec. -18. Paragraphs (15) through (19), which are not in the CSBS/AARMR model state legislation, should be removed. (Note: paragraph (19) already duplicates paragraph (8).)

One of the prohibited practices that is in S.D. 2, but not in the CSBS/AARMR model state legislation, is directed against individuals who are mortgage loan originators who deliver a misleading or deceptive communication. This is in paragraph (15). A portion of that paragraph relates to misusing the name or trademark of a financial institution. There is already a similar, though not identically worded, provision in the Code of Financial Institutions in HRS Sec. 412:2-606.5 which prohibits any “person” from misusing the name or trademark of a financial institution. Adding that in paragraph (15) is unnecessary. But there is nothing in the Code of Financial Institutions similar to the rest of paragraph (15) that prohibits individuals who are mortgage loan originators from delivering “a misleading or deceptive communication ... whether written, electronic, or oral, when ... soliciting a residential mortgage loan.”

There are three additional prohibited practices which are in S.D. 2, but which are not in the CSBS/AARMR model state legislation: paragraph (16) regarding soliciting mortgage loans without prearranged appointments, paragraph (17) regarding filling in blanks on a mortgage loan application, and paragraph (18) regarding filling in blanks in mortgage loan documents. These three prohibited practices are not in the Code of Financial Institutions.

Because the prohibited practices in paragraphs (15) through (18) are not in the Code of Financial Institutions, a bank’s mortgage loan originators wouldn’t be subject to these restrictions. Yet, these are the same restrictions that the Hawaii Bankers Association says would not be a burden to comply with for mortgage loan originators who don’t work for banks. For S.D. 2 to follow the CSBS/AARMR model state legislation, you need to delete these “add on” provisions.

Here is how the S.D. 2 should be revised in Sec. -18:

a. Correct a drafting error in paragraph (13) on page 35 to have the wording follow the CSBS/AARMR model state legislation:

“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 [owner;] insurer:”

b. Delete paragraphs (15) through (19) on pages 36 through 37 which are not in the CSBS/AARMR model state legislation. (Note: paragraph (19) already duplicates paragraph (8).) But if these provisions are left in S.D. 2, these provisions should apply to all mortgage loan originators including those who work for depository institutions covered by the Code of Financial Institutions.

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 6

5. The written agreements provision in Sec. -16 beginning on page 29 is not in the CSBS/AARMR model state legislation. While two of the three provisions are in the existing mortgage broker law (HRS Chapter 454), a third provision is taken from last year's failed mortgage broker bill. None of these provisions are in the Code of Financial Institutions.

To have S.D. 2 follow the CSBS/AARMR model state legislation, you need to delete the "add on" written agreements provisions in Sec. -16 beginning on page 29. In the alternative, you should revise Sec. -16 (written agreements) to mirror HRS Sec. 454-3.1 (written agreements) of the existing mortgage broker law. You should delete provision (3), which is not in HRS Sec. 454-3.1, and reword provision (2). This way, Sec. -16 will be identical to the existing HRS Sec. 454-3.1. Nothing more. Nothing less. If these provisions are left in S.D. 2, the Code of Financial Institutions should be amended to have these apply to all mortgage loan originators including those who work for depository institutions covered by the Code of Financial Institutions.

6. HRS Chapter 454 regulates mortgage brokers and solicitors. Entities which act as mortgage brokers and which employ mortgage solicitors are licensed under HRS Chapter 454. Those entities, as employers of mortgage solicitors, are currently subject to all the requirements of HRS Chapter 454 including bonds, prohibited acts, and penalties.

However, Section 8 on page 53 of S.D. 2 would completely repeal HRS Chapter 454. One consequence of this repeal is that entities which are mortgage brokers and which employ mortgage loan originators (i.e. mortgage solicitors) will not be licensed and will not be subject to any of the requirements in HRS Chapter 454 or any of the restrictions in this Bill. With the repeal, the entities which are mortgage brokers and which employ mortgage loan originators will be unregulated.

Repealing HRS Chapter 454 is not be in the best interest of consumer protection. For consumer protection purposes, there must continue to be a regulatory scheme for mortgage broker entities which employ mortgage loan originators. The federal SAFE Act does not preempt or prohibit states from regulating mortgage broker entities which employ mortgage loan originators.

Section 8 on page 53 of S.D. 2 needs to be removed so that HRS Chapter 454 is not repealed.

This situation is different for employers that are financial institutions, such as financial services loan companies and banks, which employ mortgage loan originators. These financial institutions are exempt from HRS Chapter 454 and should continue to be exempt from HRS Chapter 454 because they are, and will continue to be, regulated under the Code of Financial Institutions which is in HRS Chapter 412. (But, as stated above, all mortgage loan originators who work for financial institutions should be subject to the same prohibited practices in this Bill.)

To ensure that there isn't a duplicate regulatory scheme over individuals when you don't repeal HRS Chapter 454, and to ensure that mortgage broker entities continue to be licensed and regulated, we recommend the following amendment to S.D. 2:

SECTION \_\_\_\_ . §454-2, Hawaii Revised Statutes, is amended to read as follows:

**"§454-2 Exemptions.** This chapter does not apply to the following:

- (1) Banks, operating subsidiaries of a bank established and operating under section 412:5-203, trust companies, savings associations, pension trusts, credit unions,

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 7

insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;

- (2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney;
- (4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesperson;
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph, "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor;
- (6) Foreign lender as defined in section 207-11; and
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:
  - (A) The acts or conduct of a developer's authorized representative shall be deemed to be the acts or conduct of the developer for the purposes of section 454-4; and
  - (B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14[.];
- (8) An individual licensed as a mortgage loan originator under chapter . . .”

A recap of all of the above changes is attached to this testimony.

Thank you for considering our testimony.

  
MARVIN S.C. DANG

Attorney for Hawaii Financial Services Association

**RECAP OF EIGHT PROPOSED CHANGES TO H.B. 1438**  
**BY REFERENCING PROVISIONS IN S.B. 1218, S.D. 2**

1. Change the title of the new chapter from “Mortgage Brokers and Loan Originators” (see page 1, line 5) to “Hawaii Secure and Fair Enforcement of Mortgage Licensing Act.”

---

2. Add:

SECTION \_\_\_\_ . Section 412:1-109, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Mortgage loan originator” means an individual who for compensation or gain or in the expectation of compensation or gain:

(1) Takes a residential mortgage loan application; or

(2) Offers or negotiates terms of a residential mortgage loan.”

---

3. Add:

SECTION \_\_\_\_ . Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§412-\_\_\_\_\_ **Mortgage loan originator employed by financial institution.** A mortgage loan originator employed by a financial institution shall comply with the written agreements requirements in chapter -16 and shall not do any of the prohibited practices in chapter -18, provided that paragraphs (6), (8) and (19) of chapter -18 do not apply.”

---

4. Correct a drafting error in paragraph (13) on page 35 to make the wording consistent with the CSBS/AARMR model state legislation:

“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 [owner;] insurer; ”

---

5. Delete the prohibited practices in paragraphs (15) through (19) on pages 36 through 37 which are not in the CSBS/AARMR model state legislation. (Note that paragraph (19) already duplicates paragraph (8).)

---

(more)

6. Delete Sec. -16 (Written Agreements) beginning on page 29 which is not in the CSBS/AARMR model state legislation.

---

7. Remove Section 8 on page 53 so that HRS Chapter 454 is not repealed.

---

8. Add:

SECTION \_\_\_\_ . §454-2, Hawaii Revised Statutes, is amended to read as follows:

**“§454-2 Exemptions.** This chapter does not apply to the following:

- (1) Banks, operating subsidiaries of a bank established and operating under section 412:5-203, trust companies, savings associations, pension trusts, credit unions, insurance companies, financial services loan companies, or federally licensed small business investment companies, authorized under any law of this State or of the United States to do business in the State;
- (2) A person making or acquiring a mortgage loan with one's own funds for one's own investment without intent to resell the mortgage loan;
- (3) A person licensed to practice law in the State, not actively and principally engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as an attorney;
- (4) A person licensed as a real estate broker or salesperson in the State, not actively engaged in the business of negotiating loans secured by real property, when the person renders services in the course of the person's practice as a real estate broker or salesperson;
- (5) An institutional investor negotiating, entering into, or performing under a loan purchase agreement for its portfolio, for subsequent resale to other institutional investors, or for placement of the mortgages into pools or packaging them into mortgage-backed securities. As used in this paragraph, "loan purchase agreement" means an agreement or arrangement under which a bank, savings and loan, credit union, financial services loan company, or other financial institution registered to do business in the State of Hawaii agrees to sell mortgage loans or obtain funding therefor, with or without the transfer of servicing rights, to an institutional investor;
- (6) Foreign lender as defined in section 207-11; and
- (7) A person licensed under chapter 467 as a real estate broker or salesperson selling time share interests on behalf of a time share plan developer that is licensed as a mortgage broker under this chapter; provided that:
  - (A) The acts or conduct of a developer's authorized representative shall be deemed to

Senator Rosalyn H. Baker, Chair

and members of the Senate Committee on Commerce and Consumer Protection

March 23, 2009

Page 10

be the acts or conduct of the developer for the purposes of section 454-4; and

(B) If the person engages in acts or conduct prohibited under section 454-4(a), the acts or conduct shall constitute grounds for disciplinary action under section 467-14[.];

(8) An individual licensed as a mortgage loan originator under chapter .”



March 22, 2009

COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair

Senator David Y. Ige, Vice Chair

DATE: Monday, March 23, 2009  
TIME: 10:00 A.M.  
PLACE: Conference Room 229

Re: HB 1438 HD1 – 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.

HAMB supports passage of HB 1438 HD1 with amendments.

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.

SB 1218, SD 2 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.

A key issue is funding for such a program. We have proposed fees of \$425 to cover application and first year registration, and \$325 / year renewal enrollment. Third party fees for national data base registration, testing, background ground checks and education would be born by the MLO (and paid directly or passed through at cost). These are not trivial fees and based upon DCCA program cost projections would fund a viable state program. A one time \$100 surcharge for current licenses payable in December 2009, would support program startup

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.

HB 1438 and the senate version SB 1218 also contain a number of prohibited acts (PA) that deal with issues such as deceptive practices in operations and advertising, and purposefully misleading consumers. A series of these were contained in the Model Act prepared by the CSBS/ARRMR associations that were tasked by congress to implement the program. HAMB favors the argument that adopting the PA from the model act would facilitate compliance for MLO companies operating in more than one state.

We continue to believe it is in the interest of both the consumers of Hawaii as well as the industry itself to have the program operated by the state, rather than a federal agency.

Sincerely,

Greg Ravelo  
President



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

March 20, 2009

The Honorable Rosalyn Baker, Chair and  
Members of the Senate Committee on  
Commerce and Consumer Protection  
State Capitol, Room 229  
Honolulu, Hawaii 96813

Re: House Bill 1438, HD 1 Relating to Mortgage Loan Originators

Dear Chair Baker and members of the Senate Committee on Commerce and Consumer Protection:

I am Mark James, 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.

MBAH supports House Bill 1438, HD 1 Relating to Mortgage Loan Originators. MBAH specifically concurs with and supports the amendments proposed by the Hawaii Bankers Association and opposes the amendments proposed by the Hawaii Financial Services Association.

Thank you for the opportunity to present this testimony.

Mark James,  
MBAH Board Member and Co-chair, 2009 Legislative Committee



# HAWAII BANKERS ASSOCIATION

1000 BISHOP ST., SUITE 301B • HONOLULU, HAWAII 96813-4203  
PHONE: (808) 524-5161 • FAX: (808) 521-4120

Presentation to the Senate Committee on Commerce and Consumer Protection  
Monday, March 23, 2009, at 10:00 am

## Testimony for HB 1438, HD 1 Relating to Mortgage Loan Originators

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable David Y. Ige, Vice Chair  
Members of the Senate Committee on Commerce and Consumer Protection

My name is Neal Okabayashi for the Hawaii Bankers Association in strong support of HB 1438, HD 1. We believe that the bill should be amended by dropping SB 1218, SD 2 into this bill and added the amendments on transitional matters and inserting the fees to be paid to the State.

The debate on state regulation of mortgage loan originators was settled by adoption of the SAFE Act on July 31, 2008. States were given until July 31, 2009 to adopt a state system compliant with the SAFE Act or forfeit its right to regulate originations because after such date, HUD (Department of Housing and Urban Development) will license and regulate loan originators.

Originators will be regulated. The only issue is whether the regulator will be HUD or the State. Originators will pay fees. The only issue is whether the fees will be paid to HUD or the State.

To assist states, the Conference of State Bank Supervisors (“CSBS”) and the American Association of Residential Mortgage Regulators drafted a model act which has been approved by HUD as compliant with the SAFE Act. This bill is based on the model act.

In essence, the SAFE Act requires all loan originators, including those who work for a bank, to obtain a unique identifier (think of it as a social security number). Using the identifier, regulators, federal and state, will enter into a national registry the disciplinary history of an originator, and thus all regulators and the public may research the disciplinary history of an originator applying for a license or one that a person is about to do business with.

It has been implied that bank or credit union employee are exempt from the SAFE Act. That is untrue. Employees of a bank, credit union, or a subsidiary regulated by a federal banking agency, are to be registered, and regulated by a federal banking regulator, as they already do.

All other originators must be regulated by a state.

It is critical to understand mortgage lenders and originators fall into two categories. In category one, there are those who are regulated by a federal banking regulator: banks and credit unions. In category two, there are those who are either regulated only by a state or not regulated at all: nonbanks such as finance companies and mortgage brokers.

The rationale for subjecting employees of nonbanks to state regulation and leaving bank employees to federal regulation is clear cut. They are not federally regulated like banks which are heavily regulated by a federal banking regulator. The Treasury Department issued a Blueprint for a Modernized Financial Regulatory Structure last March and wrote: “Federally regulated mortgage lenders and their employees are subject to an extensive scheme of federal supervision of their lending practices and compliance with applicable law and regulations.” The Treasury thus recommended “subjecting” originators who “are not employees of federally regulated depository institutions (or their subsidiaries) to uniform licensing qualification standards.” That is precisely what the SAFE Act did.

Even CSBS recognizes the regulatory gap. Before Congress on March 4, 2008, CSBS testified that federal banking regulators had issued or proposed two guidances on nontraditional mortgage product risk and subprime lending not applicable to the state lenders they supervise, including HFSA members, and CSBS tried to fill the gap by drafting sample parallel guidance which a state could issue with respect to the nondepository lenders that it supervised. In fact, federal banking regulatory guidances on subprime and predatory lending dates back to 1997.

Banks have played a much more limited role in the creation of the credit crisis and it has been the nonbanks, including finance companies that contributed to this crisis.

In the Blueprint for a Modernized Financial Regulatory Structure, the Treasury Department wrote: “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)”. The Treasury Department went on to write: “Brokers and lenders not subject to federal oversight have repeatedly been cited as the source of abusive subprime loans with adverse and profound consequences for consumers, the mortgage markets and the financial system as a whole.”

In a recent letter to Elizabeth Warren, chair of the Congressional Oversight Panel, John Dugan, the Comptroller of the Currency that regulates national banks, said that there are “many, many federal consumer protection laws, rules and supervisory guidance applicable to national banks” and pointed out that “the overwhelming preponderance of toxic subprime mortgages were originated by companies subject only to state regulation.” The OCC conducted a study of ten areas with the highest foreclosure rates in the period 2005-2007, and of the 21 firms comprising the worst ten, 12 firms which accounted for nearly 60% of the non-prime mortgage loans and foreclosures were exclusively regulated by a state. Mr. Dugan went on to write “the market leaders for these products were nonbank brokers and lenders regulated exclusively by the states.”

The three largest predatory lending settlements were made by nonbanks; two of them were finance companies. The largest predatory lending settlement was made by an HFSA member.

Because of the extensive regulatory oversight of banks by a federal banking regulator, the SAFE Act continues that regulatory framework so federal banking regulators continue to regulate those it already regulates and states are to regulate all others.

Not all bank employees are exempt. The importance of federal banking regulation is evidenced by the provision that bank employees who do not work for a bank subsidiary regulated by a

federal banking regulator must be tested and licensed on the state level. So to suggest that all bank employees are exempt from state regulation is not accurate. It is also clear that an employee of a bank affiliate must be regulated on the state level. In other words, the bright line is not working for a bank but whether you work for a financial institution regulated by a federal banking regulator.

Thus, it is imprecise to suggest as HFSA does that all bank employees are excluded from the state law. An employee of a bank subsidiary that is not regulated by a federal banking regulator is included under this law. A bank subsidiary is deemed to be part of the bank.

HFSA says the banks have no interest in the bill because our employees are not covered by the bill although they inconsistently advocate that our employees be covered. As stated, some bank employees may be covered by the bill but setting that aside, other than existing mortgage brokers and solicitors, no group has a greater vested interest in this bill than bankers and credit unions.

The economic crisis which resulted, in part, from the acts of mortgage brokers and state lenders like finance companies has impacted banks. Banks do best in a booming economy which we don't have, and the economic downturn has directly contributed to costs which banks must bear. This economic crisis has reduced the monies in the FDIC deposit insurance fund which led the FDIC to propose a special assessment on banks (think of this as a special assessment or tax increase) as well as an increased deposit insurance premium to pay for the increased FDIC coverage necessary to assure a nervous public that their money is safe in an FDIC insured bank.

Banks also have a direct interest in this bill for the simple reason that brokers may sell and arrange a loan but do not make loans; they take the loan to a lender, sometimes a bank, who actually makes the loan. So we have a vested interest that the broker who brings us a loan is a competent, qualified and honest professional. Jamie Dimon, CEO of JP Morgan Chase, said that the worst mistake of his professional life was not closing the bank's mortgage broker division which basically made the loans brought to Chase by a mortgage broker.

In fact, the number of loans made by banks as a result of brokered loans is greater than the loans made by HFSA's non-federally regulated members and thus, it can easily be said that banks have a greater vested interest in this bill than HFSA.

HFSA wants all bank employees to be tested and licensed under this bill. They use the subterfuge of claiming they only want bank employees to be covered by the prohibited practices section but that effectively means bank employees must be tested and licensed by the state, because prohibited practice 6 in SD 2 prohibits originating a loan without a state license and thus, HFSA really wants to require bank employees to be licensed under state law. Prohibited practice 8 also requires that such bank employee comply with the state loan origination chapter. Again, effectively requiring bank employees to be subject to the state law.

Federally chartered banks cannot be made subject to this state law because of federal preemption rights. There are limits on a state's ability to deviate from the SAFE Act. According to the HUD policy statement, states may exceed the licensing and registration standards but may not enact legislation which "frustrates the objectives of the SAFE Act", one of which is "a comprehensive licensing and supervisory system with uniform application and reporting requirements." Emphasis added. HFSA seeks to make the supervisory system non-uniform by

having employees of state banks subject to regulation on both the federal and state level, which dual level of regulation will not be endured by HFSA employees.

There are vast differences between the regulatory oversight of banks and finance companies. All banks, whether federal or state, are regulated by a federal banking regulator who is the bank's primary regulator. State banks also are regulated by a state regulator who plays a secondary role in examination matters. A state bank is subject to annual examinations by the FDIC. Can finance companies say the same?

The capital requirements for a finance company are different from a bank's capital requirements. HFSA members only need to have a certain dollar amount of capital, regardless of the size or the nature of their assets, even if they have risky assets. By contrast, all banks are required to have capital, the amount of which depends on the asset size of the bank and the nature of the assets the bank has. For banks, there are five capital categories: well capitalized, adequately capitalized, undercapitalized, and significantly undercapitalized, and critically undercapitalized. For HFSA members, there is nothing comparable. For banks, if you are not well capitalized, there are restrictions on your activities; but fortunately, over 90% of banks are well capitalized, including all the local banks. There are no similar restrictions on finance companies for capital deficiencies.

Legal Aid may request that any loan made in the name of an unlicensed originator be declared void so the borrower who received the monies does not have to repay the loan. They argue that this act of punishing the innocent lender while letting the unlicensed originator go free somehow promotes consumer protection. They premise their argument on the Beneficial vs. Kida case.

Under the Kida case, in the case of table funding, where the note and mortgage is made in the name of the originator although the funds are provided by a third party, if the originator happened to be unlicensed when the loan is made, the borrower does not have to repay the monies he received and the lender does not receive the monies it loaned. Just because an originator is unlicensed does not necessarily mean there was an act against consumer protection. The lack of license could be the result of a clerical error or administrative error such as not timely renewing a bond. More importantly, the innocent lender has no way of protecting itself because it cannot determine if the lender is licensed at recording of the loan, especially a lender who buys the loans ten years later or buys a lender ten years later.

The Kida case also poses collusion possibility between the borrower and the loan originator. What if the borrower and the loan originator are romantically linked? The loan originator deliberately lets her license lapse and makes a loan to her boyfriend using the funds of the lender who will buy the loan. The boyfriend who received the loan proceeds can claim on the basis of the Kida case he should not have to repay the loan. The facts of the Kida case are not far removed from my hypothetical as the unlicensed broker was the ex-girlfriend of the borrower.

HAMB has prepared a fees structure, which I will provide using the page and line numbering of SB 1218, SD 2. On page 40, line 7, the application fee should be \$250.00. On page 40, line 11, the initial license fee should be \$175.00. On page 40, line 15, the initial renewal fee should be \$325. On page 42, line 10, the surcharge fee should be \$100.00.

Page 37, lines 10 and 11 should be deleted as it duplicates page 34, lines 11 and 12.

Sections 8, 9, and 10 of SD 2 should be replaced by the attached. This transition is based on last year's administration bill and the HUD timeline.

SECTION 8. After July 31, 2010, no new license shall be issued and no license renewal shall be effected under chapter 454, Hawaii Revised Statutes. After July 31, 2010, a person who would be regulated under this Act shall be required to be licensed under this Act, except that a mortgage broker or mortgage solicitor licensed under chapter 454 as of January 1, 2009, shall not be required to be licensed under this Act until December 31, 2010.

SECTION 9. Upon the effective date of an individual's license under this Act, such individual who is required to be licensed under this Act shall not be required to be licensed under chapter 454, Hawaii Revised Statutes, and shall not be subject to the provisions of chapter 454, Hawaii Revised Statutes; provided that this section shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before the effective date of the person's licensure under this Act.

SECTION 10. There is appropriated out of the compliance resolution fund of the State of Hawaii the sum of \$140,000, or so much thereof as may be necessary for fiscal year 2009-2010, to carry out the purposes of this Act, including the hiring of one permanent clerical assistant and three permanent examiners, exempt from chapter 76, Hawaii Revised Statutes, in the division of financial institutions, to implement this Act. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 11. Chapter 454, Hawaii Revised Statutes, is repealed on December 31, 2010; provided that the repeal does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its repeal.



# HAWAII CREDIT UNION LEAGUE

1654 South King Street  
Honolulu, Hawaii 96826-2097  
Web Site: [www.hcul.org](http://www.hcul.org)

Telephone: (808) 941-0556  
Fax: (808) 945-0019  
Email: [info@hcul.org](mailto:info@hcul.org)



Testimony to the Senate Committee on Commerce and Consumer Protection  
Monday, March 23, 2009 at 10:00 a.m.

Testimony in support of HB 1438 HD1 – Relating to Mortgage Loan Originators

To: The Honorable Rosalyn H. Baker, Chair  
The Honorable David Y. Ige, Vice-Chair  
Members of the Committee on Commerce and Consumer Protection

My name is Stefanie Sakamoto and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for over 90 Hawaii credit unions, representing approximately 810,000 credit union members across the state.

We support HB 1438 HD1's intent to provide greater oversight over mortgage brokers and loan originators. This legislation is an important step in reducing the incidence of predatory lending in Hawaii.

Thank you for the opportunity to testify.

**The Honorable Rosalyn H. Baker, Chair**  
**The Honorable David Y. Ige, Vice Chair**  
**Senate Committee on Commerce and Consumer Protection**

**Hearing : Monday, March 23, 2009, 10:00 a.m.**  
**State Capitol, Conference Room 229**

**IN SUPPORT OF HB 1438 HD 1 WITH AMENDMENTS**

**Chair and Members of the Committee:**

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 HB 1438 HD 1 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 HD 1 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 HD 1, eliminates significant tools for wronged persons and does not provide enough protection for consumers in the State of Hawaii HB 1438 HD 1 also seeks to regulate mortgage loan originators.

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

1. Delete Section 7 of the bill thus retaining the current consumer protections enumerated in the current law, HRS Section 454-8. Section 454 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 1438 HD 1, an important protection for consumers will have been eliminated. There is no reason that keeping HRS 454 or portions thereof would create a conflict with, or undue burden to either the Department or the mortgage industry.

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 1438 HD 1 are both unfair and deceptive and thus should be actionable under HRS Chapter 480. Similar language is contained in related consumer protection statutes. Previous committees have amended the prohibited acts section of this measure to conform to existing law regarding unfair and deceptive trade practices. However, no specific language has been added to cross-reference HRS Chapter 480, which may create confusion in application of private enforcement of this Act. This language might look like:
  - a. Any violation of this section shall constitute unfair and deceptive acts or practices in the conduct of any trade or commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each violation of this section shall constitute a separate violation.

The Legal Aid Society of Hawaii supports the intent of HB 1438 HD 1, would fully support the bill with the proposed amendments, and supports its efforts to protect the consumers in the State of Hawaii. The Legal Aid Society of Hawaii 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 1438 HD 1 attempts to strengthen protections for consumers by regulating the mortgage broker industry, however HB 1438 HD 1 needs to be amended as it would eliminate the current statute and along with that, one of the strongest protections for consumers. We support HB 1438 HD 1 with amendments and its attempts to protect homeowners in the State of Hawaii. Thank you for the opportunity to testify.