LATE TESTIMONY

Hawaii Bankers
Association

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Presentation To
Committee on Judiciary and Labor
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Testimony in Opposition to Bill SB 1370, SD 1

TO: The Honorable Clayton Hee, Chair
The Honorable Maile S. L. Shimabukuro, Vice Chair
Members of the Committee

My name is Neal Okabayashi and I am testifying for the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions operating in the State of Hawaii.

The Hawaii Bankers Association is opposed to SB 1370, SD 1, which requires mediation prior to a mortgagee filing a judicial foreclosure action. This requirement is unnecessary and duplicates federal law, which already more than adequately provides opportunities for a loan modification. This bill needlessly hurts local banks and credit unions.

Since Act 48 was enacted two years ago, there have been two significant national developments which make this measure unnecessary.

In April 2012, state attorney generals (except for the Oklahoma attorney general) and the U.S. Department of Justice, among others, entered into a $25 billion settlement agreement with five national lenders including those often described as the "bad actors" in Hawaii. It is also universally agreed that local banks and credit unions are not part of the problem, which begs the question why are we part of the solution?

As part of the settlement, a monitor was appointed. The monitor is Joseph Smith, former North Carolina banking commissioner. He recently (November 19, 2012) submitted his first report covering the seven month period from March 1, 2012 to September 30, 2012. Please note that part of this period is prior to the effective date of the settlement, April 5, 2012.

In the monitor's report, for the state of Hawaii, in those seven months, there were 949 borrowers who received what the monitor calls consumer relief, and the aggregate amount was $94,165,269 or an average of $99,226 per borrower. The monitor also reported that as of the end of September 2012, there were 221 consumer reliefs in process for a total benefit of $44,526,401 or an average of $201,678.40 benefit per borrower.

All of this occurred without benefit of mediation.

In January of this year, the Consumer Financial Protection Bureau (CFPB) introduced voluminous changes to the rules governing mortgage serving, including foreclosures. The rules are so voluminous (approximately 1,500 pages), it will take some time for lenders to get their arms totally around the rules. These rules, effective January 2014, apply to all persons servicing mortgage loans, not just those subject to the Attorney General's settlement. Among other things, the lender cannot file for foreclosure until the loan is 120 days (4 months) delinquent because, in the words of the CFPB, "This will give borrowers reasonable time to submit modification applications."

Lenders must not only reach out to delinquent borrowers, they must also provide the borrower with written examples of loan modification options. For example, one rule requires the lender to notify the borrower orally by the 36th day after delinquency of available loan modification options. Lenders must try to contact the borrower by phone on 3 separate occasions on 3 separate days. This is to be followed by a written notice to the borrower by the 45th day of loan modification options including credit counseling contact information. In recognition of the fact that the investor, not the lender, approves loan modifications, the CFPB requires that the lender be aware of the investor's loan modification programs so the borrower can be evaluated for all alternatives.

Thus, before foreclosure is filed, there has been a thorough review of the borrower's finances to determine if loan modification is possible and, if the application is denied, the borrower is informed of the reasons for denial and appeal possibilities.

The CFPB also requires that even after foreclosure is initiated, if a borrower applies for loan modification, the application must be evaluated and since dual tracking is prohibited, in essence the foreclosure process is suspended at such time.

A loan modification process is similar to a loan application underwriting decision based on the debt and income; in other words the ability to repay the loan obligation. This is an important concept embodied in the new "ability to repay" rules required by Dodd-Frank.

A required state mediation process would merely repeat the loan modification process with no different end result. The only result is delay, which results in a greater loss for the lender and possibly a condominium association.

When a judicial foreclosure action is brought against a borrower, the court's oversight over the proceedings also provides added protection for the borrower. The court then becomes the independent third party, which can serve in place of the mediation process, and courts have the inherent power to order mediation when appropriate. In fact, there is an ongoing judicial foreclosure mediation program on the Big Island, and we believe Maui is contemplating one.

There are other ample opportunities for loan modification. When a mortgagor falls delinquent in payments, the lenders initiate discussions with the borrowers either under the Home Affordable Modification Program (HAMP), the rules of the Government Sponsored Enterprises (GSEs) such as Fannie Mae, or the lender's own loan modification programs. Should the borrower meet certain criteria, generally meeting a certain debt-to-income ratio (DTI), there will be a loan modification, which can take the form of interest rate reduction or extending the term of the loan to reach an affordable monthly payment.

We are also very concerned with the current mediation law that was created for non-judicial foreclosure actions. There is one requirement that especially renders the current mediation process impossible for lenders to comply with when the loan has been sold to an investor such as Fannie Mae. The requirement to have individuals authorized to make loan decisions present at the mediation, in person or by phone, is not possible because the established procedures are that we inform them of the potential loan modification and then they approve or decline. The timing of the response is quite timely but not instantaneous (often the next day) although it takes longer when the loan is in a securitized poor or the approval of a private mortgage insurer is required.

In summary, we believe this bill is rendered moot by the attorney general's settlement and the Consumer Financial Protection Bureau regulations.

Thank you for the opportunity to submit this testimony and please let us know if we can provide further information.

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