

# SB1093

Measure Title: RELATING TO MORTGAGE SERVICERS.

Report Title: Mortgage Servicers

Description: Clarifies mortgage servicer requirements under chapter 454M, Hawaii Revised Statutes, including licensing requirements, crediting of payments, escrows for payment of taxes and insurance, payoff statements, delinquencies and loss mitigation efforts, borrower complaints, fee disclosures, record maintenance, assignment of servicing rights, and prohibited activities. Establishes bonding requirements.

Companion: [HB924](#)

Package: Governor

Current Referral: CPN, WAM

Introducer(s): KIM (Introduced by request of another party)

<u>Sort by Date</u>		<b>Status Text</b>
1/28/2015	S	Introduced.
1/28/2015	S	Passed First Reading.
1/28/2015	S	Referred to CPN, WAM.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
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  
cca.hawaii.gov

CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

TO THE  
SENATE COMMITTEE ON  
COMMERCE AND CONSUMER PROTECTION  
THE TWENTY-EIGHTH STATE LEGISLATURE  
REGULAR SESSION OF 2015

February 4, 2015  
9:00 a.m.

TESTIMONY ON S.B. NO. 1093  
RELATING TO MORTGAGE SERVICERS

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

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"), testifying on behalf of the Department of and Consumer Affairs ("Department") in strong support of this administration bill, Senate Bill No. 1093.

S.B. 1093 amends the Mortgage Servicers law, Chapter 454M of the Hawaii Revised Statutes. This bill strengthens the law to protect consumers, by adding important new requirements for mortgage servicers, such as bonding, making specific information available to borrowers about their mortgage, and setting loss mitigation standards to help homeowners in distress, and penalties for chapter violations. The

provisions in this bill are especially important because while mainland mortgage servicers service loans for Hawaii homeowners, none have a physical presence in this State. This can make it very difficult for homeowners to obtain appropriate attention from their mortgage servicer. We believe that the provisions of this bill will not have a substantial negative impact on mortgage servicer companies since many companies have already implemented the proposed provisions.

Since the major settlement agreement in 2012, many mortgage servicer companies have addressed the concerns found by state examiners during examinations. There are no national or cross-state requirements in place for mortgage servicers. The states, through CSBS<sup>1</sup>, have formed a work group<sup>2</sup> to suggest prudential standards for mortgage servicer companies. CFPB requires that mortgage servicers possess a compliance management system and provides recommended elements of a robust system, but not any standards. CFPB has issued requirements relating to servicing standards that pertain to both bank and non-bank mortgage servicers.

Mortgage servicers handle administrative business after a mortgage loan has closed, by collecting mortgage payments and dealing with delinquent borrowers. In the past few years, there has been a dramatic rise of nonbank servicers. Nonbank specialty servicers, which typically service troubled loans, now hold approximately \$1.4 trillion in mortgage servicing rights out of a nearly \$10 trillion market. Nonbank specialty servicers at one time were seen as a cost-effective solution to larger banks that wanted to unload the responsibilities of servicing difficult loans.

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<sup>1</sup> CSBS – Conference of State Bank Supervisors is a nationwide organization of banking regulators from all 50 states, District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands.

<sup>2</sup> Hawaii's commissioner is a member of the work group.

However, nonbank servicers are subject to far less stringent regulatory and financial requirements than banks. (See FHFA, Office of Inspector General, “FHFA Actions to Manage Enterprise Risks from Nonbank Servicers Specializing in Troubled Mortgages” (July 1, 2014) (“FHFA-OIG Report”), p. 1, <http://fhfaoig.gov/Content/Files/AUD-2014-014.pdf>.) Consequently, the rise of this industry has been accompanied by consumer complaints, lawsuits, and other regulatory actions as the servicers' workload outstrips their processing capacity, according to the FHFA-OIG Report. As an example, in February 2014, the Consumer Financial Protection Bureau (“CFPB”) and 49 states entered a judgment requiring it to provide \$2.1 billion in consumer relief and comply with the National Mortgage Settlement servicing standards for its entire loan portfolio. (See CFPB v. Ocwen Financial Corp., Consent Judgment, <https://www.jasmithmonitoring.com/omso/wp-content/uploads/sites/4/2014/05/Ocwen-Consent-Judgment.pdf>.)

Poor mortgage servicing can cause consumers extreme stress and financial harm. If the servicer fails to credit payments, the consumer's credit report and borrowing capacity are damaged. If the servicer refuses to fairly consider loss mitigation options for homeowners in financial distress, homes are needlessly lost to foreclosure, devastating families and their financial futures. The Special Inspector General for the Troubled Asset Relief Program (“SIGTARP”) found consumer loss mitigation efforts to be so gravely at risk when mortgage servicing rights are transferred, that it devoted an entire report to the topic, entitled, “Homeowners Can Get Lost in the Shuffle and Suffer Harm When Their Servicer Transfers Their Mortgage But Not the

HAMP Application or Modification”, (October 29, 2014),

[http://www.sig tarp.gov/Audit%20Reports/SIGTARP\\_Mortgage\\_Transfers\\_Report.pdf](http://www.sig tarp.gov/Audit%20Reports/SIGTARP_Mortgage_Transfers_Report.pdf).

For the twenty-five month period ending January 31, 2015, Hawaii consumers lodged 516 mortgage complaints on the CFPB complaint database. Nearly all of these Hawaii complaints concerned loan servicing issues such as payments, escrow accounts, loan modification, collection, or foreclosure. These Hawaii homeowners were apparently so distressed by their mortgage servicers that they sought out avenues of possible relief, managed to find out about the relatively new CFPB and its database, and took the time to lodge a complaint. Consumer problems with mortgage servicers clearly continue. In January 2015, 1,501 consumer complaints about mortgages were lodged in CFPB database nationwide, and again, the great majority of complaints related to mortgage servicing issues.

This bill provides specific standards for mortgage servicer businesses, which the Division of Financial Regulations (“DFI”) needs to enhance its examinations, regulate the industry more meaningfully, and protect Hawaii consumers. It is important to strengthen Hawaii’s law now, given the nationwide surge in nonbank mortgage servicers, the types and gravity of complaints against the industry, and the serious potential for harm to consumers. By requiring nonbank mortgage servicers to meet the same servicing standards as regulated bank mortgage servicers, borrowers will have the same protections in place for their mortgages, whether they are serviced by a bank or a nonbank servicer.

This should not have a significant impact on the mortgage servicers who already comply with many of these proposed provisions. This is an important bill that will enable

State regulators to protect homeowners dealing with increasingly critical concerns about the mortgage servicer industry and its practices.

DFI strongly supports this administration bill, Senate Bill No. 1093, and respectfully requests that it be passed out of the committee without amendments.

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



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

January 2, 2015

The Honorable Rosalyn H. Baker, Chair,  
The Honorable Brian T. Taniguchi, Vice Chair, and  
Members of the Senate Committee on Consumer Protection & Commerce  
State Capitol, Room 229  
Honolulu, Hawaii 96813

Re: Senate Bill 1093 Relating to Mortgage Servicers

**Chair Baker, Vice Chair Taniguchi, and Members of the Senate Committee on  
Consumer Protection & Commerce:**

I am Linda Nakamura, representing the Mortgage Bankers Association of Hawaii ("MBAH"). The MBAH is a voluntary organization of individuals involved in the real estate lending industry in Hawaii. Our membership consists of employees of banks, savings institutions, mortgage bankers, mortgage brokers, financial institutions, and companies whose business depends upon the ongoing health of the financial services industry of Hawaii. The members of the MBAH originate or support the origination of the vast majority of residential and commercial real estate mortgage loans in Hawaii. When, and if, the MBAH testifies on legislation, it is related only to mortgage lending.

The MBAH is in support of the intent of Senate Bill 1093.

The Dodd Frank Wall Street Reform and Consumer Protection Act amended the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) with respect to the servicing of certain residential mortgage loans also known as the "Mortgage Servicing Rules." These rules were issued by the Consumer Financial Protection Bureau (CFPB) and became effective on January 10, 2014. Mortgage Servicers who service more than 5,000 mortgage loans are required to comply with the Mortgage Servicing Rules. The issues raised in Senate Bill 1093 are addressed in the Mortgage Servicing Rules. The Mortgage Servicing Rules may be found on the CFPB website or the Federal Register.

Thank you for the opportunity to present this testimony.

LINDA NAKAMURA  
Mortgage Bankers Association of Hawaii

Presentation To  
Committee on Commerce and Consumer Protection  
February 4, 2015 at 9:00 a.m.  
State Capitol Conference Room 229

**Testimony in Support of S.B. No. 1093  
Relating to Mortgage Servicers**

TO: The Honorable Rosalyn H. Baker, Chair  
The Honorable Brian T. Taniguchi, Vice Chair  
Members of the Committee

My name is Neal Okabayashi and I testify for the Hawaii Bankers Association (HBA). HBA is the trade association representing all FDIC insured depository institutions with branch offices in the State of Hawaii.

HBA supports the intent of this administration bill which will fill a gap in the regulatory framework of mortgage servicing because one of its key provisions is to make the Consumer Financial Protection Bureau servicing rules applicable to nonbank servicers.

Mortgage servicing is the act of collecting loan payments and sending the payments to the actual owner of the loan, making payments for required insurance and real property tax, and if the loan falls into default, engaging in activity to bring the loan current, including loss mitigation activity, or ultimately, bring enforcement action on the mortgage loan.

The person performing the act of mortgage servicing is called a servicer. The servicer can be a bank but often it is a nonbank that may not own the loan. Sometimes, the owner of the loan retains an independent servicer to perform the servicing functions. Servicing rights are a separate right from the right to receive the income stream from a loan. When the owner of a loan sells the loan, it can sell it "service released," meaning that the new owner takes over the servicing duties or sell it "service retained" meaning the previous owner will continue to service the loan.

While many bank servicers are subject to the servicing rules of the Consumer Financial Protection Bureau and there are nonbank servicers that are not subject to the servicing rules of the Consumer Financial Protection Bureau. This bill would require mortgage servicers to adhere to the Consumer Financial Protection Bureau rules as well as the National Mortgage Settlement even if they are not presently subject to such rules.



We understand that recent anecdotes of behavior not consistent with the Consumer Financial Protection Bureau rules were not done by banks but by nonbank mortgage servicers. The importance of this bill is also rooted in the expectation that more mortgages will be serviced by nonbank servicers. In 2013, it was estimated that nonbank servicers serviced about 14% of mortgage loans. It is estimated that over the next 2-3 years, the non-bank servicers will own an additional ten percent of the market for servicing rights. Ironically, it is the impact of the most recent version of an international banking capital standard (Basel III) that will incentivize banks to sell servicing rights to nonbank servicers.

The international bank capital standards are the results of the Basel accord of the Basel Committee on Banking Supervision. The first accord was reached in 1988. We are now embarking on Basel III, and Basel III's unfavorable treatment capital treatment of mortgage servicing assets are driving many banks to sell servicing rights to nonbank mortgage servicers who are not subject to the Basel accord.

This bill does address the gap between servicing obligations of banks and the nonbank servicers.

Many banks are subject to the rules of the Consumer Financial Protection Bureau on servicing which went into effect in January 10, 2014. Due to the Consumer Financial Protection Bureau carve out, the rules do not apply to community banks because in the words of the Consumer Financial Protection Bureau, local banks/servicers have "an interest in maintaining a relationship with borrower as a customer of the bank or thrift or member of the credit union to provide other banking services. Further such servicers must be conscientious of reputational consequences within a community or member base."

The Consumer Financial Protection Bureau was created under the Dodd-Frank Act and its sole mission is to protect consumers. Because its budget is not subject to congressional review, it has a measure of independence not enjoyed by other federal departments and agencies.

The Consumer Financial Protection Bureau servicing rules are predicated on the theory that early intervention works best, a theory supported by a HUD study on foreclosure counseling, which shows intervention before default or in the first three months demonstrated a chance of success but after six months of delinquency, the chance of success was poor.

The new rules prohibit the servicer from filing an action or notice for foreclosure until the loan is 120 days (4 months) delinquent because, in the words of the Consumer Financial Protection Bureau, "This will give borrowers reasonable time to submit modification applications."

The Consumer Financial Protection Bureau rules provide that the servicer shall:

1. Make a good faith effort to establish live contact (phone or in person) 36 days after delinquency;

2. Provide written notice of loss mitigation options after 45 delinquent days including housing counselor information;
3. Reach out to the borrower after two missed payments with information on loss mitigation options including options to avoid foreclosure;
4. Inform borrowers of that the application for loss mitigation is incomplete and with the required information;
5. Decide on an application for loss mitigation within 30 days and if denied, provide a detail on the reasons for denial including appeal rights (the appeal must be decided by a different person)
6. Not engage in dual tracking and thus the foreclosure is stayed while the application is pending;
7. Have a single point of contact;
8. Allow applications for relief, even if denied earlier, up to 37 days before the foreclosure sale which must then be postponed.

To require adherence to the National Mortgage Settlement of 2012, which was negotiated among state attorney generals (except for the Oklahoma attorney general), the U.S. Department of Justice, and five major lenders/servicers, is also helpful. The terms of the settlement are aligned with the Consumer Financial Protection Bureau rules. As noted by the Consumer Financial Protection Bureau, the five largest servicers service 53% of mortgage loans in the country, and those five are subject to the National Mortgage Settlement (and the oversight of a monitor) as well as the new Consumer Financial Protection Bureau rules

To assure clarity to the obligation of these servicers to adhere to the Consumer Financial Protection Bureau rules and the National Mortgage Settlement, we recommend reviewing the possibility of adding a new paragraph at the end of subsection (b)(1) at the bottom of page 42 to read:

The mortgage servicers shall comply with the law, rules, regulations, agreements, orders and interpretations set forth in subsection (b)(1) as if such law, rules, regulations, agreements, orders and interpretations applied to such mortgage servicer in full even if such law, rules, regulations, agreements, orders and interpretations did not apply to such mortgage servicer on the effective date of this Act.

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



1654 South King Street  
Honolulu, Hawaii 96826-2097  
Telephone: (808) 941.0556  
Fax: (808) 945.0019  
Web site: [www.hcul.org](http://www.hcul.org)  
Email: [info@hcul.org](mailto:info@hcul.org)



Testimony to the Senate Committee on Commerce and Consumer Protection  
February 4, 2015

In support of SB 1093, Relating to Mortgage Servicers

To: Senator Rosalyn Baker, Chair  
Senator Brian Taniguchi, Vice-Chair  
Members of the Committee

My name is Stefanie Sakamoto, and I am testifying on behalf of the Hawaii Credit Union League, the local trade association for 70 Hawaii credit unions, representing approximately 804,000 credit union members across the state.

This administration bill seeks to clarify mortgage servicer requirements. Approximately 50 credit unions in the state of Hawaii offer mortgage loans. Credit unions are governed by the National Credit Union Administration, and have strict mortgage servicing rules that closely mirror the servicing rules put forth by the Consumer Financial Protection Bureau. This bill would bring further clarity to mortgage servicing rules. We are in support of the intent of this measure.

Thank you for the opportunity to testify.

**SB1093**

Submitted on: 2/2/2015

Testimony for CPN on Feb 4, 2015 09:00AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Harvey Arkin	Individual	Support	No

Comments: Aloha, I strongly support SB 1093. I know several people who are very upset about the poor service they received from their mortgage servicer. They were incorrectly told by their servicer that they did not qualify for a loan modification. Fortunately they were able to hire an attorney, who was successful in getting the servicer to give them a loan modification which they should have received when they first applied. My own HAMP Tier 1 loan modification application was denied multiple times due to errors on the servicer's part. I requested help from many government officials and while they wrote letters for me, their letters had no effect on the servicers and the servicers' responses failed to address the issues and errors that were brought to their attention. Finally I was approved for a trail loan modification after 2 years, hundreds of hours of effort, and reams of paper. One issue this bill does not address is the fact that servicers will foreclose on a condo but not change ownership at the title level with the bureau of conveyances. Consequently, though the foreclosed-upon owner has long vacated the property, s/he continues to be liable for the monthly HOA dues which continue accruing. At the same time, the real property taxes are going unpaid. Why are you letting the servicers get away with this? This is one more example of how servicers use loopholes in the laws for their gain, disregarding the impact on people. Please remember, in the National Mortgage Settlement, the 5 largest banks/servicers paid a \$25 billion to settle claims of fraud and misconduct. This and other consent decrees and fines that show their actions as mortgage servicers are still damaging to Hawaiian citizens. See <https://www.jasmithmonitoring.com/omso/about-the-national-mortgage-settlement/>. Thank you