February 28, 2008

TO: Banks Committee

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Regarding Raised Bill No. 423, (LCO No. 1838), An Act Concerning Foreclosure Prevention and Responsible Lending

The Connecticut Mortgage Bankers Association, Inc. ("CMBA"), which numbers over one hundred seventy five organizations and 750 individuals, is a non-profit association formed in 1984. The two principal purposes of the CMBA are to promote the welfare of the mortgage lending industry in Connecticut and to improve its service to the citizens of Connecticut. The CMBA is Connecticut's only trade association dedicated exclusively to the mortgage banking industry in the State of Connecticut.

BACKGROUND

The CMBA recognizes the problems arising from the "subprime crisis", the financial challenges facing many Connecticut homeowners, and the need to insure the proper functioning of the residential mortgage credit markets to serve current and prospective borrowers.

The CMBA has had the opportunity to review Raised Bill No. 423 and other legislative proposals. The CMBA supports measures to benefit Connecticut consumers by encouraging responsible lending and encouraging lenders to engage in loss mitigation efforts to limit foreclosures where practicable, while maintaining residential mortgage credit availability for the citizens of Connecticut. Accordingly, the CMBA is supportive of many of the provisions of Raised Bill No. 423 but opposes other provisions, as described below, that could restrict credit availability to Connecticut's citizens. The CMBA would welcome the opportunity to work with the Banks Committee to address its concerns with Raised Bill No. 423 and other legislative measures under consideration.

- Provisions Concerning Nontraditional Mortgages and Subprime Loans. The CMBA supported the state's "high cost home loan" statute, which was originally codified as the Abusive Home Loan Lending Practices Act. The CMBA supports many of Bill 423's provisions regarding "subprime loans" provided that: (1) the rate triggers for a loan to constitute a "subprime loan" are set at higher levels in order to avoid the applicability of the new requirements to many loans for which additional borrower protections are not warranted; and (2) for the reasons set forth in clause (1), an additional rate trigger is added based on the conventional mortgage rate which is established by Freddie Mac and which is published weekly by the Federal Reserve Board.

Some provisions of Bill 423 also warrant changes to avoid unnecessarily restricting the availability of credit to Connecticut residents. Those provisions include: (1) the Section 5(a) provision which would render unenforceable a subprime or nontraditional mortgage loan for which the creditor has not furnished the borrower with a list of HUD approved counselors; and

(2) the Section 5(a) provision prohibiting a nontraditional mortgage loan from generally providing for negative amortization.

- Provisions of General Applicability. While well-intentioned, several provisions of the bill would subject mortgage lenders to obligations which exceed the industry norm and would have an adverse impact on mortgage lending. Those provisions (which the CMBA opposes) include: (1) the Section 3 obligation of lenders to follow all reasonable and lawful instructions of the borrower (despite the fact that the lender is not the agent of the borrower and the lender will have conflicting obligations to the secondary market investor to whom a loan is to be sold); (2) the Section 3 obligation to make a loan that is "reasonably advantageous" to the borrower; (3) the Section 4 requirement to make a refinancing loan only when the loan has a "tangible net benefit" to the borrower; (4) the Section 4 restriction on not making a loan unless the lender has a "reasonable belief that the borrower will be able to repay the loan", which would eliminate beneficial foreclosure prevention remedies that are currently being offered by many lenders (for example, "streamlined" refinance mortgage loans which serve to reduce a borrowers rate with the same lender, generally at reduced closing costs, as well as mortgage modifications in a loan "workout" situation where borrowers cannot at the time of modification demonstrate the ability to repay); (5) the Section 5(3) prohibition on a creditor making a mortgage loan which would payoff a "special mortgage" (e.g., a government subsidized mortgage loan) unless the borrower receives a certification from a HUD approved counselor; (6) the imposition pursuant to Section 6 of liability upon the assignee of a loan for the lender's actions; and (7) the Section 6 provision for damages (in addition to actual damages) consisting of consequential damages, statutory damages of $5,000 per violation, additional statutory damages of twice the amount of the finance charge paid and forfeiture of the remaining interest due under the loan, as well as rescission of the mortgage loan. An unintended consequence of the bill will be the disincentive for lenders to make new loans to Connecticut borrowers out of concern that the bill will clog the judiciary and add delay and expense for lenders as foreclosures are transformed into complex litigation. Specifically, a lender's ability to foreclose a mortgage due to non-payment could be delayed for years inasmuch as the bill would facilitate the assertion of claims which, on their face, may be legally sufficient defenses to foreclosure, and which would require the expense and delay of a trial to resolve.

While such provisions may be warranted for loans subject to the state's current "high cost home loan" law and in some instances for "subprime loans" based on the "subprime crisis" which we are now experiencing, such provisions are not warranted in connection with mortgage lending generally and would have a chilling effect on such lending for Connecticut borrowers.

- Prepaid Finance Charge Limitations. Connecticut law imposes limitations on the amount of prepaid finance charges. The CMBA opposes the Section 8 provision which would include in the "prepaid finance charge" for purposes of the state law limitations any additional fees paid by the lender to the broker, including yield spread premiums (which are not an out of pocket expense paid by borrowers). Such a provision would only serve to discourage mortgage lenders from using mortgage brokers who, in many instances, can provide borrowers with more competitive pricing on loans than if borrowers deal directly with a single mortgage lender.

• Bonding. The CMBA supports the proposal to increase the dollar amount of the required surety bond found in other legislation to $60,000 but is concerned that the proposal in Section 9 of the Bill to increase the bond amount to 30% of the Fannie Mae conforming loan size limit (presently $417,000 for a single family home) may force many responsible licensees to forego renewing their licenses and cease serving Connecticut consumers.