February 28, 2008

TO: Banks Committee

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Regarding Raised Bill No. 5577, (LCO No. 2138), An Act Concerning Responsible Lending and Economic Security

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. 5077 and other legislative proposals. The CMBA supports measures to benefit Connecticut consumers by encouraging responsible lending and economic security and maintaining residential mortgage credit availability for the citizens of Connecticut. Accordingly, the CMBA is supportive of many of the provisions of Raised Bill No. 5577 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. 5077 and other legislative measures under consideration.

- Loan Programs Benefiting Existing Borrowers. The CMBA support Sections 1 to 4 of Bill 5577 which would establish the REAL Program, the HERO program, and an EMAP Program. These programs would have the potential to provide much needed help to many borrowers who are at risk of foreclosure.

- Mandatory Mortgage Foreclosure Notices and New Pre-conditions to Foreclosure. The CMBA recognizes the financial challenges facing many homeowners. Section 5 of the bill would require a new, additional notice prior to commencement of a foreclosure, would require that foreclosure actions cease if a borrower applies for participation in one of the new programs, and would permit borrowers to seek a six month moratorium on a foreclosure. As a federal constitutional matter, the "contract clause" of the U.S. constitution prohibits states from enacting legislation that would impair the obligation of existing contracts. As a result, the proposed provisions in Section 5 of the Bill as applied to existing mortgages may not be effective and might only serve to give many homeowners the false hope of relief. Moreover, the proposed limitations on a mortgage lender's ability to foreclose on a mortgage would serve as a disincentive for mortgage lenders to make new loans in Connecticut and could contribute to a contraction in the availability of credit to Connecticut residents, particularly to those residents who need higher than average loan to value ratio loans or who have below average creditworthiness. For those reasons, the CMBA opposes those provisions of Bill 5577.

- Provisions Concerning Nonprime Home 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 5577's provisions regarding "nonprime home loans" (provided that the rate triggers for a loan to constitute a "nonprime home loan" are set at somewhat higher levels). Some provisions of Bill 5577, however, warrant changes to avoid unnecessarily restricting the availability of credit to Connecticut residents. Those provisions include the Section 9(d) requirement for borrowers to attend accredited courses before obtaining a nonprime mortgage loan, the requirement that borrowers qualify for a loan based on the highest possible interest rate over the loan term, and the voiding of loans which violate Section 9.

- 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 the Section 9(b) imposition of fiduciary duties on mortgage lenders and brokers, the inclusion of the successors and assigns of a "lender" within the definition of "lender", the coverage of only licensed mortgage lenders within the scope of covered lenders under Section 9 and Sections 10 to 15, the requirement for a "tangible net benefit" for all refinance loans, the mandatory termination of foreclosure proceedings upon the borrower's cure of defaults, the required notice to all tenants in connection with a foreclosure coupled with the tenants' right to terminate a lease upon receipt of a lender's notice of a foreclosure, the adoption of a $5,000 statutory damages provision, the availability of the remedy of a rescission of a mortgage and an injunction barring foreclosure for violation of Sections 9 to 14 of the bill, and the imposition of liability upon the assignee of a loan. While such provisions may be warranted for loans subject to the state's current "high cost home loan" law and in some instances for "nonprime home 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.

- Bonding. The CMBA supports the proposal to increase the dollar amount of the required surety bond, provided that the effective date of the increase is delayed for existing licensees to the date when an existing license expires.

- Provisions Enabling Department of Banking to Adopt Regulations and Need for Consistency with Changes in Federal Laws. The CMBA recognizes the experience and qualifications which the Connecticut Department of Banking possesses in connection with the regulation of the mortgage industry in Connecticut. The CMBA generally supports those provisions of Bill 5577 which enable the Department of Banking to adopt regulations. In addition to the Connecticut legislature's efforts to provide better regulation of the mortgage industry, both the U.S. Congress and federal regulators (primarily the Board of Governors of the Federal Reserve System) have pending proposals which would also change the regulations applicable to the mortgage industry. By virtue of an exemption under federal law, the

Connecticut Department of Banking has the authority to oversee state-chartered and state-licensed mortgage lenders. This local oversight is beneficial to Connecticut consumers and is desired by both the Department of Banking and the industry. The changes proposed in the Connecticut legislature (namely Bill 5577) as well as the federal proposals could, however, lead to a loss of the current exemption. Moreover, the adoption of proposals at the state and federal levels could subject Connecticut regulated lenders to potentially duplicative and/or inconsistent disclosure obligations (which could ultimately be confusing to not only lenders but more importantly to borrowers as well). To avoid such problems, the CMBA would support a broader authorization for the Department of Banking to adopt regulations which would have the objective of: (1) maintaining Connecticut's exemption (and preserve the oversight of the industry by the Department of Banking); and (2) avoiding the adoption of duplicative or inconsistent disclosure obligations which could arise from changes at both the federal and state level.