

Legal Assistance Resource Center

❖ of Connecticut, Inc. ❖

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S.B. 21 -- Mortgage Lending

Banks Committee Public Hearing -- February 21, 2008

Testimony of Raphael L. Podolsky

Recommended Committee action: JOINT FAVORABLE
with additions and changes

We generally support this bill, which imposes additional consumer protective standards on the making of home mortgage loans and strengthens the Banking Commissioner's regulatory powers. We particularly support Sections 20-26 and Sections 33-37. We do have questions, however, about the following provisions of the bill:

- **Discount points** (l. 177-180, l. 405-408): We do not understand why so-called "bona fide discount points" should be excluded from the APR in determining whether or not a loan is a high-cost loan. This appears to conflict with federal Truth-in-Lending disclosure definitions and invites lenders to try to evade stricter regulation by claiming that points are in lieu of a higher interest rate.
- **Federal subsidiaries** (l. 518-521): While there are questions about enforcing state laws on federally-chartered institutions and their subsidiaries, our statutes should not exempt them. Inclusion of subsidiaries means that our law will apply to the maximum extent that federal law permits.
- **Exemption of persons making six or more second mortgage loans per year to blood relatives** (l. 549-550): We are puzzled by this proposed exemption. Persons making 1 to 5 loans are already exempt (l. 522-524). Persons making six or more loans, even to blood relatives, are running a business and should not be exempt. In addition, as worded, it appears that there is no limit to the degree of kinship (distant cousins are included) and it is not clear that the exemption requires that loans be only to blood relatives.
- **Prepayment penalties** (l. 1208-1210): The language of the bill should make clear that a prepayment penalty is not "based on a legitimate financial reason" unless the justification supports the particular dollar amount and not just the existence of a prepayment penalty. The Committee should add in l. 1210 the following: "provided that the dollar amount of such prepayment penalty does not exceed such legitimate financial reason." **We also support H.B. 5166, which would limit prepayment penalties on high-cost loans to prepayments that occur during the first year of the loan.** The use of three-year prepayment penalties has become a serious obstacle to refinancing homeowners out of subprime loans and is often a source of deceptive selling, in which the broker induces the borrower to accept a teaser rate with the assurance that the loan can be refinanced before the teaser period ends.

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In addition, we support a furthering strengthening of the law that would go beyond the provisions of S.B. 21, including:

- **High-cost loans** (l. 137-180): Tightening the definition of “high-cost loans”;
- **Waiver of remedies** (l. 1666–1671): Applying the waiver of remedies provision to all mortgage loans, not only to high cost ones;
- **Brokers' duties**: Imposing on mortgage brokers a duty to act in the best interest of the borrower;
- **Assignee liability**: Removing at least some of the immunity from liability that assignees now have, much as C.G.S. 52-572g limits the holder-in-due-course doctrine in regard to contracts for the purchase of consumer goods;
- **Consumer remedies**: Providing a separate cause of action for borrowers for a violation of the act, or making violations per se violations of the Connecticut Unfair Trade Practices Act;
- **Yield spread premiums**: Requiring that yield spread premiums paid to mortgage brokers be included in the prepaid finance charge or banned entirely.