TESTIMONY IN FAVOR OF Senate Bill 423
An Act Concerning Foreclosure Prevention and Responsible Lending

AARP Connecticut is pleased to have the opportunity to comment on Senate Bill 423, An Act Concerning Foreclosure Prevention and Responsible Lending. We support this bill as offering the right solutions at the right time to remedy abuses in the lending industry and to help keep borrowers in their homes. In particular, AARP is concerned about seniors who are more likely to own their homes and have considerable equity in them. This makes them a target for unscrupulous lenders when these homeowners seek to tap into that equity for needed medical expenses, home repairs, and other major costs associated with their age and circumstance.

This bill goes a long way to prevent bad loans from being made, and to remedy those bad loans after the fact, and when foreclosure is at hand. First and foremost, it deals with the problematic loans that have been at the heart of the current mortgage crisis. That is, subprime loans and non-traditional adjustable rate mortgages that have an initial teaser rate that traps unwary borrowers, or interest only loans for an initial period. These latter loans are particularly troublesome as they are attractive to borrowers who anticipate selling their homes in a few years, and this has become an exceedingly difficult scenario in the down housing market.

There is imposed in this bill a strong duty of care that brokers and other creditors involved in the making of the loan owe to the potential borrower. This concept is new to this business transaction, and comes with consequences for offering the wrong loan to the wrong person with inadequate disclosure. Here, there are provisions that mandate good faith and fair dealing and a standard of care that requires an affirmative effort on the part of the broker/creditor to offer a loan that is reasonably advantageous to the borrower, and to verify his ability to repay the loan. Full and timely disclosure of all aspects of the loan is required, as is an explanation of all compensation paid to the broker, and how this impacts the cost of the loan to the borrower. This is of particular importance when a yield spread premium is involved that directly impacts the interest rate offered the borrower. Another innovative provision directs that if the borrower is being offered a subprime or non-traditional loan that he/she also is offered a traditional fixed rate loan product at the best interest rate at which the borrower actually qualifies.

What this bill provides is choice, disclosure, protection, and the ability for the borrower to walk away from an unsuitable loan. If this does not occur, and a foreclosure scenario arises, then the bill affords the borrower a right to cure his default after being notified of a pending foreclosure, and to be reinstated without acceleration of any obligation under the loan.

The bill poses two sets of parallel restrictions on mortgage loan products. The first set is comprised of standard prohibitions seen in many state laws, and applies to all mortgage products, traditional, subprime, and non-traditional. These include prohibiting the encouragement of default, churning or "flipping" a loan (by refinancing into a loan that has no material benefit to the borrower), acceleration, financing of credit insurance, and failure to verify ability to repay.

The second set of prohibitions is an overlay that applies to subprime and non-traditional loans. Its purpose is to provide extra consumer protection for loans with extra risk. Provisions include escrowing taxes and insurance, providing the borrower with a written list of independent third party loan counselors, a ban on prepayment penalties, no negative amortization or doubling up of payments, protecting the right of access to the courts in a dispute, prohibiting rate increases after default, and very stringent requirements for written verification of the borrowers ability to repay the loan. In fairness to creditors offering subprime or non-traditional loans who make a good faith error in assessing the borrower's ability to pay, there is a safe harbor provision that allows them to cure this error in a timely manner and to adjust to mortgage product to suit the borrower and offer restitution.

Remedies for the borrower under this bill are comprehensive and fair. First and foremost, there is assignee liability, that allows the borrower to hold accountable any purchaser of the loan to the same extent the loan originator would be liable for offering a bad loan. This is only reasonable as almost all mortgage loans are sold into the secondary market shortly after they are made, and responsibility for the consequences of an inappropriate loan should follow the paper. This provision has withstood scrutiny in other states without damaging the availability of loan money for credit worthy borrowers. This provision also provides needed defenses for aggrieved borrowers facing foreclosure. There is also a private right of action, and a five year statute of limitations. These are particularly timely and necessary aspects of this proposal.

Senate Bill 423 affords borrowers relief from inappropriate loans and a greater likelihood that they will not enter into a bad loan in the first place. It offers a new and timely approach to resolving abuses in the lending industry that are of recent vintage, such that current law does not provide adequate relief. This bill it timely and essential, and provides more and better, and more relevant solutions than other proposals before this legislature. AARP Connecticut strongly supports this bill and asks that you give it your most favorable consideration. Thank you for the opportunity to express our view.