

February 24, 2008

TO: Banks Committee

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Concerning Raised Bill No. 949, (LCO No. 3425), An Act Concerning the Department of Banking's Proposal on Mortgage Practices and Governor's Bill No. 6367 (LCO No. 2644), An Act Concerning Mortgage Practices

The Connecticut Mortgage Bankers Association, Inc. ("CMBA"), which numbers over one hundred twenty organizations and 575 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.

The CMBA recognizes the challenges facing many Connecticut residents and the need to ensure 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. 949 and Governor's Bill No. 6367 (the "Mortgage Practices Bills") and other legislative proposals. The CMBA supports measures to maintain residential mortgage credit availability for the citizens of Connecticut.

The CMBA generally supports the Mortgage Practices Bills to ensure the meaningful regulation of the mortgage loan industry in the State of Connecticut.

The CMBA proposes modifications to the Mortgage Practices Bills, which are discussed below. (For ease of reference, the comments below refer to Sections in Bill 949 but not to the comparable Sections in Bill 6367.)

- Civil Forfeiture Provision. Section 2 of the Mortgage Practices Bill would subject the property of persons who engage in residential mortgage fraud to "civil forfeiture" of the property used in the fraud to the state. While the CMBA supports efforts to discourage mortgage fraud and to subject persons engaging in mortgage fraud to liability for their conduct, the proposal could unnecessarily extend the forfeiture to loan funds handled by an innocent settlement agent or an innocent creditor to whom a portion of the loan proceeds are paid. Accordingly, the CMBA opposes the broad terms of the civil forfeiture provision in these bills.

- Continued Limitation of Applicability of Nonprime Home Loans to Owner-Occupied Dwellings. Connecticut General Statutes Section 36a-760 et seq. contain the provisions adopted in the 2008 legislative session which afford protections to borrowers with respect to "nonprime home loans". Those protections apply to loans with rates above certain thresholds where the loans were secured by owner-occupied dwellings. Section 6 of the Mortgage Practices Act would, however, incorporate a new definition of "first mortgage loan", "secondary mortgage loan", and "residential property" that would expand the coverage of the "nonprime home loan"

law protections to property which is not owner-occupied. As a result, loans such as construction loans (which are not owner occupied property but which typically carry higher rates than loans on owner occupied property) and loans secured by investment property of borrowers who are making a personal investment but who are not in the business of being a landlord could become subject to this law. As a result, lenders may be unwilling to extend credit for such loans due to the restrictions on the loan terms applicable to “nonprime home loans.” Accordingly, the CMBA proposes that the definitions of “first mortgage loan”, “secondary mortgage loan”, and “residential property” should be revised to limit their applicability to loans on 1 to 4 family owner occupied property.

- Retention of Underwriting Requirements and Restrictions Applicable to Obligor. Connecticut General Statutes Sections 36a-760 et seq. requires that lenders, among other things, not make a “nonprime home loan” unless the lender reasonably believes that the “obligors” will be able to repay the loan. The law imposes other requirements concerning “obligors”, which is a term that can include co-signers and guarantors who a borrower might provide in order to establish creditworthiness. Section 7 of the Mortgage Practices Act Bills would substitute the term “borrower” for “obligor” and thereby require that a lender only rely on the “borrowers” income, assets and other criteria for establishing creditworthiness. As a result, some borrowers who could otherwise qualify with the assistance of a co-signer or guarantor would not be able to satisfy the underwriting requirements and restrictions imposed on lenders making “nonprime home loans”. Accordingly, the CMBA opposes the substitution in the Mortgage Practices Act Bills of the term “borrower” for “obligor” since the change will result in the reduction of available credit to borrowers who are not creditworthy themselves but who with the assistance of a co-signer or guarantor could demonstrate creditworthiness.

- Retention of Ability of Lender to Make a Good Faith Inquiry As to Whether a Loan is a “Special Mortgage”. As adopted in 2008, Connecticut General Statutes Section 36a-760c provides that a lender cannot make a “nonprime home loan” where all or a portion of the proceeds are used to fully or partially pay off a “special mortgage” (e.g., a loan originated, subsidized or guaranteed by or through a state, federal, tribal or local government, or nonprofit organization.) unless the borrower has obtained a written certification from a HUD approved counselor that the borrower has received mortgage counseling. Presently, there is an exemption from the certification requirement if the lender (1) makes a good-faith inquiry to the current holder or servicer of the loan and to the borrower as to whether the loan is a special mortgage; and (2) does not receive an affirmative response from either the current holder or servicer of the loan or the borrower indicating that it is a special mortgage. Section 8 of the Mortgage Practices Act Bills would remove that “good faith inquiry” exception. The CMBA opposes the removal of that exception, which can result in borrowers not being able to close on a new loan with more beneficial terms when the borrower is not able to procure the required certification in a timely manner.

- Balloon Payment Prohibition Should Not Apply to Construction Loans. Section 9 of the Mortgage Practices Act would limit the payment terms (such as prohibiting unequal payments, negative amortization, and the consolidation of multiple payments) for loans with terms of less than 7 years. While “bridge loans” are not subject to these limitations, the CMBA supports a specific exclusion for construction-only (as opposed to construction-permanent) loans.

While those construction loans secured by a borrower's existing dwelling can fall within the exclusion for "bridge loans", loans secured only by the property being constructed would not appear to fall within this exclusion. Accordingly, a specific exclusion for construction-only loans is warranted.