

February 24, 2008

TO: Banks Committee

FROM: The Connecticut Mortgage Bankers Association, Inc.

RE: Statement Concerning Raised Bill No.948, (LCO No. 3445), An Act Concerning the Department of Banking's Proposal to Implement the S.A.F.E. Mortgage Licensing Act and Governor's Bill No. 6368 (LCO No. 2680), An Act Concerning Implementation of the S.A.F.E. Mortgage Licensing Act

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. 948 and Governor's Bill No. 6368 (the "SAFE 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 SAFE Bills so that the Connecticut Department of Banking can continue to be the licensing authority for mortgage loan originators in the State of Connecticut. This will enable Connecticut consumers to look to our own government agency (instead of the Department of Housing and Urban Development in Washington, D.C.) to monitor and oversee mortgage loan originators.

The CMBA proposes modifications to the SAFE Bills, which are discussed below and on the attached Appendix. (For ease of reference, the comments below refer to Sections in Bill 948 but not to the comparable Sections in Bill 6368.)

- Delayed Effective Date. The key sections of the SAFE Bills as proposed would become effective on passage. Under the Housing and Economic Recovery Act of 2008 or "HERA" (which includes the federal SAFE Mortgage Licensing Act), states are not required to have laws in place to implement the SAFE Mortgage Licensing Act until July 30, 2009. Accordingly, the new requirements for individuals and companies to obtain a lender, broker, or originator license should not become effective until that time.

- Revise Definition of Mortgage Loan Originator to Limit Scope as Required by HERA. HERA defines the term "loan originator" to mean an individual who--

(I) takes a residential mortgage loan application; and

(II) offers or negotiates terms of a residential mortgage loan for compensation or gain.

Section 2 of Raised Bill No. 948 would extend the definition to any person who does either of those activities by using the word “or” instead of “and”. The CMBA requests that the definition be revised to conform to HERA. Otherwise, a “mortgage loan originator” (for which a license would be required) could arguably include persons working for a loan servicer who work on the negotiation and closing of loan modifications (loss mitigation efforts), short payoffs, and foreclosures. The extension of the licensing requirement to such persons could thereby impede the ability of loan servicers to modify loans and address other loss mitigation efforts because the loan servicers would need to hire persons who satisfy the loan originator licensing requirements.

- Permit Licensed Mortgage Loan Originators to Act for More than One Company When the Originator is an Officer, Director, Member or Independent Loan Processor or Underwriter or Is Engaged by a Bank. Section 5 of Raised Bill 948 would continue the Connecticut prohibition on a licensed originator acting for more than one company. In accordance with HERA, Connecticut is eliminating its exemption from licensing as an originator for any officer, director or member of a company and is also adding the requirement that any person who is an independent contractor acting as a loan processor or underwriter become licensed as a loan originator. Raised Bill 948 should be revised to permit persons who are officers, directors or members of a licensed company to act as an originator for more than one company (which is particularly appropriate when the companies are affiliated). In addition, independent contractors acting as loan processors and underwriters should be permitted to work for more than one company (including a bank) in order to qualify as independent contractors for employment law purposes. Moreover, inasmuch as they do not originate loans, the CMBA requests a change to permit the licenses of those persons to be effective even when they are not associated with any particular licensed mortgage lender or broker or a bank.

- Limit Lifetime Ban from Being Licensed Only to Mortgage Loan Originators Whose Licenses Have Been Revoked, Not to Licensed Mortgage Lenders or Brokers. To implement the SAFE Mortgage Licensing Act, the state law must impose a lifetime ban from being licensed on any mortgage loan originator whose license in any state has ever been revoked. Section 8 of Raised Bill No. 948 would impose that lifetime ban on any licensed mortgage lender or broker whose license was ever revoked in any state. While the Connecticut Department of Banking should clearly have the authority to consider whether a licensed lender’s or broker’s prior license revocation (whether in Connecticut or in any other state) should disqualify such a company from having a Connecticut license, HERA does not require and it is not necessary as a policy matter, to mandate that such companies also be subject to the lifetime ban from being licensed.

- Permit Licensed Company to Require an Originator to Post Security or Compensate the Company for Granting Permission to the Originator to Rely on the Company’s Surety Bond. Section 12 of Raised Bill No. 948 permits a mortgage lender or mortgage broker to use the surety bond of such lender or broker in lieu of the mortgage loan originator having to post his or her

own surety bond. The minimum amount of the surety bond is \$100,000.00. Raised Bill No. 948 is silent on whether the licensed lender or broker may require the mortgage loan originator to post security with the lender or broker (or be required to compensate the lender or broker) for the privilege of relying on the lender or broker's bond. The CMBA supports including in Raised Bill No. 948 a provision which would permit the lender or broker to do so.

- Assessment of Costs of Investigation and Enforcement on Licensee. Section 19 of Raised Bill No. 948 would permit the Department of Banking to assess licensees for the costs of investigating and bringing enforcement actions against the licensee. Inasmuch as the current banking law permits the Department of Banking to collect enforcement costs as part of a settlement agreement, the CMBA opposes this new provision as unnecessary.

- Section 20 Provisions Not Required by HERA. Section 20 of Raised Bill No. 948 would add new provisions to Connecticut's banking law, for example, provisions prohibiting licensees from failing to make required disclosures, failing to comply with licensing requirements, or from making false and deceptive statements. Such conduct is already prohibited by Connecticut law. Pending discussions with the Department of Banking, the CMBA opposes these new provisions which appear to be redundant of existing law.

- Relaxation of SAFE Requirements. The CMBA supports the purposes of the "SAFE Act". Some provisions of the SAFE Act are, however, potentially problematic and may actually be detrimental to the interests of consumers. For example, increased bonding requirements might actually reduce the number of licensed lenders, brokers, and originators so that competition is limited and consumers have difficulty obtaining loan origination services. To the extent that SAFE Act is amended either in the 2009 congressional session or in later years in a manner that relaxes some of the SAFE Act requirements, Connecticut's SAFE Bills should automatically incorporate such relaxed requirements or should permit the Department of Banking to by regulation alter the terms of the changes to Connecticut law required by the SAFE Act. This change would serve the Connecticut mortgage industry and Connecticut consumers so that they do not have to wait until a subsequent Connecticut legislative session is held during which such "relaxed requirements" could be incorporated into Connecticut law.

- Definition of "Residential Property" under Public Act 08-176 Provisions Relating to Non-prime Home Loans and Connecticut's Abusive Home Loan Lending Practices Act (Sections 36a-746a et seq.). The definition of "residential property" for purposes of the provisions of (1) "non-prime home loans" pursuant to Public Act 08-176 (An Act Concerning Responsible Lending And Economic Security); and (2) Connecticut's Abusive Home Loan Lending Practices Act (36a-746a et seq.), should continue to be limited only to owner occupied residential real estate. Each of those laws has provisions applicable to "residential property" as defined in 36a-485. Those laws should continue to be limited to their present scope and not include loans to be secured by property which is not owner occupied, for example, construction loans to individuals (where occupancy of the property is not permitted) and home loans made to individuals for personal investment purposes where the borrowers are not generally in the business of being a landlord.

• Placement of Unique Identifier on Loan Application. Section 21 of Raised Bill No. 948 would require that the loan originator's "unique identifier" be placed on a loan application. Inasmuch as several licensed loan originators might actually work on originating the same mortgage loan, the Section 21 requirement should simply require that the unique identifier of at least one such originator be placed on the loan application.