



CONNECTICUT BANKERS ASSOCIATION

March 1, 2011

To: Members of the Banks Committee

Fr: Connecticut Bankers Association
Contact: Tom Mongellow, Fritz Conway

**Re: S.B. No. 1077 AN ACT CONCERNING MARKET INTEREST RATES ON
CERTAIN DEPOSIT ACCOUNTS.**

Position: Support

Background

Existing State law mandates that interest must be paid on Tenant Security Deposits maintained by landlords and Tax and Insurance Escrow Accounts maintained by mortgage lenders. The statutes specify that the interest rate paid on these accounts be determined by the average savings account interest rate as published by the Federal Reserve. The purpose of this rate analysis is to provide an average *market* rate of interest that would be paid on these accounts. That rate is reviewed by the Department of Banking, and if necessary adjusted on January 1st each year.

Existing law also mandates a minimum amount of interest that must be paid on these accounts of 1.5%, which in amounts to a price control in the current low interest rate environment.

When the current law was enacted in 1993, average savings account interest rates were much higher than today and the average savings rate reflected a market rate that landlords or mortgage lenders could expect to pay, and tenants and borrowers would receive, on these accounts. On a nationwide basis, interest rates on both savings accounts and lending products are the lowest in decades, and it appears likely that they will remain low for the foreseeable future.

Senate Bill 1077 would remove the artificially high interest rate "floor" on these accounts and allow landlords and lenders to pay current market interest rates on these deposit accounts.

Market Based Interest Rate

The original intent of the law was to have market interest rates paid on these accounts, not to have landlords and mortgage lenders subsidize tenant and borrower deposit accounts. The 1.5 % mandated rate is over 7 times higher than the Connecticut's average savings account interest rate of .19%, based on a December 2010 statewide sampling of 87 depository institutions by Connecticut Bankrate Recap.

Price Control Unfairly Targets State Chartered Banks

This mandate is only enforceable against State chartered banks, due to federally chartered banks being pre-empted from most State "pricing" mandates. It is unfair to force the 38 State chartered community banks to pay a subsidized interest rate on these accounts while federal banks (which control over 70% of the deposit marketplace) can pay a lesser amount.

Escrow Accounts are a Valuable Service to Municipalities and Borrowers

Many banks provide tax escrow accounts for their borrowers. These escrow accounts provide customers with a convenient way to save for their property taxes on a monthly basis, thereby

easing the financial burden of having to pay a large property tax bill. The prompt payment of municipal property taxes from these escrow accounts provides a valuable tax collection tool for the State's towns and cities.

With the many benefits associated with escrow accounts, State chartered banks shouldn't have to pay a State mandated subsidy on these accounts; the free market pricing of these accounts should prevail.

Unfair to Landlords

Due to the low interest rate environment, landlords aren't able to find a savings account that will pay them anywhere near the 1.5% State mandated rate. That means they have to pay the additionally mandated interest out of their own pocket. This provision was originally geared to provide a safe depository for tenant deposits at a market rate, which would be readily available from depository institutions. When the law incorporating the interest rate "floor" was enacted, no one expected rates to be so low, for such an extended period of time.

We urge the Committee's support of Senate Bill 1077.



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**Re: S.B. No. 1078, AN ACT ENHANCING COMMUNITY BANK COMPETITIVENESS
AND FRAUD PREVENTION ON CERTAIN PRODUCTS.**

Position: Support

Background

Ever since 2003, Connecticut law has prohibited the use of expiration dates on gift certificates and gift cards. While this is an important consumer protection, when the law was originally enacted, no one anticipated the product innovations that might be on the horizon, including the emergence of “open-loop” gift cards. These are plastic cards that carry a “network” branded logo, such as Visa or MasterCard. That feature allows the gift card to be used at any retailer that accepts that same brand of credit or debit card. In recent years, these gift cards have become increasingly popular with the American public, because they function much like a credit card or debit card. It can be swiped at the register for an in-person purchase, and when certain fraud prevention procedures are followed, the card can be used to purchase goods or services over the telephone or on the Internet.

Fraud Prevention

As a matter of fraud prevention, most of the card networks (e.g. Visa), will not permit their brand of card to be issued without an expiration date. That date is often a critical part of the security verification process, particularly in a phone or Internet transaction where the cardholder provides the card brand, card number and expiration date. However, that expiration date is typically not the date the underlying funds expire. Rather, it is the date the *plastic card* expires. If a card expires, or is lost, a replacement card can be issued to ensure that remaining funds are still accessible to the consumer.

Proposed Legislation

Senate Bill 1078 would importantly, still *preserve the underlying funds and allow for a replacement card to be issued*. At the same time, however, the legislation would expressly allow expiration dates

on the plastic card, as long as the consumer is afforded clear protections. It also helps to level the competitive landscape for local state chartered banks.

State Chartered Banks Currently Prohibited From Offering The Product

As currently drafted, the existing Connecticut statute does not allow for expiration dates on these types of cards. Federally chartered banks are pre-empted from this law and regularly offer these cards to their business customers and consumers. However, State chartered banks have to adhere to the law and are unable to offer this widely sold and used product. As mentioned, the proposed legislation would allow State chartered banks to sell this product, just like their federal counterparts.

Consumer Protections

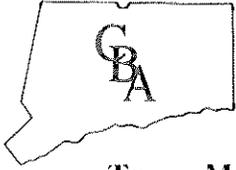
To ensure that the consumer is protected, Senate Bill 1078 would require that the *plastic card* could not expire for at least five years. Right on the card itself, consumers would be told that while the card can expire, *the underlying funds would never expire*. Disclosures on the card will also tell consumers that they may *obtain a replacement card* by calling a toll-free number (and through a web site, if one is available). *A consumer could not be charged a fee to obtain a replacement card or to otherwise gain access to the remaining funds on an expired card.*

Federal Regulation E Compliance

These important consumer protections are consistent with recent amendments to Regulation E, the federal law that governs electronic funds transfers.

We respectfully submit that Senate Bill 1078 strikes a proper balance by accommodating product innovation, enhancing fraud prevention and protecting consumers against the loss of value.

For all of these reasons, we urge your support of this legislation.



CONNECTICUT BANKERS ASSOCIATION

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Re: House Bill 6351, AAC Foreclosure Mediation

Position: Oppose

This bill would create a moratorium on any motions or pleadings associated with a foreclosure, while a borrower is enrolled in the Judicial Department's Foreclosure Mediation Program.

As the law currently stands, no judgment of foreclosure can be entered into, prior to the mediation being completed. However, the program was specifically designed to allow for motions and pleadings to continue during the mediation on behalf of *both* the borrower and lender. This was to allow the foreclosure to proceed in an orderly fashion in the event that the borrower was unable to financially afford staying in the property.

There are several public policy concerns surrounding delays in the foreclosure process including, protection of the existing housing stock; anti-blight issues surrounding vacant or abandoned properties, depreciation of housing prices which prolong negative equity situations for existing homeowners and reduced home sales due to market uncertainty. These were carefully taken into consideration when the Mediation program was developed, resulting in the allowance of motions and pleadings during the duration of the mediation.

While the Mediations are suppose to be conducted within a 90 day window, sometimes, borrowers or lenders may need more time for the mediation, such as when a borrower enters into a trial mortgage modification under the Federal HAMP program.

The Courts, depending on the circumstances, frequently exercise their equitable powers to extend the mediation timeframe, where necessary. With these issues in mind, we feel that H.B. 6351 would cause an unnecessary and negative modification to the Mediation Program.

State Mediation Program a National Model

Since the inception of the Mediation Program, the banking industry has worked with Committee leadership, the Judicial Department, consumer advocates and leading foreclosure attorneys to design a program that is now a national model for foreclosure mediation programs. The success rate of the program results in over 60% of borrowers staying in their homes and another 15% of borrowers reaching a resolution to the foreclosure. We continue to work with interested parties to improve the results and effectiveness of the program.

Making Mediations More Effective

Rather than delaying the foreclosure process, as this bill would do, we would suggest enhancing the Mediation program to make each mediation session as productive as possible, and make the program results even more successful.

First would be to make the *first* mediation session as effective as possible by providing a financial statement to the borrower when the mediation program application is received.

Second would be to create a "Mediation Counselor" position within the program, who would be able to independently guide and prepare the borrower for their mediation sessions, especially the first session. Funding for these additional employees could be provided by the Department of Banking Fund, which was and continues to be, the primary source of funding for the mediation program.

Third, would be to change to statute to allow the borrower, and the mediation counselor, a full 30 days to prepare for and schedule the first mediation session. Currently, there is only 15 days to prepare and schedule a mediation, which has proven problematic for many borrowers.

We look forward to working with the Committee, the Judicial Department and other interest parties to enhance the ability of the Mediation Program to keep borrowers in their homes, without unduly slowing down the foreclosure process.



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Re: House Bill 6382, An Act Concerning the Banking Fund

This bill contains a provision to sweep monies derived from “fines, civil penalties, or restitution” from the Department of Banking into the General Fund. These monies typically create a surplus amount of monies and are most typically collected from entities or persons that the Department regulates. The balance of the surplus fund is directly related to the number and level of those fines and thus, may significantly vary from year to year.

This fund allows the Department to have a financial cushion in the event that they need unexpected and additional resources, such as more examiners to oversee a particular issue or to address a problem that may arise on a statewide basis, such as the foreclosure crisis.

Currently, two important initiatives have been undertaken by the State because of previously available monies in the Fund. The first was the Judicial Department’s Foreclosure Mediation Program, which has over a 65% success ratio for keeping borrowers in their homes and has become the national model for mediation programs. The second program is the Mortgage Crisis Job Training Program which re-trains borrowers who are in foreclosure due to being unemployed or under-employed.

Both these programs would most likely never have been funded if the Department did not have those excess monies available. If these excess monies were swept into the general fund, that necessary innovation and focus on consumer and industry specific solutions will likely be lost.

With that in mind the Banking Industry certainly understands the significance of the State Budget Deficit and the need to close that deficit. We would hope that a modified approach could be employed, such as sweeping a smaller percentage of the excess monies, that would leave the Department with a financial cushion for the uncertainties that may arise (such as their new regulatory responsibilities under the Dodd Frank Act), and also for potential programs benefiting the citizens of the State.

Additionally, we would suggest sunseting that partial and automatic sweep of the excess funds at some point in the future, when the State Budget deficit has been successfully eliminated.

We look forward to working with the Committee and the bills proponents on these important concepts.



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**Re: H.B. No. 6454, AN ACT ADOPTING THE FEDERAL HIGHLY COMPENSATED
EMPLOYEE EXEMPTION FOR MORTGAGE LOAN ORIGINATORS**

Position: Support

Background

Last March, the U.S. Department of Labor issued an Opinion Letter addressing mortgage loan officers and originators ("MLOs"). Without any advance warning or opportunity to comment, the Opinion Letter abruptly reversed a longstanding position of the U.S. DOL. The letter stated that employees who perform job duties typical of a MLO do not qualify for the "administrative exemption" under the overtime requirements of wage and hour laws. Since most lenders have been relying on the administrative exemption in connection with their MLOs, this change meant that lenders either needed to reclassify MLOs as non-exempt, or classify them under another exemption that fit the job duties of the MLO position.

Most MLO's are paid on some type of a commission basis (not an hourly wage). And most high-earning originators neither expect, nor want, to be paid for any overtime associated with their job. They do not punch a clock and consider any type a time record to be overly burdensome and unnecessary. They control their own schedules and are often on the road, putting in hours at civic functions, meeting with realtors and applicants, and logging in and out of their blackberries and cell phones, often outside normal business hours.

Tracking the hours worked and computing "overtime pay" on the basis of sales commissions is an incredibly cumbersome task not only for the MLO, but also the lender that employs them. It is also an invitation for expensive lawsuits if a lender makes an unintended administrative error in an overtime calculation (which may have to be a retroactive calculation due to time records not being submitted by the MLO on a timely basis). In short, this is a serious and risky issue for lenders in Connecticut.

State Adoption of the Federal Highly Compensated Individual Exemption (HCIE)

Since many MLO's are highly compensated, and since the U.S. DOL's opinion was geared at protecting lower income earners with predictable work schedules, the State adoption of the HCIE as

presented in House Bill 6454 would provide relief for MLO's and lenders from the onerous record keeping which is currently necessary.

Federal "highly compensated individual" exemption (HCIE), is generally available for employees earning at least \$100k per year. This exemption would cover many of the MLO employees who are no longer able to fall under the repealed administrative exemption.

While Connecticut law and regulation do not currently recognize the Federal "highly compensated individual" exemption, all of Connecticut's surrounding states do recognize the HCIE, which may lead MLO's living in border towns to seek employment at an out-of-state lender, to avoid what they see as a burdensome and totally unnecessary timekeeping task.

Solution

We believe the solution to this issue would be for Connecticut to adopt a statutory recognition of the Federal highly compensated individual exemption, as presented in House Bill 6454.

There are a host of existing exemptions in the State wage and hour and overtime statutes, which already mirror other Federal exemptions, indicating a clear State precedence for recognizing certain Federal exemptions, as our surrounding states have done.

Both the Department of Banking and the State Department of Labor have reviewed and approved the language contained in House Bill 6454. At the request of the Department of Labor, the language before the Committee has been narrowed to only apply to MLO's.

We urge the Committee's support of the bill.