



October 15, 2007

The Honorable John Conyers
Chairman
Committee on the Judiciary
U.S. House of Representatives
2138 Rayburn House Office Building
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
U.S. House of Representatives
2142 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

On behalf of the Mortgage Bankers Association (MBA), I write in strong opposition to H.R. 3609, the "Emergency Home Ownership and Mortgage Equity Protection Act of 2007." At a time when the mortgage market is already experiencing a serious credit crunch, this bill threatens to increase costs to consumers, destabilize the mortgage market and result in injury to the overall economy. If this bill becomes law, mortgage bankers will no longer be sure that the money they lend is truly secure. This uncertainty will require higher interest rates and larger downpayments to offset the new risk and will push many lenders out of making certain mortgages.

MBA urges policymakers to take a more cautious and deliberate approach. Additional Congressional hearings are warranted given the complex nature of the issue and the known, unknown and unintended consequences of reopening the bankruptcy code.

H.R. 3609 authorizes bankruptcy judges to modify the terms of a mortgage – interest rate, repayment period, and other key provisions – effectively giving the courts free rein to rewrite these contracts without statutory or economic restraint. Although the bill is described as being targeted to remedying abusive subprime loans, the provisions of the bill actually cover all mortgages and home equity loans; therefore, if it is enacted, we believe that H.R. 3609 would result in negative consequences for all future borrowers.

Current market conditions suggest that the risk premium lenders would charge could be as much as two full percentage points on a mortgage. In other words, if the interest rate for a prime mortgage today is 6%, the passage of this bill could cause that rate to go up to 8%, without any changes in market conditions, borrower credit or any other factor. As an example, at today's interest rates, a prime borrower with a 30-year fixed loan of \$300,000 at 6% interest would pay \$1,799 per month in principal and interest. If H.R. 3609 were to become law, we estimate that the rate for the same loan could go as high as 8%, leading to a monthly payment of \$2,201 -- a monthly increase of over \$400, an annual increase of \$4,824 and more than \$144,000 over the life of the loan.

In addition to higher mortgage rates for everyone, we believe that enactment of the bill will actually increase foreclosures in the short- and long-term. In the short-term, lenders will have no choice but to move quickly to foreclosure to ensure that they are not covered by the onerous provisions of this bill.

As you know, the House of Representatives has taken significant steps that would assist today's troubled borrowers. MBA views these policies as significantly better options to address the mortgage crisis than reopening the nation's bankruptcy code. Specifically, the House overwhelmingly passed H.R. 1852, the Expanding American Homeownership Act of 2007, which modernizes the Federal Housing Administration, giving it a greater ability to help troubled borrowers refinance their loans. The House also passed H.R. 3648 that would exclude discharges of debt on primary residences from gross income, thereby saving borrowers from tax liability resulting from foreclosure avoidance.

Additionally, federal regulators have taken action to assist troubled borrowers. The Office of Federal Housing Enterprise Oversight recently announced that it would allow additional flexibility in the Fannie Mae and Freddie Mac investment portfolios and encouraged them to buy mortgages in distressed sectors. The Securities and Exchange Commission has clarified that loan servicers can modify loans for consumers where there is a "reasonable likelihood of default" rather than waiting until the loan is already in default, maximizing the possibility that people can remain in their homes.

Again, MBA respectfully urges members of the Judiciary Committee to vote against H.R. 3609 when the Committee marks up the legislation. The House of Representatives and the Administration have taken steps to help address troubled borrowers. Reopening the bankruptcy code would only further exacerbate the credit crisis, increase the costs of borrowing and ultimately hurt consumers.

Thank you for the opportunity to weigh in on this critically important legislation. If you or your staff has any questions, please do not hesitate to contact Erick Gustafson, MBA's Vice President for Government Affairs, at (202) 557-2913.

Sincerely,

A handwritten signature in black ink, appearing to read "John M. Robbins". The signature is stylized with a large, sweeping loop at the bottom and a horizontal line extending to the right.

John M. Robbins, CMB
MBA Chairman



OPPOSE CRAMDOWN LEGISLATION

MBA and the entire lending industry urge opposition to H.R. 3609, the “Emergency Home Ownership and Mortgage Equity Protection Act of 2007”

At a time when the mortgage market is experiencing a serious credit crunch, passing this bill will increase costs to consumers, further destabilize the mortgage market and hurt the overall economy. Mortgage bankers will no longer be sure that the money they lend is truly secure. This uncertainty will require higher interest rates and larger downpayments to offset the risk and will push many lenders out of making certain mortgages. The people impacted most will be those with lower incomes, weaker credit and smaller downpayments.

H.R. 3609 is advertised as being carefully targeted at abusive subprime loans made to low- and moderate-income homebuyers. The bill actually covers all mortgages and home equity loans, including traditional conventional mortgages made to higher income individuals.

The bill allows bankruptcy judges to modify (cram down) the terms on a mortgage – interest rate, repayment period and other key provisions – and gives judges free rein to rewrite these contracts without statutory or economic restraint. Essentially, the bill would reverse Chapter XIII of the Bankruptcy Act of 1898, which prohibited modifying or otherwise affecting the rights of a creditor holding a claim secured by real property.

Recent Congressional and regulatory actions should be given time to work

The House has taken significant steps to address current mortgage problems.

It has passed legislation modernizing the Federal Housing Administration (FHA), giving it a greater ability to help troubled borrowers refinance their loans. H.R. 3609 would actually work against these FHA reforms, as it would drive up interest rates for first-time, low- and moderate-income homebuyers – the very group of borrowers FHA reform would most help.

The House has passed legislation that would exclude discharges of debt on primary residences from gross income for tax purposes, thereby saving borrowers already in trouble from higher tax bills.

Federal regulators have taken action to assist troubled borrowers.

The Office of Federal Housing Enterprise Oversight (OFHEO) recently announced that it would allow additional flexibility for the Fannie Mae and Freddie Mac portfolios and encouraged them to use it to buy mortgages in distressed sectors.

The Securities and Exchange Commission (SEC) confirmed that loan servicers can modify loans for consumers where there is a “reasonable likelihood of default” rather

then waiting until the loan is already in default, maximizing the possibility that a loan modification can help people remain in their homes.

MBA concerns with H.R. 3609

H.R. 3609 will increase the costs for *all* mortgages.

Current market conditions suggest that the risk could be quantified by an increase of as much as two full percentage points on a mortgage.

At today's interest rates, a prime borrower with a 30-year fixed rate loan of \$300,000 at 6% interest would pay \$1,799 per month in principal and interest. If H.R. 3609 is enacted, we estimate that holding the economy, interest rates, borrower's credit, etc. constant, the rate for the same loan could go up to as much as 8%, leading to a monthly payment of \$2,201, an annual increase of \$4,824 and more than \$144,000 over the life of the loan.

H.R. 3609 will increase foreclosures.

In the short term, lenders will likely move quickly to foreclosure to ensure that they are not covered by the onerous provisions of this bill.

H.R. 3609 will make it more difficult to refinance both prime and subprime loans.

Borrowers who currently are able to refinance their subprime ARM loans may be hampered from doing so, given that credit underwriting standards would be tightened for both prime and subprime borrowers. Lenders and servicers previously willing to offer 97 to 100 percent financing to assist distressed borrowers would be reluctant to do so if they were subject to accepting new bankruptcy cramdown risk. The end result would be fewer refinances and greater frequency of default and bankruptcy cases.

H.R. 3609 will harm FHA, VA and RHS lending.

Because cramdowns and modifications through bankruptcy proceedings effectively do not exist today, there are substantial consequences to introducing this new bankruptcy risk. For example, FHA, Veterans Affairs (VA) and Rural Housing Service (RHS) loans subject to "involuntary" bankruptcy modifications may have to be purchased out of Ginnie Mae mortgage-backed securities (MBS) by servicers and transferred to the servicers' balance sheet with limited opportunities to re-securitize the loan. The net effect would be reduced accessibility to FHA, VA and RHS programs for borrowers. Servicers would be unwilling to accept this new risk and would shy away from such low-downpayment programs or would require significantly greater compensation, which would translate into greater downpayments and higher rates for borrowers.

The Bankruptcy Code doesn't "protect" vacation home owners with a cramdown.

Proponents of cramdowns and modifications of primary residences point to the ability to cram down vacation home and investment property debt as a reason for the bill. They also claim that there have been no ill effects from permitting cramdowns on second homes and investment properties. What they fail to demonstrate is that the Bankruptcy Code provides competing protections to secured creditors of second and investment properties. Because second homes and investor properties are not essential to the reorganization of the debtors, these properties are subject to relief from stay and can proceed to foreclosure without cramdown.

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