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.

<u>MBA concerns with H.R. 3609</u>

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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