



March 5, 2008

The Honorable Patrick J. Leahy  
Chairman  
Senate Judiciary Committee  
224 Senate Dirksen  
Washington, D.C. 20510

The Honorable Arlen Specter  
Ranking Member  
Senate Judiciary Committee  
152 Senate Dirksen  
Washington, D.C. 20510

Dear Chairman Leahy and Ranking Member Specter:

On behalf of the Mortgage Bankers Association (MBA), I write today to express MBA's opposition to two bills, S. 2136 and S. 2133, which are on the Committee's agenda for the Executive Business Meeting on Thursday, March 6. These bills would reopen the bankruptcy code to grant new powers to bankruptcy judges to change the terms of a primary mortgage. As a result, S. 2136 and S. 2133 would increase the cost of buying a home, and thus will price many Americans out of the housing market and make owning a home more expensive for others. The last thing potential homeowners and those looking to refinance need in this market are higher mortgage payments.

MBA estimates the change in bankruptcy law may increase interest rates across the board by at least 1.5 percentage points for those seeking to buy a home or refinance their existing loans. If bankruptcy judges are allowed to independently change the terms of a signed mortgage contract, which this bill would allow, lenders will face new uncertainty as to the value of the asset - the home - as the loan's collateral. To account for the new risk, lenders will be forced to require higher down payments, higher costs at closing and higher interest rates, pushing the dream of homeownership beyond the reach of millions of families.

Economists, mortgage experts and the Congressional Budget Office (CBO) believe bankruptcy reform legislation will increase costs. The CBO noted one of the costs "could be higher mortgage interest rates."<sup>1</sup> Professor Joseph Mason of Drexel University, who testified before the Committee, stated costs will increase for borrowers, as have a number of experts.

In addition to higher mortgage rates for everyone, we believe homeowners who borrow through the Federal Housing Administration, Department of Veterans Affairs and Rural Housing Service will be hardest hit because these programs will not be able to insure against a cram down. In effect, the loan servicer will have to absorb these losses, which are not at all anticipated under current law. As a result, borrowers will most likely

be required to produce large down payments and increased fees to offset new risks. Areas prone to natural disasters would be particularly hard hit, as loan amounts could be crammed down to zero or close to zero, eradicating the creditor's claim and giving lenders no incentive to lend in these areas.

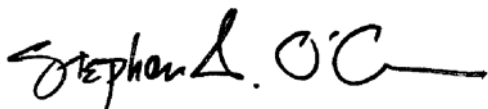
If this bill passes, we anticipate a substantial surge in Chapter 13 filings because the controls that currently limit lien stripping on *all other secured credit* are removed solely for home loan creditors. Moreover, by stripping a lien on a principal residence, it serves mostly to provide more funds to pay unsecured creditors such as credit card companies.

Moreover, the proponents of bankruptcy reform fail to acknowledge the very real and severe consequences for consumers who declare bankruptcy. For instance, the bankruptcy process is a long, arduous, very public and expensive process (court costs and legal fees average about \$3,000 per bankruptcy); and unfortunately, 64 percent of the repayment plans do not work. Filing bankruptcy will allow a federally appointed trustee to scrutinize every consumer's expenditure. Additionally, bankruptcy stays on a consumers' credit report for 10 years, making it difficult to acquire future credit, buy a home, car or insurance and in some cases, obtain employment. For an indication of how cumbersome the Chapter 13 bankruptcy process and proceedings are for consumers, please visit <http://www.bankruptcyvisuals.com/viewcharts.html>.

At a time when the mortgage market is already experiencing a serious credit crunch, these bills threaten to increase costs to consumers, destabilize the mortgage market and result in injury to the overall economy. We urge Congress to finish work on FHA modernization legislation, pass GSE reform, and other proposals to increase liquidity in the markets. Congress should also pass a predatory lending bill that provides uniform protections for all consumers. Congress should not change the bankruptcy laws to help the few at the expense of increasing costs on every borrower seeking a new mortgage.

Again, MBA respectfully urges members of the Judiciary Committee to oppose bankruptcy legislation. Reopening the bankruptcy code would only further exacerbate the credit crisis, increase the costs of borrowing and ultimately hurt consumers.

Sincerely,

A handwritten signature in black ink that reads "Stephen D. O'Connor". The signature is written in a cursive, slightly slanted style.

Steve O'Connor  
Senior Vice President  
Government Affairs

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<sup>i</sup> See, CBO Paper – Options for Responding to Short-Term Economic Weakness (January 2008) at 25.  
<http://www.cbo.gov/ftpdocs/89xx/doc8916/Frontmatter.2.1.shtml>