

January 27, 2009

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

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

Dear Chairman Conyers and Representative Smith:

The undersigned organizations have and continue to strongly oppose broad cram down legislation, such as H.R. 200 and H.R. 225. Such cram down legislation would give bankruptcy judges the broad power to reduce unilaterally the remaining balance on a mortgage and modify or change the interest rate or term of the loan.

We understand that a Manager's Amendment will be offered to H.R. 200 when it is marked up by the Committee later today. We appreciate the fact that the Amendment narrows the scope of the cram down to loans that were made prior to the date of enactment and makes other changes that reduce the negative impacts of the legislation. However, it will leave in place overly broad mortgage cram down authority and other provisions that will harm the housing market. We understand that several other amendments will be offered during the markup, and we strongly support amendments that narrow the scope of this legislation.

The housing market is already contracting and enactment of cram down legislation would make things even worse by injecting more risk into the mortgage market, making it harder and more costly for people to buy and sell homes. Permitting cram down in bankruptcy would encourage many people to file for bankruptcy first and would undermine other efforts to work-out or modify troubled loans. Bankruptcy is an ad hoc process that will overload the courts with millions of new cases that the system could not handle quickly or effectively, and the increased costs will be borne by taxpayers. Moreover, debtors that may have obtained mortgages through fraud or misrepresentation would also benefit from cram down at the expense of other borrowers.

Importantly, cram down legislation would disrupt Federal Housing Administration (FHA) and Veterans Administration (VA) loan programs that account for nearly a third of all new mortgages and are now the major source of affordable mortgage credit. Under current law, the federal government cannot insure or guarantee the amount that has been crammed down in a FHA or VA loan. Therefore, private companies that service mortgages would have a strong incentive to refuse to service FHA and VA mortgages. This would mean that the government would bear the costs and burdens of servicing FHA and VA loans. As the FHA noted in testimony and other communications, if private servicers abandon the market and the federal government is required to service FHA loans, the federal government and taxpayers would then be required to absorb the losses associated with cram down.

Cram down would also be costly to Fannie Mae and Freddie Mac (the GSEs), the federal government, and taxpayers. For instance, when a mortgage that has been packaged into a mortgage backed security (MBS) guaranteed by the GSEs is modified in bankruptcy, the value of the mortgage is negatively affected. The GSEs would need to realize a loss on the guarantee, and those losses flow through to the federal

government in its role as Conservator of those institutions and thus to taxpayers. In addition, prior to the enactment of the Emergency Economic Stabilization Act's Troubled Asset Relief Program (TARP) and recent actions by the Federal Reserve, it was private sector parties owning MBS that would bear any losses resulting from cram downs. However, under TARP the federal government can buy troubled loans and MBS. The government has also guaranteed losses from some large financial institutions. Cram down of this debt and MBS would trigger massive losses for the federal government and taxpayers.

Better alternatives than bankruptcy have been put in place and these can be expanded to enable lenders and borrowers to work together to modify mortgages to make them more affordable and avoid foreclosures. In particular, we believe that the FDIC's program on mortgage loan modifications could be an effective tool if implemented on a nationwide basis and if money from TARP could be used to support the program's broader availability. There are also other loan modification proposals that have been put forward that have merit and that could be effective if adequate funding is provided. The House Financial Services Committee has recognized that more money is needed for these programs and has made it clear in legislation passed by the House (H.R. 384, "TARP II") that at least \$40 billion and up to \$100 billion of any further money provided by Congress for the TARP program should be used by the Obama Administration for programs designed to avert foreclosures.

In addition, the Federal Housing Administration, which created the FHA Secure program last year, has helped nearly 410,000 borrowers refinance into more affordable mortgages. The HOPE NOW Alliance, which includes over 30 market participants, is helping at-risk homeowners avoid foreclosure through more than 200,000 workouts and loan modifications each month. On December 15, 2008, the housing GSEs, Fannie Mae and Freddie Mac, working with their regulator and industry partners, implemented a streamlined loan modification program similar to the FDIC's program for Indy Mac loans. In July 2008, Congress passed the Housing Economic Recovery Act, which included the Hope for Homeowners program. This legislation established a new FHA program (Hope for Homeowners) with an additional \$300 billion in FHA insurance authority. This program became effective October 1, and is just now starting to be implemented. In addition, H.R. 384 would expand the program and make it more flexible to assist more homeowners.

We look forward to continuing to work with the 111th Congress, the Administration, and the regulatory agencies on these and other programs designed to help prevent foreclosures. We strongly urge you to give these programs time to work, rather than legislating broad bankruptcy cram down provisions that would make it harder for consumers to buy and sell homes.

American Bankers Association
American Financial Services Association
American Securitization Forum
Consumer Bankers Association
Independent Community Bankers of America
Mortgage Bankers Association
Securities Industry and Financial Markets Association
The Financial Services Roundtable
The Housing Policy Council
U.S. Chamber of Commerce