



MBA Analysis of S. 2452 The Homeownership Preservation and Protection Act of 2007

MBA has long supported a uniform national standard to stop abusive lending. Given this long-standing policy, MBA strongly believes S. 2452, in its current form, is not the right approach. While S. 2452 would restrict some lending practices, it also would significantly increase lender liability and compliance costs, resulting in higher mortgage costs and less credit for borrowers. MBA is currently reviewing the Federal Reserve Board's recent proposal under the Home Ownership and Equity Protection Act (HOEPA) and the implications of H.R. 3915 which was passed recently by the House of Representatives. MBA believes that legislative and regulatory approaches to combat lending abuses should be targeted so as not to exacerbate the current credit crunch or constrain long-term market innovation.

S. 2452 would –

- Establish new limitations on all mortgage lending to borrowers; new and even broader limitations on subprime and nontraditional mortgage lending and the greatest limitations on high cost mortgage lending under the Home Ownership and Equity Protection Act (HOEPA) while expanding the Act's restrictions to a larger number of mortgages; and
- Establish new restrictions on appraisals, servicing and foreclosure practices.

As drafted, S. 2452 would significantly increase the liability, litigation and compliance costs of lenders and other real estate finance service providers and reduce competition, resulting in greatly increased costs and reduced choices for borrowers.

Specifically, S. 2452 would –

- Establish subjective and undefined standards of “good faith and fair dealing” as well as a duty to make “reasonable efforts” to secure an “appropriately advantageous” loan for borrowers which would invite costly litigation;
- Make lenders liable for the acts of mortgage brokers inviting litigation and/or resulting in less use of brokers – decreasing competition and credit options;
- Impose an undefined “reasonable skill” and “good faith and fair dealing” standard on appraisers while making lenders and holders of mortgages responsible for both appraiser violations and over appraisals;
- Establish substantively similar limitations for subprime mortgages and for nontraditional mortgages resulting in undue restrictions on prime borrowers who choose to defer interest and lower their monthly payments;

- End lending to subprime and nontraditional borrowers who have a debt-to-income (DTI) ratio greater than 45 percent – even where there are mitigating factors such as significant cash reserves – by establishing a rebuttable presumption they are unable to repay. Notably, the bill does not establish a presumption of ability to pay when the DTI is less than 45 percent;
- End prepayment penalties for subprime and nontraditional mortgage borrowers making mortgages more costly for these borrowers;
- Prohibit lenders from paying yield spread premiums (YSPs) for subprime and nontraditional mortgages, taking away the ability of borrowers to choose to reduce the cash needed to close. The bill would also take away this option for all other borrowers except where all of the loan costs are paid by the YSP, i.e., for “no-cost” loans;
- Take away the ability of all borrowers – including those with high incomes and significant downpayments – to get reduced documentation loans;
- Cut off credit and restrict choices for many borrowers by expanding the mortgages subject to HOEPA. Virtually no HOEPA loans are originated today as a result of HOEPA’s assignee liability and other provisions;
- Impose an undefined “reasonable skill” and “good faith and fair dealing” standard on servicers and make them agents of lenders, increasing liability;
- Create a defense to foreclosure if the servicer does not agree to renegotiate a valid mortgage contract with a borrower and also require a stay of foreclosure when a borrower enters foreclosure counseling;
- Limit the effect of foreclosure on leases so bona fide tenants may remain in foreclosed property however long their leases might run notwithstanding contrary state and local laws;
- Impose new regulatory burdens while limiting the ability of servicers to pass through valid charges incurred because of individual borrowers’ actions;
- Require lenders to pay the costs of foreclosure prevention counseling without limits, making lenders and ultimately performing borrowers pay the costs of non-performers;
- Extend the right of rescission available to borrowers for Truth in Lending Act (TILA) violations from three years to six years and make a rescission claim available as defense to foreclosure for an extended period of up to ten years, markedly increasing lender exposure to liability while delaying foreclosures and harming communities; and
- Significantly increase class action liability for assignees of subprime and nontraditional mortgages, which would likely curtail the availability of credit to subprime borrowers and prime borrowers who choose to defer interest.

S. 2452 would not establish –

- A uniform national standard for mortgage lending since it does not provide any federal preemption of state and local laws and regulations whatsoever;

- Reasonable exceptions to its requirements for FHA and VA mortgages which have not been subject to abuses;
- Uniform national licensing and registration requirements;
- Clear and objective standards and safe harbors to proscribe bad conduct and facilitate “good lending;”
- Reasonable safe harbors to clarify any assignee liability to avoid choking off loan funds from the secondary market for borrowers; or
- Procedures to provide an opportunity for the prompt cure of violations by lenders to make borrowers whole and avoid unnecessary litigation.

In contrast, H.R. 3915 would provide –

- Uniform national licensing and registration requirements;
- Greater clarity in the form of clear prohibitions and defined safe harbors;
- Reasonable exceptions from prohibitions for FHA and VA mortgages; and
- Some preemption of state laws regarding assignee liability and means to discharge assure the availability of funds to borrowers.

The Federal Reserve Board’s HOEPA proposals –

- Address many of the concerns covered by S. 2452;
- Provide advocates and industry an opportunity to comment by April 8, 2008; and
- Should be allowed to move forward through final issuance and be complemented by legislation only as necessary.
 - Examples of complementary legislation might include establishment of strong national licensing standards and preemption of the patchwork of state lending laws, which increase costs to all borrowers without providing consistent protections to consumers nationwide.

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