



December 10, 2009

The Honorable Nancy Pelosi  
Speaker of the House of Representatives  
H-232, The Capitol  
Washington, DC 20515

The Honorable John A. Boehner  
House Minority Leader  
H-204, The Capitol  
Washington, DC 20515

Dear Speaker Pelosi and Leader Boehner:

On behalf of the 2,400 members of the Mortgage Bankers Association (MBA), we are writing to express our strong opposition to the mortgage bankruptcy cram down amendment expected to be offered by Representative John Conyers to H.R. 4173, the Wall Street Reform and Consumer Protection Act.

Our primary goal should be to help keep more families in their homes and to unfreeze the credit markets. Cram down legislation fails on both marks. It will encourage more homeowners to opt for bankruptcy, and it will inject new risk into the mortgage market, thus making it more difficult for borrowers to buy, sell, or refinance a home.

The Conyers amendment also directly undermines the Obama administration's Home Affordable Modification Program (HAMP). While HAMP is still getting up to full speed, it has already exceeded the President's goal of securing 500,000 trial modifications by November 1, 2009. We clearly need to work to refine and improve this program to increase the rate of permanent modifications, but we should not raise potential new problems for HAMP by layering the possibility of cram down on top of it.

The amendment also fails to address the most pressing cause of foreclosures today: rising unemployment. Whereas the foreclosure crisis was initially exacerbated by nontraditional mortgages whose interest rates reset, data for 2009 indicates that prime fixed-rate mortgages now account for the largest number of new foreclosures. These products are safe and prudently underwritten, but are going into foreclosure mainly because of job losses. Allowing cram downs will do nothing to address this growing problem of job losses and foreclosures; in fact, cram downs will increase the risk of destabilizing already fragile housing markets.

Additionally, proponents of cram down have argued the provision would pose no cost to taxpayers. On the contrary, cram downs will dramatically affect the financial soundness of Fannie Mae, Freddie Mac, Federal Housing Administration, Rural Housing, and

Veterans Affairs programs. These entities, all of which are backed by the federal government, are currently the primary sources of residential mortgage liquidity. The Conyers amendment would cause them to absorb losses they otherwise would not sustain, resulting in greater risk to taxpayers and a substantial reduction in the availability and increase in the cost of credit.

Finally, we are concerned with a provision of the amendment that would completely disallow a creditor's claim in bankruptcy when a borrower alleges a violation of the Truth in Lending Act (TILA). TILA already provides penalties against creditors for minor and non-material errors in disclosing the finance charge. This provision would effectively give the borrower a "mortgage free" house while also requiring the creditor to return all interest and finance charges paid. That was never the objective of TILA and will have dire consequences to the mortgage market.

At a time when the federal government and financial community are singularly focused on getting the U.S. economy back on track, it seems contrary to be considering an amendment that will weaken the housing market and steer more homeowners directly into bankruptcy.

MBA urges the House to defeat the Conyers amendment and allow the administration's HAMP program to work as it was intended.

Sincerely,



John A. Courson  
President & CEO



Rob Story, Jr., CMB  
Chairman