

March 12, 2008

To: Senate Judiciary Committee Members

Re: Oppose Legislation to Change the Treatment of Mortgages During Bankruptcy

We are writing to reiterate our strong opposition to legislation that would reopen the bankruptcy code and grant new powers to bankruptcy judges to change the terms of a primary mortgage. The two bills, S. 2136 and S. 2133, that are on the Committee's agenda for the Executive Business Meeting on Thursday, March 13, would increase the cost of buying a home, and thus would price many Americans out of the housing market and make owning a home more expensive for others. We urge you to vote against these bills.

S. 2136, even as amended by the Committee on March 6 by substituting the provisions of Title IV of S. 2636, is not a "narrow," targeted approach to the problems in the mortgage market. Instead, it includes several provisions that have nothing to do with the underlying problem. For instance, it allows courts to override arbitration provisions and subjects lenders to severe penalties for technical noncompliance with the Truth in Lending Act. The enactment of these provisions, which have never been the subject of Committee hearings, will lead to protracted litigation and will exacerbate the current contraction in the credit markets.

A March 3 editorial by the Washington Post noted that allowing bankruptcy judges to rewrite mortgages would cause lenders to price the risk of litigation into interest rates, making "it harder for everyone to afford a home." Noted economist Robert J. Samuelson wrote in his March 5 Washington Post column that some measures being considered by Congress, such as overhauling the Federal Housing Administration (FHA), might help, but that other proposals, "particularly empowering bankruptcy judges to reduce mortgages unilaterally – would perversely hurt the housing market by raising the cost of mortgage credit. Lenders would increase interest rates or down payments to compensate for the risk that a court might modify or nullify their loans."

Congress has passed many bills that are helping address the problems facing the housing market. These include measures:

- Increasing the loan limits for the government-sponsored enterprises (GSEs) and FHA.
- Making mortgage debt forgiveness tax-free.
- Making mortgage insurance premiums tax deductible.

These types of bills, not changes to the Bankruptcy Code, are the right ways to help the housing market.

Additionally, the industry is working hard to help prime and nonprime borrowers. As of this week, HOPE NOW and Project Lifeline have helped more than one million homeowners stay in their homes. More help is on the way.

Therefore, we urge you to oppose S. 2136 and S. 2133.

Sincerely,

American Bankers Association
American Financial Services Association
American Insurance Association
American Securitization Forum
Consumer Bankers Association
Consumer Mortgage Coalition
Independent Community Bankers of America
Manufactured Housing Institute

Mortgage Bankers Association
National Association of Home Builders
National Bankers Association
Securities Industry and Financial Markets
Association
The Financial Services Roundtable
The Housing Policy Council
U.S. Chamber of Commerce