

February 24, 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, DC 20515

The Honorable John Boehner
Republican Leader
U.S. House of Representatives
Washington, DC 20515

Dear Speaker Pelosi and Representative Boehner:

The undersigned organizations oppose the broad bankruptcy provisions included in H.R. 1106, which will be considered by the House later this week. This legislation would allow bankruptcy judges to rewrite arbitrarily the terms of a mortgage contract, including reducing (“cram down”) the amount owed on a mortgage, changing the interest rate, or stretching out the term of the mortgage.

The housing market is already unstable and enacting cram down legislation would make things worse by adding even more risk to the mortgage market, effectively undermining efforts by Congress and the Administration to stabilize the housing market. In contrast, President Obama outlined a much more focused approach in his “Homeowner Affordability and Stability Plan” and called for “careful changes to personal bankruptcy provisions so that bankruptcy judges can modify mortgages written in the past few years when families run out of other options.”

We appreciate the fact that provisions have been added to H.R. 1106 that improve the bill reported by the Judiciary Committee (H.R. 200) with respect to FHA and VA loans and how losses are allocated to investors in mortgage backed securities pools. However, H.R. 1106 still does not address the President’s recommendations for narrowing the scope of the cram down to a targeted approach that makes bankruptcy a last resort rather than a first option.

In fact, H.R. 1106 not only leaves in place overly broad mortgage cram down authority, but also includes an extraneous provision that provides that even minor violations of the Truth-in-Lending Act (TILA) could result in a home equity loan or even a mortgage being disallowed in bankruptcy. Moreover, H.R. 1106 weakens language adopted by the Judiciary Committee that would have prevented applicants who committed fraud in their mortgage application from taking advantage of the cram down. These provisions will harm the housing market, increase bankruptcy filings and abuse of the bankruptcy system, and increase the cost and availability of credit for new home buyers and those that want to refinance their mortgages.

In addition, H.R. 1106 waives the current debt limit for Chapter 13 filings, thereby allowing millionaires to file for cram down on multi-million dollar homes. This directly contradicts the President’s statement that cram down should apply “only to existing mortgages under Fannie Mae and Freddie Mac conforming loan limits, so that millionaire homes don’t clog the bankruptcy courts.”

Therefore, we strongly urge you not to include broad bankruptcy cram down legislation in H.R. 1106 when it is brought to the House floor.

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

Cc: Members of the House of Representatives