

## **Oppose H.R. 3609, the Emergency Home Ownership & Mortgage Equity Protection Act**

### **Bill Would Lead to More Bankruptcies, More Foreclosures, and Higher Mortgage Rates**

Dear Representative:

The undersigned organizations, representing a united lending industry, are writing in opposition to H.R. 3609, the Emergency Home Ownership and Mortgage Equity Protection Act of 2007. This legislation, which was reported by the Judiciary Committee late last year, would add significant risk and uncertainty to the housing market by making major changes in our bankruptcy system. H.R. 3609 would undermine the effectiveness of Congressional and private-sector initiatives to help current and future homeowners and further restrict credit at a time when every effort possible is being made to stimulate the economy and avoid a recession. We strongly urge you not to cosponsor this harmful bill and to oppose it if it comes to the House floor.

H.R. 3609 would allow bankruptcy judges for the first time to alter the terms of a mortgage on a primary residence. For instance, judges would be allowed to make a unilateral decision to reduce (“cram down”) the amount owed to a lender. Historically, this was prohibited because it would undermine the long-standing public policy to encourage liquidity in the mortgage market and increase home ownership. Specifically, when Congress rewrote the bankruptcy laws in 1978, it deliberately retained the prohibition on cram downs and other changes to first mortgages by bankruptcy judges to keep housing affordable for as many Americans as possible. To change this policy now, especially when the country is facing a highly volatile and uncertain housing market, is bad public policy and would have several negative consequences for current and future homeowners, the housing market, and the economy.

Allowing bankruptcy judges to unilaterally change mortgage terms would increase risks for lenders and result in increased borrowing costs and less credit availability. At a time when the credit market is already contracting, this is the opposite of what is needed. The Mortgage Bankers Association (MBA) estimates that H.R. 3609 could increase interest rates on first mortgages by at least 1.5 percent. MBA has provided an online calculator for borrowers to determine what this would mean for them.<sup>1</sup>

For example, in Los Angeles County, the cost of an average \$359,000 mortgage would increase more than \$4,200 per year. In Wake County, North Carolina, an average \$160,000 mortgage would increase more than \$1,900 per year. And in Hamilton County, Ohio, the cost of an average \$132,000 mortgage would increase more than \$1,500 per year. Many deserving borrowers simply cannot afford these increased costs.

The vast majority of economists, mortgage experts, and even the Congressional Budget Office (CBO) believe H.R. 3609 would have an adverse impact on interest rates and credit availability. For example, CBO noted in its analysis of economic stimulus options that one of the costs of the bill “would be higher mortgage interest rates.”<sup>2</sup> Professor Joseph Mason of Drexel University testified before the

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<sup>1</sup> Go to: <http://www.mortgagebankers.org/StopTheCramDown>

<sup>2</sup> See, CBO Paper – Options for Responding to Short-Term Economic Weakness (January 2008) at 25. <http://www.cbo.gov/ftpdocs/89xx/doc8916/Frontmatter.2.1.shtml>

Senate Judiciary Committee that “it is straightforward to conclude” that cram downs will increase the cost of mortgage credit. Professor Mason responded to written questions from the Committee in more detail: “Allowing bankruptcy judges to unilaterally change the terms of a mortgage to those less favorable to the lender will impose unexpected and un-forecastable costs upon lenders and therefore raise the cost of providing funds to borrowers that can qualify for such treatment.”

Lenders want to avoid foreclosures whenever possible, and government and private-sector efforts to work with borrowers to avoid foreclosure are starting to take hold. For example, a recent study of 28,000 “non-traditional” mortgages held by banks and credit unions as of August 2007 conducted by California’s Department of Financial Institutions showed that a minority of these loans (9 percent) were delinquent 90 or more days or in foreclosure and that most of these were being worked-out rather than foreclosed upon (about 450 foreclosures to 3,500 workouts).<sup>3</sup> Statistics compiled by MBA show that nearly a quarter of a million loans were put into repayment plans or modified in the third quarter of 2007. On January 18, the HOPE NOW alliance of counselors, lenders, and servicers reported that 370,000 homeowners were helped in the second half of 2007 through repayment plans and workouts, and that the number of borrowers being helped “is accelerating rapidly.”

H.R. 3609 would undermine work out efforts because it encourages borrowers to file for bankruptcy first, rather than viewing bankruptcy as a last resort. CBO’s analysis of economic stimulus options states that H.R. 3609 would “add to the caseload of the bankruptcy court system causing delays in resolving cases.” There is also real concern that H.R. 3609 would result in increased fraud and abuse in the bankruptcy system. Professor Mason said in his Senate Judiciary Committee testimony that allowing judges to change the terms of mortgages in bankruptcy “sets the stage for a potential abuse of the bankruptcy system to further speculative purposes.” He also believes it would encourage people to cash out their home equity, thus dramatically reducing a major component of retirement savings for most Americans.

We strongly urge you not to cosponsor H.R. 3609 and to oppose it if it comes to the House floor. H.R. 3609 would undermine the effectiveness of Congressional and private-sector housing-related initiatives, while hurting millions of current and prospective homebuyers and the economy.

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

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<sup>3</sup> See, <http://www.dfi.ca.gov/publications/bulletins/2007/november07.pdf>