

September 19, 2007

The Honorable Patrick Leahy
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Leahy:

The undersigned organizations share your concern about growing mortgage delinquencies and foreclosures and are working hard to help consumers whose difficulties might lead to foreclosures. For example, we support proposals to enhance the Federal Housing Administration (FHA) by allowing the FHA to assist borrowers who are 90-days delinquent in payments and to modernize the FHA to make it a more viable alternative to support lending to low- and moderate-income borrowers. In addition, the industry is working with individual borrowers to keep them out of foreclosure.

Lenders and servicers are taking a variety of actions, individually and in partnership with non-profits, to reach out to borrowers in difficulty. Individual companies are actively trying to contact their customers who are behind on their mortgage or who may be facing a reset in an adjustable rate loan. Companies work one-on-one with customers who have fallen behind on their payments, often up to the actual point of foreclosure, on options to keep them in their home. In addition, our member companies and others in the industry are actively working with non-profits to reach borrowers who are reluctant to call their lender. One successful effort is the 1-888-995-HOPE national counseling program. Independent, non-profit counseling is available to any consumer who calls that number, 24 hours a day, seven days a week. These efforts are on-going and will continue.

However, we are very concerned about legislative proposals intended to respond to problems in the subprime market by making major changes to our bankruptcy system. One such proposal would allow bankruptcy judges to modify the terms of a mortgage in a Chapter 13 proceeding. This proposal could involve reducing the value of the loan, extending the terms of the loan, lowering the interest rate, delaying the effective date of an adjustable rate increase, and similar provisions.

If a mortgage loan can be modified or rendered unsecured during bankruptcy, it will be far more difficult to originate or sell mortgages in the secondary market. Such changes introduce substantial risks that the terms of loans will be changed in unpredictable ways. The cost of mortgages would have to increase to reflect this additional risk. These proposals would reduce liquidity and make it harder for Americans to obtain a new mortgage or refinance their existing mortgage, the exact opposite of what the mortgage market needs now.

We are also concerned with proposals which would add a new section 1334 to Chapter 28 of the U.S. Code, thereby voiding legal arbitration in regard to both core and non-core proceedings for all consumer loans, both secured and unsecured, that become part of a bankruptcy proceeding. Such a change is unnecessary. Bankruptcy courts already have the discretion to deny enforcement of an arbitration clause or deny a motion to compel arbitration where to do so would advance the underlying policy of the Bankruptcy Code, such as where "core proceedings" are involved. Any

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change would only serve to increase litigation and would undermine a system that has provided tremendous benefit to all involved – including consumers and debtors.

We ask that you oppose these changes in our nation's bankruptcy laws. We do want to work with you on constructive solutions to this difficult problem. Thank you for considering our views.

Sincerely,

American Bankers Association
America's Community Bankers
American Financial Services Association
Consumer Bankers Association
The Financial Services Roundtable
The Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association
National Association of Home Builders
Securities Industry and Financial Markets Association
The Council of Federal Home Loan Banks
U.S. Chamber of Commerce