SIFMA

Securities Industry and Financial Markets Association

November 6, 2007

The Honorable John Conyers Chairman Committee on the Judiciary U.S. House of Representatives Washington, D.C. 20515	The Honorable Lamar Smith Ranking Member Committee on the Judiciary U.S. House of Representatives Washington, D.C. 20515

Dear Chairman Conyers and Ranking Member Smith:

As the Committee prepares to mark-up H.R. 3609, the “Emergency Home Ownership and Mortgage Equity Protection Act of 2007” we write to express our opposition to the bill, as reported by the Commercial and Administrative Law Subcommittee. The Securities Industry and Financial Markets Association (SIFMA) and the American Securitization Forum (ASF) believe that the legislation represents a fundamental change to mortgage finance that would undermine one of the pillars of securitization and the six and one-half trillion dollar secondary mortgage market. Securitization helps provide valuable liquidity to our economy by linking mortgage originators with the global capital markets.

The bill would allow a debtor in Chapter 13 bankruptcy to “strip down” a lien secured by the debtor’s principal residence, such that the lender would only receive the value of the secured property, as opposed to the full amount of the debt owed. Allowing a bankruptcy judge to reduce the secured balance of a mortgage loan introduces a significant degree of uncertainty and inaccuracy to the process of valuing the collateral that supports mortgage-backed securities. This uncertainty generates risks that would cause investors to require higher yields on these securities, and could cause some investors to reduce their exposure to mortgage backed securities. In either case, this will significantly affect the availability and pricing of mortgage credit in a manner that would be deleterious to all borrowers.

While this risk would prevail for all mortgage borrowers, the effect would be particularly pronounced for those borrowers who are perceived to pose the greatest risk for entering bankruptcy during the life of their mortgage. Thus, this increased risk , and the resulting increased costs of borrowing would be felt even more in areas where home prices are declining, local economic conditions are poor, or a borrower otherwise has a riskier profile. Given the current conditions in the mortgage market—lenders tightening credit standards, or lenders going out of business entirely—it is already becoming difficult for some borrowers to access mortgage credit. The changes to the bankruptcy code in H.R. 3609 would only serve to exacerbate this problem and would harm those whom it intends to help by making it even more difficult and expensive for imperiled borrowers to obtain affordable new financing.

Furthermore, allowing bankruptcy judges to change the terms of an existing mortgage loan, thus altering mortgage lenders' property rights, clearly raises significant substantive due process concerns and may involve a taking of property within the ambit of the Takings Clause of the Fifth Amendment. The Supreme Court has addressed similar statutes on several occasions and has generally ruled to preserve lenders' preexisting property rights either by construing that a statute did not apply retroactively or by finding that a statute applied retroactively and violated the Takings Clause. To the extent the bill would be applied retroactively to destroy a lender's previously vested property rights, it is constitutionally suspect. This result would not serve the best interests of consumers, lenders, investors or the U.S. capital markets and would be particularly harmful to those borrowers most negatively affected by the subprime downturn who need access to affordable credit to refinance or obtain loan modifications.

Instead of policies that would shrink mortgage lending, there are other ways to help homeowners currently facing foreclosures. For example, industry participants are collaborating in new ways to create comprehensive education efforts. Specifically, lenders and servicers are reaching out to troubled homeowners, and assisting borrowers through community programs such as NeighborWorks® America, HOPE NOW and 888-995-HOPE. Many lenders have also increased other loss mitigation efforts including loan modifications, enhanced counseling programs and increased staffing to assist borrowers.

As the Committee continues to explore appropriate solutions to assist troubled borrowers and homeowners, we look forward to working with you.

Sincerely,

Scott DeFife
Senior Managing Director
Government Relations

Richard Hunt
Senior Managing Director
Government Relations