

HOUSE SUBCOMMITTEE REVIEWS CASTLE-KANJORSKI PROPOSAL -- April 15, 2008

Washington, DC - Today, Congressman Michael N. Castle (R-DE) and Congressman Paul Kanjorski (D-PA), held a Financial Services Committee hearing in the Capital Markets, Insurance, and Government Sponsored Enterprises Subcommittee to review their recently introduced legislation, H.R. 5579, the Emergency Mortgage Loan Modification Act. This legislation would provide a legal safe harbor for mortgage servicers making certain loan modifications.

As homeowners feel the threat of foreclosure and increased mortgage payments, many mortgage loan servicers have the opportunity to modify the mortgage rates. The home loans originated by banks and other mortgage retailers are then bundled and sold to investors as new securities. These securities are overseen by mortgage service companies -- which could be discouraged from making modifications of the loan for fear of lawsuits from their investors. While mortgage service companies are able to rewrite the circumstances of the loan, investors could be displeased and sue.

In most instances, changes to complex or adjustable mortgage terms can keep a family in their home while yielding a greater rate of return for investors than a foreclosure. Many agree that the small legal clarification presented in H.R. 5579 would protect mortgage modification efforts from legal exposure while balancing the interests of investors and help relieve some of the immediate pressure from the current market volatility. On April 4, 2008, Senator Hillary Clinton (D-NY) introduced a Senate version of this legal liability legislation.

At today's hearing, Reps. Castle and Kanjorski addressed the committee, detailing the goals of this proposal.

"The goal of this legislation is to provide immediate relief for those facing the threat of foreclosure by protecting servicers modifying mortgage loans," said Rep. Castle. "Homeowners and investors alike could benefit by finding terms and conditions that would allow at-risk homeowners the opportunity to stay in their homes, while providing investors some rate of return on their investments."

"One of the main obstacles that we face in attempting to decrease the number of mortgage foreclosures is the reluctance of servicers to modify loans and conduct workouts because they fear investor lawsuits," said Chairman Kanjorski. "The legislation under consideration today will provide servicers a safe harbor from legal challenges, if the servicers meet certain conditions. A safe harbor should embolden servicers to ramp up loan modifications. Without the fear of litigation, servicer efforts toward loss mitigation should also greatly increase."

In recent Committee hearings, Chairman Barney Frank of the House Financial Service Committee and John Dugan, Comptroller of the Currency have acknowledged the benefit of enacting H.R. 5579.

"The Castle-Kanjorski bill is a very significant contribution to our effort to deal with the most important domestic issue facing Congress this year, and Rep. Castle deserves a great deal of credit for not only identifying an obstacle to the response, but in providing a way to eliminate it," said House Financial Services Committee Chairman Barney Frank.

"[The Castle and Kanjorski legislation clarifies] the obligations of servicers and provide reasonable and limited protection from liability for undertaking loan modifications, workouts, or principal write downs..." asserted John C. Dugan, the Comptroller of the Currency, in testimony before the House Committee on Financial Services on April 9, 2008. "H.R. 5579 would clarify that servicers should take actions that benefit all pool investors in the aggregate under these arguments. The alternate interpretation - that servicers cannot take action when it would result in conflicting impact on different classes of investors - could effectively paralyze servicers from taking any of the remedial actions specified in the agreements."

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