

May 11, 2021

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
H – 232, The Capitol
Washington, D.C. 20515

The Honorable Kevin McCarthy
Minority Leader
U.S. House of Representatives
H – 234, The Capitol
Washington, D.C. 20515

Dear Speaker Pelosi and Leader McCarthy:

On behalf of the undersigned organizations, we are writing to express our views on H.R. 2547, the “Comprehensive Debt Collection Improvement Act,” sponsored by Chairwoman Waters of the House Financial Services Committee. Collectively, our organizations represent a broad and diverse constituency of lenders, servicers, and additional market participants that foster the flow and availability of affordable and accessible credit to all consumers. Debt collection appropriately executed and within the confines of the law is necessary to ensure the continued and sustainable flow of credit while also providing legal and financial protections to borrowers.

Specifically, the undersigned organizations are opposed to Title VIII of H.R. 2547, the Non-Judicial Foreclosure Debt Collection Clarification Act, which would reverse the unanimous Supreme Court of the United States (SCOTUS) decision from March 20, 2019 in *Obduskey v. McCarthy and Holthus LLP* (“*Obduskey*”). In *Obduskey*, SCOTUS clarified that entities enforcing a security interest without also seeking repayment or deficiency judgment generally do not qualify as debt collectors under the Fair Debt Collection Practices Act (FDCPA).

Our country’s mortgage lending system continues to rest on the foundation of enforceable security interests in real property. By allowing lenders to take possession of collateral through foreclosure when a borrower defaults, the law reduces the risk to lenders – which in turn allows them to make credit available to more home buyers at a much lower interest rate than available for unsecured credit. More than half of the States have designed their legal systems to provide for non-judicial foreclosures, which maintain significant state and federal procedural protections for borrowers while streamlining the foreclosure process. One purpose of non-judicial foreclosure is to avoid the costs and protracted delay of litigation, which inevitably result from judicial involvement in the foreclosure process. These states have made the judgment that this process also appropriately balances the needs of individuals through robust procedural protections and the benefits to communities of limiting blight or opening new home ownership opportunities.

In March of 2019, SCOTUS unanimously held in *Obduskey V. McCarthy and Holthus LLP* that a business engaged in non-judicial foreclosure proceedings is not a “debt collector” under the FDCPA. We support the unanimous SCOTUS ruling and oppose any legislation designed to overturn the decision, which is consistent with the opinions filed in the supporting amicus.¹ Such an outcome would disrupt the choices states have made in structuring their foreclosure regimes, imposing unnecessary costs and delay to the enforcement of real property interests and subsequently increasing the cost of credit.

¹ https://www.supremecourt.gov/DocketPDF/17/17-1307/72111/20181114165931617_Obduskey%20-%20MBA%20et%20al%20amicus%20FINAL.pdf

Thank you in advance for your consideration of the views expressed within this letter. We stand ready to work with Congress to ensure a robust mortgage finance market that is accessible and affordable – and works efficiently and effectively for all borrowers across our country.

Sincerely,

American Bankers Association (ABA)
Consumer Bankers Association (CBA)
Credit Union National Association (CUNA)
Independent Community Bankers of America (ICBA)
Mortgage Bankers Association (MBA)
National Association of Federally-Insured Credit Unions (NAFCU)
Securities Industry and Financial Markets Association (SIFMA)
U.S. Chamber of Commerce (COC)

cc: All Members, U.S. House of Representatives