



Credit Union National Association

cuna.org

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January 22, 2009

The Honorable John Conyers
Chairman
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

The Honorable Lamar Smith
Ranking Member
Committee on the Judiciary
United States House of Representatives
Washington, DC 20515

Dear Chairman Conyers and Ranking Member Smith:

On behalf of the Credit Union National Association (CUNA), I am writing regarding today's hearing on H.R. 200, the "Helping Families Save Their Homes in Bankruptcy Act of 2009," and H.R. 225, the "Emergency Homeownership and Equity Protection Act." CUNA represents approximately ninety percent of America's 8,200 state and federally chartered credit unions and their 90 million members.

CUNA acknowledges bankruptcy as a legitimate option for eligible borrowers who have no other way to address their indebtedness. Yet, we believe that the Bankruptcy Code must fairly balance the rights of both credit grantors and borrowers, and it must recognize the impact that bankruptcy has on the cost of credit to borrowers who do have the ability and determination to repay their obligations.

Since late 2007, when the subprime mortgage crisis developed, credit unions have recognized the need for Congress to take steps to try to keep people in their homes. In fact, credit unions were the first – and only – group of mortgage lenders to be open to legislation that would provide limited loan modifications in bankruptcy. We have worked since that time to ensure that this legislation be targeted to the mortgages that have caused the problem, and limited to address the crisis at hand.

Loan modifications may, in some cases, result in lower costs than foreclosure proceedings and reduce the negative impact vacant properties have on local communities. However, a lender that made a mortgage loan using good underwriting standards should not bear the risk of a decline in the house's value. The adoption of a broad amendment could result in a number of bankruptcy filings by people who are capable of paying their current mortgages.

Credit unions did not make the types of loans that triggered the mortgage crisis, but credit unions are certainly being impacted. We have already heard from credit unions executives about credit union members who are not even delinquent on their mortgage loans and who have not lost their jobs, suddenly stopping payments and triggering foreclosure because they just no longer want to make large mortgage payments on houses which have dropped notably in value.



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On January 17, 2009, in an article entitled, "The Growing Foreclosure Crisis," *The Washington Post* reported that some people were simply walking away from houses where they had made no down payment and their monthly payment was akin to rent. A real estate agent was quoted in that article saying, "Some people would rather hold onto their pickup truck or Mercedes than their homes." The story also mentioned the person who was approved for a mortgage loan modification by IndyMac, but was disappointed that he did not get help in lowering his credit card debt. A bankruptcy amendment that allows anyone to seek to modify his home loan in bankruptcy not only impacts mortgage loans, but impacts all loans that can be modified in Chapter 13, including that pickup truck, Mercedes, and credit card debt.

A broad bankruptcy amendment allowing any mortgage loan to be modified in bankruptcy would put additional stress on all types of lenders. Such an amendment would further undermine investor interest in mortgage-backed securities, increase cost of mortgage loans for future borrowers, and present additional challenges in rebuilding the secondary mortgage markets.

For these reasons, we cannot support an amendment to the Code that would give bankruptcy courts unlimited authority to modify any type of loan secured by a debtor's principal residence. We believe that any amendment to the Code must target certain types of loans and be limited in duration. Therefore, credit unions cannot support these bills in their current form, and CUNA opposes any amendment to the bankruptcy law being included in the economic stimulus legislation. Adequate consideration needs to be given to the unintended consequences of amending the bankruptcy law and to the practical implementation issues associated with any amendment to the code since the bankruptcy law has no implementing regulations to serve as guidance to the courts.

For over a year, CUNA has worked with this committee and Senator Richard Durbin on an amendment to the Code to give bankruptcy courts authority to amend certain mortgage loan agreements secured by the debtor's principal residence, specifically: Loans that are determined to be "subprime" loans with large re-sets of interest rates; loans with negative amortization; or loans that a court reasonably determines were fraudulent or abusive when made with no reasonable underwriting standards and expectation the borrower could actually repay the loan. Adopting such an amendment would not only provide relief to certain debtors, but would serve the important purpose of helping to ensure that these types of lending products do not re-emerge.

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For any loan falling within this category, we believe the bankruptcy court should have the authority to:

- Cancel prepayment penalties;
- Lower the interest rate to the current conventional fixed market rate;
- Extend the maturity of the loan; and
- Adjust the principal balance to no lower than the current market value of the house if, when the house is eventually sold by the debtor, the debtor would not only have to repay the remaining loan balance established by the plan, but also have to turn over to the original first and junior lien holders any net proceeds up to the original mortgage balances, even after discharge (also known as recapture).

Obviously, any amendment to the Code permitting the adjustment of the mortgage value to current market value should also require that current market value be established by an independent appraisal, and require the debtor to demonstrate the ability to make the monthly payments under the new terms. It is also important that the amendment prohibit a debtor receiving such relief from using the house as collateral for any future loans. Debtors pulling equity out of their home was a key reason for the mortgage mess our country is in today.

With government actions underway to improve disclosures, curtail unfair and deceptive mortgage practices, and require the registration or licensing of mortgage lenders and brokers, CUNA believes that the mortgage market in the future will be quite different and that bankruptcy courts will not continue to see the types of mortgages where debtors should reasonably be granted some form of relief in Chapter 13 cases. Therefore, CUNA would not support the ability of a bankruptcy court to modify any terms on any mortgage loan made after 2008, and would hope that the authority given to the bankruptcy court as outlined above would sunset five years after enactment.

We recognize that in the current economic environment there is growing interest in Congress to give bankruptcy courts the authority to modify any mortgage loans secured by the debtor's principal residence. Many press reports erroneously state that this issue involves only first mortgages; however, home equity loans and other secured secondary loans would also be impacted. And many supporters of a broad bankruptcy amendment cite the fact that a bankruptcy court can modify the terms of a loan secured by the debtor's vacation home but not a loan secured by the debtor's principal residence. We think it is very unlikely that courts allow debtors to maintain second homes that are used even for occasional vacations while eliminating debts owed to other creditors. But if this is a real concern, we would support an amendment to forbid debtors from

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maintaining vacation homes if they file for Chapter 13 relief, if other bankruptcy amendments are adopted.

Some who are supporting an amendment broader than our position believe it will encourage far more mortgage loan modifications outside of bankruptcy. We respectfully disagree: A broader amendment will only encourage people to hire bankruptcy lawyers – and we do not expect that the requirement that a borrower must have attempted to contact the mortgage lender or servicer at least 10 days before filing will do anything to deter a bankruptcy petition.

Finally, we encourage Congress to consider a range of issues before addressing bankruptcy in an economic stimulus bill, including: How can federal loan guarantee programs be incorporated into any bankruptcy amendment to curtail Chapter 13 plan amendments if a house's value continues to drop? How can a recapture provision practically work? How should the application of tax rules on discharge of indebtedness made inside and outside of bankruptcy be reconciled?

In absence of significant modification, credit unions are not able to support the mortgage bankruptcy bills being considered by the Committee. We appreciate the opportunity to share our perspective at this hearing, and look forward to exploring the impact and complications of enacting such legislation.

Sincerely,

A handwritten signature in black ink that reads "Daniel A. Mica". The signature is written in a cursive, flowing style.

Daniel A. Mica
President & CEO