



CUNA

Credit Union National Association

cuna.org

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February 9, 2009

The Honorable Evan Bayh
United States Senate
131 Russell Senate Office Building
Washington, DC 20510

Dear Senator Bayh:

On behalf of the Credit Union National Association (CUNA), I am writing in support of your efforts to seek improvements to the pending mortgage bankruptcy cramdown proposals. CUNA represents approximately 90% of America's 8,200 state and federally chartered credit unions and their 90 million members.

Across the country, foreclosure rates have increased as the financial crisis has impacted not only Wall Street, but Main Street as well. While credit unions are very concerned regarding proposed changes to the Bankruptcy Code in response to the mortgage crisis, CUNA acknowledges bankruptcy as a legitimate option for eligible borrowers who have no other way to address their indebtedness. 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.

Cramdown Legislation Should Be Targeted in Scope, Authority and Duration

CUNA has worked for over a year to ensure that this legislation be targeted to the mortgages that have caused the problem. We have suggested that any cramdown legislation be limited specifically to 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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The Honorable Evan Bayh
February 9, 2009
Page Two

For any loan falling within the category described above, 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 sold by the debtor – whether the sale occurs before or after discharge – the debtor and creditors share in the appreciation of the property.

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 the mortgage market in the future will be quite different and 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 does not support the ability of a bankruptcy court to modify any terms on any mortgage loan made after 2008, and believes the authority given to the bankruptcy court as outlined above should sunset five years after enactment.

Cramdown Legislation Should Not Encourage Gaming the System

Credit unions did not make the types of loans that triggered the mortgage crisis, but credit unions are certainly being impacted. We have heard from credit union executives about borrowers 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. If the bankruptcy law is changed to allow modification of all loans, these borrowers could seek to have their mortgage restructured by the bankruptcy court.

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.

Additional Concerns

We encourage the Senate to consider a range of issues before moving legislation that includes the cramdown provision.

For example, during the House Judiciary Committee's consideration of mortgage cramdown legislation, the Committee approved an amendment that says a mortgage loan secured by the debtor's principal residence will not be entitled to any payment if the

The Honorable Evan Bayh
February 9, 2009
Page Three

mortgage loan is subject to the "right of rescission" under the Truth in Lending Act (TILA). Even a nonmaterial, technical and unintentional violation of Truth in Lending rules could result in the debtor getting to keep the house with the lender paid absolutely nothing. This is clearly an unfair result, and we question if this was truly the intent of the supporters of this provision. The attached letter to House Judiciary Committee Chairman Conyers describes our concerns with respect to this issue in greater detail.

This is but one of several issues that need to be examined further before Congress enacts legislation permitting mortgages to be modified by bankruptcy courts. Others include: 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?

On behalf of the Credit Union National Association, we appreciate your leadership in seeking a more targeted and effective approach to mortgage bankruptcy legislation, and we look forward to working with you on this issue.

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

cc: The Honorable Richard Durbin

Attachment