



**CUNA**

Credit Union National Association

[cuna.org](http://cuna.org)

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June 3, 2009

The Honorable Patrick Leahy  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

The Honorable Jeff Sessions  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Chairman Leahy and Ranking Member Sessions:

On behalf of the Credit Union National Association (CUNA), I am writing regarding S. 257, the Consumer Credit Fairness Act, which is scheduled to be considered by the Committee on the Judiciary this week. CUNA represents nearly 90 percent of America's 8,000 credit unions and their 92 million members.

As you know, the member-owned, cooperative structure of credit unions motivates credit unions to extend credit on terms that are in the best interest of the member-borrower as well as in a safe and sound manner consistent with the interests of the credit union's entire membership as well as the National Credit Union Share Insurance Fund. As not-for-profit financial institutions, credit unions do not have a history of gouging or preying on their members. That type of activity is simply inconsistent with the mission of credit unions. Therefore, credit unions are generally supportive of balanced efforts to eliminate predatory lending practices and improve consumers' access to mainstream financial services.

Nevertheless, we are very concerned with S. 257, which would impose an ex post ceiling on all consumer loans – under current economic conditions, a ceiling of about 19%. This would be accomplished by permitting bankruptcy courts to disallow any claim for a “high cost consumer credit” loan. The definition of high cost consumer credit would be any loan where the annual percentage rate -- calculated by including all fees and costs -- at any time during the life of the loan exceeds the lesser of (a) 15% plus the yield of U.S. Treasury securities with a 30-year maturity (where the current yield is around 4%) or (b) 36%.

Moreover, under S. 257 the judge would disallow any claim not only for interest and fees associated with the loan but for the outstanding balance itself. And S. 257 would permit a debtor who had high cost consumer credit to file under Chapter 7 even though the debtor failed the means test or substantial abuse existed.



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We are concerned that the bill ties the ex post ceiling to an interest rate that is in part based on the yield of a Treasury security and stipulating any claim to a loan that exceeds the ceiling at any time during the loan may be disallowed. The bill does not even seem to be drafted so that the ceiling can be determined at the time the loan is made but rather would be determined at the time the person files for bankruptcy. This would present an impossible compliance burden for the creditors and an interpretive task for the bankruptcy court that may prove impossible to apply uniformly.

We are also concerned that this legislation and other bills that seek similar interest rate caps use the usury ceiling to which federally chartered credit unions are subject under the Federal Credit Union Act as a guide for or justification to extend a cap more broadly. Any suggestion of similarity between the usury ceiling in the Federal Credit Union Act and the ceiling that this bill proposes may not only be confusing but also misleading.

The key difference between the usury ceiling in the Federal Credit Union Act and the limitations proposed under this legislation are the inclusion of all fees and costs when determining the APR under S. 257. This bill would include in the calculation of the APR even fees that are triggered by the action of the borrower which are impossible to calculate at the time that the extension of credit is granted. An adverse action on the part of a borrower should not affect the ability of a creditor to claim the debt in the event that the borrower files for bankruptcy.

While this bill is aimed at reducing high cost consumer loans, even mainstream lenders that do not engage in high cost consumer lending will be forced to adjust their lending practices in light of this legislation. We are convinced that the enactment of this legislation would make convenient credit less available to many consumers, and perhaps more expensive to those who currently qualify for better rates. Therefore, CUNA cannot support S. 257.

On behalf of America's credit unions, thank you for considering our views.

Sincerely,

A handwritten signature in cursive script that reads "Daniel A. Mica". The signature is written in black ink and is positioned above the printed name and title.

Daniel A. Mica  
President & CEO

cc: Members of the United States Senate Committee on Judiciary