

NATIONAL BANKRUPTCY CONFERENCE

*A Voluntary Organization Composed of Persons Interested in the
Improvement of the Bankruptcy Code and Its Administration*

December 12, 2007

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Honorable John Conyers
Chair,
Committee on the Judiciary
House of Representatives
Washington, DC 20515

Honorable Linda Sanchez
Chairwoman,
Subcommittee on Commercial
and Administrative Law
House of Representatives
Washington, DC 20515

Re: H.R. 3609

Ladies & Gentlemen:

The National Bankruptcy Conference understands that the Committee on the Judiciary is scheduled to mark up legislation to amend chapter 13 of the Bankruptcy Code to permit modification in certain limited circumstances of a security interest on a debtor's principal residence, based on a proposal that is a compromise among some of the recently introduced bills on this subject. We have previously written to you and testified in support of such legislation. A copy of our prior letter, dated October 17, 2007, is attached.

Although the NBC prefers legislation that would help a larger number of overburdened homeowners, we believe the compromise proposal is a reasonable step in the right direction and should be enacted as soon as possible. The current foreclosure crisis is having devastating effects on many homeowners, neighborhoods and cities as well as on the economy of the entire nation. This legislation will provide relief to some Americans whose homes are facing foreclosure and will promote necessary stability to the housing market.

We support this legislation despite the recent Administration proposal for voluntary modification of some subprime mortgages. First, the Administration's proposal would help only a small percentage of distressed homeowners. Second, it would impose a "one-size-fits-all" approach to those whom it might help. Third, it is strictly voluntary. Thus, the Administration proposal will not likely generate enough help to avert a serious housing crisis. By contrast, the proposed compromise legislation is narrow and targeted specifically at those whom the Administration proposal would not help: those who are facing foreclosure, those whose home values have fallen below their

mortgage balances, and those whose overall credit problems make them ineligible for the Administration proposal and require more complete financial restructuring.

We would be pleased to respond to any questions that you may have. Please feel free to contact the Chair of our Committee on the Individual Debtor David Lander ((314) 552-6067, dlander@thompsoncoburn.com), the Chair of our Committee on Legislation Sally Neely ((213) 896-6024, sneely@sidley.com), or me.

Sincerely,

/s/ Richard Levin

Richard Levin
Vice Chair
(212) 474-1978
rlevin@cravath.com

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October 17, 2007

**Senator Richard Durbin
United States Senate
Washington, D.C. 20505**

**Chairman John Conyers, Jr.
House Committee on the Judiciary
Washington, D.C. 20515**

**Chairwoman Linda T. Sanchez
House Committee on the Judiciary
Subcommittee on Commercial and
Administrative Law
Washington, D.C. 20515**

**Rep. Brad Miller
House of Representatives
Washington, D.C. 20515**

Dear Members:

The National Bankruptcy Conference (“NBC”) has considered the issues raised by recently introduced bills designed to provide protection against home foreclosures in light of the subprime mortgage crisis. Those bills are H.R. 3609 (the “Miller Bill”), S. 2136 (the “Durbin Bill”), S. 2133 (the “Specter Bill”), and H.R. 3778 (the “Chabot Bill”). As you may be aware, the NBC provided a Report, dated July 17, 2007 (“NBC July Report”), on a draft of the Durbin Bill, in which we provided technical comments and addressed certain policy considerations. A copy of the NBC July Report is attached. The NBC remains committed to the policy positions set forth in the NBC July Report.

Based upon the work of the NBC’s Committee on the Individual Debtor, and with the approval of the Executive Committee, the NBC believes that the principle of equality of distribution underlying Bankruptcy Code § 506(a) supports modification of mortgage debt on the debtor’s principal residence in chapter 13 and reamortization of loans at reasonable fixed rates. We prefer the approach taken in the Miller Bill because it provides more flexibility and is designed to reflect economic reality. The NBC also supports relief from the pre-filing credit counseling requirement for chapter 13 debtors who face imminent home foreclosure.

**Senator Arlen Specter
Ranking Member
Senate Committee on the
Judiciary
Washington, D.C. 20505**

**Rep. Steve Chabot
House of Representatives
Washington, D.C. 20515**

We are aware of the argument that such legislation would adversely affect the supply of home mortgage loans. However, we believe that historical experience with similar remedies provided in chapters 11 and 12, as well as with similar remedies available for vacation or other second homes in chapter 13, belie such concerns. By recognizing economic reality and averting foreclosures and liquidation, which often depress values in entire neighborhoods, modification of secured obligations under chapters 11 and 12 actually preserves value for creditors and debtors. Such provisions have not had perceptible adverse effect on credit markets. Because of that, we do not support a “sunset provision” with respect to this important law reform.

In addition, the NBC supports provisions, such as those in the Durbin Bill, that would: (1) require all fees and charges on secured debts incurred while a chapter 13 plan is in effect to be subject to objection in the bankruptcy court; (2) codify for consumer cases that mandatory arbitration clauses need not be honored in core proceedings; and (3) prevent use of judicial estoppel to eliminate consumer protection claims against lenders based on inadvertent nondisclosure of such claims in the borrower’s bankruptcy. We do not support any provision, such as found in the Specter Bill, that would require lender consent to modifications, as such a provision would effectively negate the change proposed in the Miller and Durbin bills. Lenders are currently free to agree to changes. However, without the power of the bankruptcy court to require mortgage modifications, lenders have little if any incentive to agree.

We continue to be available to provide technical drafting assistance with respect to this important legislation, so that the sponsors’ or committee’s intentions are clearly expressed (even if we may disagree with them) and to avoid unanticipated consequences, such as litigation pitfalls often resulting from new legislation. Please contact us with any questions or concerns you may have.

The NBC will be meeting in Washington, D.C. on October 25-26, 2007, during which time we will discuss further the issues raised by the above-noted bills. We will advise you of the position of the entire Conference after our meeting.

Thank you for your interest in and sponsorship of legislation in this important area.

Sincerely,

Richard Levin
Richard Levin
Vice Chair
(212) 474-1978
rlevin@cravath.com