

# Legislative Highlights

## *Lien-stripping Debate Returns; Prof. Warren to Serve on TARP Board*

In mid-November, Sen. Dick Durbin (D-Ill.) reintroduced his hotly-contested legislation to allow bankruptcy judges to modify the terms of distressed mortgages on primary residences—an idea whose odds of enactment have improved as a result of the 2008 elections.

Durbin's bill was introduced in what is expected to be a brief lame-duck session of Congress, convened to address the auto industry bailout and economic stimulus measures. Democrats, including Durbin in particular, have long advocated allowing judges to modify principal amounts of mortgages on primary residences in chapter 13 bankruptcy cases filed by debtors. Republicans and most industry groups have strongly opposed so-called "debt cramdown" proposals for mortgages, saying that it would add to the costs of a mortgage for other consumers and swell the ranks of borrowers filing for bankruptcy.

Senate Democrats tried and failed to get cramdown provisions included in the Housing and Economic Recovery Act of 2008 during July; they tried again in negotiations surrounding the creation of the Troubled Asset Relief Program (TARP). President-elect Obama, however, has said repeatedly that his administration will make passing the

legislation a priority when he takes office in January.

Durbin signaled that his proposed bill wasn't likely to be passed in the current Congress. "In many ways, today's legislation is a marker for future action," Durbin said. "The debate on how to help stabilize the financial sector will continue into the 111th Congress, and I intend to continue to fight for homeowners and taxpayers." The bill would also force servicers to restructure any loan that qualifies under the criteria established for HUD's Hope for Homeowners mortgage program. The current law merely makes H4H an option in loss mitigation, and earlier reports have highlighted a slow start for the program. The bill would also require modifications to any loan managed by the government, as is the case at IndyMac Federal Bank, which is currently managed by the Federal Deposit Insurance Corp. FDIC Chair Sheila Bair has been very outspoken in urging a more aggressive approach to staving off more foreclosures, frequently clashing with Treasury Secretary Paulson. Sen. Durbin agrees with the Bair approach: "Virtually every economist agrees that the financial crisis will not diminish, and the economy will not begin to recover, until we address the root cause of the

problem: the failed mortgage market," Durbin said. "We also have an obligation to make sure that taxpayer money is spent responsibly and that the American people see a return on this investment."

Meanwhile, the Bush administration told Congress on Nov. 18 that it won't seek to release the remaining \$400 billion or so in the financial rescue package, leaving it to the new administration to prioritize its direction. The Treasury Department committed about \$290 billion to inject capital into a wide range of financial institutions, rather than the original plan of buying troubled assets from firms. The shift in using the funds came under fire from Congress. Days earlier, Speaker Pelosi and Majority Leader Reid named their three members of a five-person oversight panel to monitor the rescue plan under TARP. Reid named Harvard Law professor **Elizabeth Warren**. Others named include the superintendent of banks in New York and the associate general counsel of the AFL-CIO. Financial institutions, unions and consumer interests may end up especially well-represented in future decisions involving bailout funds. ■