

“Inside the Beltway” Update

October 13, 2008
Chicago Consumer Bankruptcy Conference



AMERICAN
BANKRUPTCY
INSTITUTE

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110th Congress Overview

- January 2007 to December 2008
- Democrats control majority in both chambers
 - During Republican administration
 - For first time since the 102nd Congress in 1992
- In reaction to economic/mortgage crisis, there have been many oversight hearings in Senate and House on issues directly affecting bankruptcy and predatory lending, mortgage and credit card practices
- There have been many bills on these issues, most of which have died in committee or after being reported “placed on the calendar” without further action
- Normally not much activity this time of year and during election, but economic crisis is causing more activity

110th Congress

Recent Activity in Reaction to Economic Crisis

- **Financial Rescue/Bailout Plan**

- Would allow Treasury to purchase \$700 billion of bad mortgage debt from U.S. headquartered companies
- Failed in House 9/29 (228-205)
- Passed in Senate 10/1 (74-25)
 - Both Presidential candidates voted in favor
 - Changes from rejected House version included:
 - Disaster relief (Midwest Summer 08, Hurricane Ike, federally-declared disasters in 2008 and 2009)
 - Shelter 26 million Americans from alternative minimum tax
 - Create and extend renewable energy resources incentives
 - Individual extender provisions
 - Business extender provisions
 - Temporary increase of FDIC-insured deposits from \$100,000 to \$250,000
- Passed in House 10/3 (263-171)
- Signed by President 10/3

110th Congress

Recent Activity in Reaction to Economic Crisis

- **Mortgage Modification in Bankruptcy not Included**
 - Proposals failed to amend § 1322:
 - to allow bankruptcy judges to rewrite residential mortgages to fair market value
 - to reamortize loans for up to 40 years at market interest rate plus reasonable risk premium
 - Would apply to pending and future cases as of enactment date; no sunset
 - Similar proposal defeated in Senate in April 2008
 - Obama promises support for modifying mortgages in bankruptcy early in the next Congress
 - McCain's focus seems to be on modification outside of bankruptcy

110th Congress

What Else Became Public Law

- **The Mortgage Forgiveness Debt Relief Act of 2007 – Public Law No. 110-142**
 - H.R. 3648 (Rangel, D-N.Y.)
 - President signed Dec. 07
 - Amends IRC to exclude discharge of indebtedness on qualified principal residences from gross income
 - Exclusion applies to amounts discharged prior to Jan. 2010
 - \$2 million limit and corollary reduction to basis
- **The Housing and Economic Recovery Act of 2008**
 - H.R. 3221 (Pelosi, D-Cal.)
 - President signed July 08
 - Allows refinancing of up to \$300 billion in troubled mortgages on primary residences into 30-year loans backed by government
 - Provides \$4 billion in block grant funds for local governments to buy homes in foreclosure
 - Provides for stronger regulation of Fannie Mae and Freddie Mac and modernization of FHA
- **National Guard and Reservists Debt Relief Act of 2008**
 - S. 3197 (Durbin, D-Ill.)
 - Passed in Senate 9/30 and House 10/3; President signed _____
 - Prohibit dismissal or conversion in chapter 7 based on means test for qualifying members of reserves and National Guard

110th Congress

Proposed Bankruptcy Legislation

- ***Mortgage Modification in Chapter 13***
 - In Fall 07 and early 08, five bills introduced
 - S. 2136 (Durbin, D-Ill.); S. 2636 (Reid, D-Nev.) (latter incorporated Durbin provisions); defeated on floor early Spring 08
 - H.R. 3609 (Miller, D-N.C.); amendment in nature of substitute (Conyers, D-Mich.); passed House Judiciary Committee, no further action
 - S. 2133 (Specter, R-Penn.); H.R. 3778 (Chabot, R-Ohio); both referred to committee Fall 07
 - All would have allowed stripping of lien and mortgage modification
 - All would have allowed credit counseling waiver for foreclosure
 - Democrats' versions would have allowed extending mortgage beyond original term
- ***Judicial Pay Raise***
 - Federal Judicial Salary Restoration Act of 2007
 - S. 1638 (Leahy, D-Vt.); would provide first salary increase for bankruptcy judges since 1991; placed on calendar Mar. 2008
 - H.R. 3753 (Conyers, D-Mich.); ordered to be reported Dec. 07

110th Congress

Proposed Bankruptcy Legislation

- ***Student Loans***

- S. 1561 (Durbin, D-Ill.); would eliminate BAPCPA change of making private student loans nondischargeable; referred to committee June 2007
- Davis (D-Ill.) Amendment (tacked on reauthorization of the Higher Education Act) to do same was voted down by House Feb. 08

- ***Medical Debt***

- Medical Bankruptcy Fairness Act of 2008, H.R. 5138 (Shea-Porter, D-N.H.); would allow medically-distressed debtor to elect to exempt up to \$250,000 of specified property used as residence; would also revise requirements for dismissal or conversion of chapter 7 case to prohibit motions to dismiss or convert if debtor is medically-distressed debtor or economically-distressed caregiver; referred to subcommittee Feb. 08

110th Congress

Oversight Hearings Related to Bankruptcy

- **Second Anniversary of BAPCPA Enactment – Whether Consumers Are Really Being Protected**
 - House Judiciary Committee’s Subcommittee on Commercial and Administrative Law
 - May 1, 2007
 - Steve Bartlett, Financial Services Roundtable
 - Shirley Jones Burroughs, chapter 13 debtor
 - Yvonne D. Jones, GAO
 - Henry J. Sommer, NACBA President

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Oversight Hearings Related to Bankruptcy

- **Medical Debt and Bankruptcy**

- House Judiciary Committee's Subcommittee on Commercial and Administrative Law
- May 1, 2007
- Turned into forum for debate over nationalized, taxpayer-funded health care
- Committee Chairman Conyers (D-Mich.) has asked GAO to study effect of medical debt on bankruptcy filings

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Oversight Hearings Related to Bankruptcy

- **U.S. Trustee Program, “Watchdog or Attack Dog”**
 - House Judiciary Committee’s Subcommittee on Commercial and Administrative Law
 - October 2, 2007
 - Clifford J. White III, EOUST Director
 - Hon. A. Jay Cristol (S.D. Fla.)
 - Mary Powers, Esq. (former USTP trial attorney)
 - Hon. Eugene R. Wedoff (N.D. Ill.)
 - Paul M. Uyehara, Esq. (Language Access Project)

110th Congress

Oversight Hearings Related to Bankruptcy

- **Is Misconduct in Bankruptcy Fueling Foreclosure Crisis?**
 - Senate Judiciary Committee's Subcommittee on Administrative Oversight and the Courts
 - May 6, 2008
 - Steve Bailey, Countrywide
 - Debra Miller, chapter 13 trustee
 - Katherine M. Porter, law professor
 - Clifford J. White III, EOUST Director

110th Congress

Oversight Hearings Related to Bankruptcy

- **Increase Chapter 7 Trustee Fee by \$60 for No-asset Cases**
 - House Judiciary Committee's Subcommittee on Commercial and Administrative Law
 - September 16, 2008
 - Jack Williams, ABI resident scholar
 - Robert Furr, NABT president
 - Eugene Crane, former NABT president
 - Hon. Margaret McGarity (E.D. Wis.)

110th Congress

Matters Related to Mortgage Crisis

- **Proposed legislation**

- *Regulation of Mortgage Brokers/Originators*

- Borrower's Protection Act of 2007, S. 1299 (Schumer, D-N.Y.); would regulate and impose fiduciary responsibility on mortgage brokers and establish \$300 million emergency fund; referred to committee May 07
- Mortgage Reform and Anti-Predatory Lending Act of 2007, H.R. 2915 (Miller, D-N.C.); would establish licensing and registration requirements for residential mortgage originators and provide certain minimum standards for consumer mortgage loans; passed House and referred to Senate Committee Dec. 07
- Mortgage Kickback Prevention Act of 2007, H.R. 3813 (Murphy, D-Conn.); would prohibit mortgage originators from receiving incentive compensation that varies with terms of mortgage; referred to committee Oct. 07
- Fair Mortgage Practices Act of 2007, H.R. 3012 (Bachus, R-Ala.); would provide for national system for licensing or registering residential mortgage loan originators; referred to committee July 07

110th Congress

Matters Related to Mortgage Crisis

➤ **Proposed Legislation** (cont'd)

- ***Loss Mitigation***

- Foreclosure Prevention and Sound Mortgage Servicing Act of 2008, H.R. 5679 (Waters, D-Cal.); would require mortgagees to engage in reasonable loss mitigation activities for mortgages in default; subcommittee hearings held in Apr. 2008

- ***Lending Practices***

- Home Ownership Preservation and Protection Act of 2007, S. 2452 (Dodd, D-Conn.); would provide protections for consumers re high-cost loans by prohibiting particular lending practices (prepayment penalties, balloon payments), providing new formula for points and fees, etc.; referred to committee Dec. 07
- STOP FRAUD Act, S. 1222 (Obama, D-Ill.); would make certain fraudulent activities of mortgage professionals criminal; referred to committee Apr. 07

110th Congress

Matters Related to Mortgage Crisis

- **Proposed legislation (cont'd)**

- *Loan Modifications*

- Emergency Mortgage Loan Modification Act of 2008, H.R. 5579 (Castle, R-Del.); would establish standard for loan modifications or workout plans for certain residential mortgages; placed on calendar in May 08
- Mortgage Enhancement and Modification Act of 2008, S. 2801 (Clinton, D-N.Y.); would encourage modifications for unworkable and impractical loans and reaffirm basic obligation of investment advisors to achieve beneficial outcomes for clients; referred to committee Apr. 08
- Emergency Mortgage Loan Modification Act of 2007, H.R. 4178 (Castle, R-Del.); would shield holders of residential mortgages from liability for entering loan modifications or workout plans; referred to committee Nov. 07

110th Congress

Matters Related to Credit Card Industry

- **Proposed legislation**

- **Credit Cardholders' Bill of Rights Act of 2008**, H.R. 5244 (Maloney, D-N.Y.); would eliminate universal default provisions and double-cycle billing and require 45-day advance notice of changes to account terms, among other provisions; passed in House 9/23 (312-112)
- *See also*
 - Universal Default Prohibition Act of 2007
 - S. 1309 (Tester, D-Mont.); would prohibit creditor from using adverse information on a consumer as basis to increase interest rate; referred to committee May 07
 - H.R. 2146 (Ellison, D-Minn.); similar; referred to committee May 07
 - Stop Unfair Practices in Credit Cards Act
 - S. 1395 (Levin, D-Mich.); would outlaw several current practices regarding interest charges; referred to committee May 07
 - H.R. 5280 (Davis, D-Tenn.); similar; referred to committee Feb. 08
 - Credit Card Reform Act of 2008, S. 2753 (Menendez, D-NJ); includes myriad reforms of practices, including some particularly aimed at young consumers; referred to committee Mar. 08
 - Credit Card Accountability Responsibility and Disclosure Act of 2007, H.R. 1461 (Udall, D-Colo.); would ban abusive credit practices, enhance consumer disclosure and protect underage consumers; referred to committee Mar. 07

110th Congress

Matters Related to Credit Card Industry

- **Proposed Legislation (cont'd)**

- *National Usury Rate*

- Protecting Consumers from Unreasonable Credit Rates Act of 2008, S. 3287 (Durbin, D-Ill.); would establish 36% national usury rate for consumer credit transactions; referred to committee July 08

- *Minimum Payments Disclosures*

- Credit Card Minimum Payment Warning Act of 2007, S. 1176 (Akaka, D-Haw.); would require warning that paying minimum rate will increase interest owed, years and months to pay off at minimum rate and other information; referred to committee Apr. 07
- Credit Card Repayment Act of 2007, H.R. 1510 (Price, D-N.C.); would require enhanced disclosure regarding consequences of making only minimum payments; referred to committee Feb. 07

New Administration and 111th Congress

What to Expect

- **Obama**

- Voted against BAPCPA (Biden was major supporter)
- Address predatory lending practices
- In favor of mortgage modification in bankruptcy
- Promises larger homestead exemption for elderly
- Wants faster track for military families in bankruptcy
- Wants “exemption” through means test for debtors who file because of medical expenses

New Administration and 111th Congress

What to Expect

- **McCain**

- Voted for BAPCPA
- May not be in favor of mortgage modification in bankruptcy, but outside of bankruptcy
- Supports creation of DOJ Task Force on mortgage abuse by lenders, brokers and others

ABI Legislative Resources

- Daily headlines at abiworld.org and can receive by email
- Twice-weekly update newsletters received by email
- Titles and descriptions of relevant bills with links to text for current and past Congresses at abiworld.org
- Hearing archive with links to written testimony at abiworld.org
- Legislative Update and Legislative Highlights columns in *Journal* (published and mailed 10 times a year)