CUNA
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DANIEL A. MICA
PRESIDENT & CEO

February 25, 2008

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

Dear Senators Reid and McConnell:

On behalf of the Credit Union National Association (CUNA), I am writing in support of the Durbin amendment to Title IV of S. 2636, the *Foreclosure Prevention Act of 2008* on "Minimizing Foreclosures." CUNA represents nearly 90% of America's 8,400 credit unions and 87 million credit union members.

While we have concerns with any legislation that would open the Bankruptcy Code to amendment so soon after major revisions were enacted, we understand the need to be responsive to the current crisis in the subprime mortgage market. We appreciate the effort that Senator Durbin and his staff have made over the last several weeks to address many of our concerns.

The Durbin amendment would allow bankruptcy judges to adjust the terms of certain loans secured by the debtor's principal residence, those loans secured by subprime mortgages and some "nontraditional mortgages," and made prior to enactment of the bill into law. If a loan is secured by a first mortgage, a subprime mortgage would be one that has an annual percentage rate greater than 3% over the yield on a comparable Treasury security; if a mortgage loan is a subordinate loan, a subprime loan would be one greater than 5% plus the equivalent Treasury security. The amendment also includes a means test to qualify for this special relief, and the judge would have the authority to reduce the "allowed secured claim" to an amount no lower than the current value of the house. If the loan balance is reduced and the house is sold during the term of the Chapter 13 plan, the lender would have the possibility of recouping some or all of the amount that had been transformed into an unsecured claim.

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The definition in Section 410 of a non-subprime "nontraditional mortgage" is of particular interest to CUNA, and we are pleased that the Durbin amendment recognizes that some lenders, in particular credit unions have made suitable interest-only loans, that legitimately factor in the borrower's ability to repay. We think the bill gives the bankruptcy judge appropriate guidance in deciding what loans can be modified and what terms regarding maturity and interest rate have to apply to loan modifications (Section 411).

While we support the amendment, we do believe that it could still be improved. We suggest that Section 412, which proposes to waive the pre-filing counseling requirement, be changed to allow the person facing foreclosure to first file for bankruptcy and then have the counseling within some reasonable period, perhaps within 30 days, after filing.

Additionally, we seek clarification regarding the intent of Section 425. As written, it appears to apply to all lenders, including those that may have legitimate disputes involving "consumer protection laws," a term which is not defined. We are not certain whether this is intended to apply to only mortgage loans (since it references rescission and foreclosure) or any type of loan. Our concern is that numerous lawsuits will result in order for courts, creditors and debtors to try to ascertain a meaning, if the provision is enacted as proposed. We hope to continue to work with Senator Durbin and his staff to clarify this provision.

Our outstanding concerns with respect to this amendment are minimal in comparison to our endorsement of the compromise language that Senator Durbin has offered allowing bankruptcy judges to alter the terms of certain loans secured by debtor's principal residence. We are very pleased with the language contained in Subtitle A of Title IV, as the Durbin amendment would modify, and encourage the Senate to adopt the amendment.

Sincerely,

Daniel A. Mica
President & CEO