

New Jersey League of Community Bankers Federal Position Papers Summary

Mortgage Bankruptcy Bill Threatens Affordable Mortgage Credit

The League opposes H.R. 3609 and S. 2636 since they would add significant risk and uncertainty to the housing market by making major changes in our bankruptcy system.

Credit Union Regulation & Taxation

The League is opposed to the Credit Union Regulatory Improvements Act of 2007 (H.R. 1537). The League urges that credit unions that want to provide bank-like services be subject to taxation and regulation on the same basis as banks. Credit unions that wish to convert to a savings bank charter should be able to do so without interference from the NCUA.

Industrial Loan Companies

The League supports legislation (S. 1356) that would prohibit commercial firms from prospectively chartering or acquiring an ILC and will establish a bright-line test regarding who may own an ILC in the future. Banking and commerce must be kept separate.

Mortgage Reform Bill / Subprime / Predatory Lending

The League urges that any mortgage reform legislation not impair the availability of credit to credit-worthy borrowers. The League has concerns with H.R. 3915, Mortgage Reform and Anti-Predatory Lending Act of 2007.

Data Security

The League strongly supports comprehensive data security legislation that creates a national standard, exempts institutions subject to existing GLBA data security requirements, maintains functional regulation, and provides full reimbursement of costs to protect consumers by those responsible for security breaches.

Regulatory Relief

The League strongly supports efforts to reduce the regulatory burden on depository institutions without impairing safety and soundness.

Regulation of Government Sponsored Enterprises: Freddie Mac and Fannie Mae

A new, independent regulator is needed to oversee the operations of Freddie Mac and Fannie Mae. These GSE entities must not engage in primary market activities.

Thrift Charter and Independence of the Office of Thrift Supervision

The federal thrift charter and unitary thrift holding company structure should be preserved. The authority of the states to design an array of state charters including state thrifts should be preserved. The Office of Thrift Supervision should remain independent within the Treasury Department.

Federal Home Loan Bank System

The Federal Home Loan Bank System must maintain its cooperative nature with a primary mission of providing community banks with access to advances for housing and community development lending.

Preserve the Mutual Charter

Preserving the mutual charter is extremely important to New Jersey savings institutions. Neither Congress nor federal regulatory agencies should take actions that would directly or indirectly force companies to abandon the traditional thrift charter or the mutual holding company (MHC) form of ownership.

Secret Ballot and Card Check

The League opposes H.R. 800, which would effectively do away with secret ballot elections by permitting the waiver of elections after a majority of employees sign authorization cards.

Mortgage Bankruptcy Bill Threatens Affordable Mortgage Credit

The League opposes H.R. 3609 and S. 2636 since they would add significant risk and uncertainty to the housing market by making major changes in our bankruptcy system.

- ❑ In December 2007, the House Judiciary Committee narrowly approved the *Emergency Home Ownership and Mortgage Equity Protection Act of 2007* (H.R. 3609), which would allow bankruptcy judges to make a unilateral decision to reduce (“cram down”) the amount owed to a lender. Historically, this was prohibited because it would undermine the long-standing public policy to encourage liquidity in the mortgage market and increase home ownership.
- ❑ The Senate recently fell 12 votes short of the 60 needed to begin consideration of the Foreclosure Prevention Act of 2008 (S. 2636) that includes League-opposed Title IV provisions that would allow bankruptcy judges to modify first-mortgage terms in Chapter 13 proceedings.
- ❑ When Congress rewrote the bankruptcy laws in 1978, it deliberately retained the prohibition on cram downs and other changes to first mortgages by bankruptcy judges to keep housing affordable for as many Americans as possible.
- ❑ Allowing bankruptcy judges to unilaterally change mortgage terms would increase risks for lenders and result in increased borrowing costs and less credit availability. At a time when the credit market is already contracting, this is the opposite of what is needed.
- ❑ The Congressional Budget Office (CBO) reported* that H.R. 3609 would have an adverse impact on interest rates and credit availability, noting in its analysis of economic stimulus options that one of the costs of the bill “would be higher mortgage interest rates.” Professor Joseph Mason of Drexel University testified before the Senate Judiciary Committee that “it is straightforward to conclude” that cram downs will increase the cost of mortgage credit. Professor Mason responded to written questions from the Committee in more detail: “Allowing bankruptcy judges to unilaterally change the terms of a mortgage to those less favorable to the lender will impose unexpected and un-forecastable costs upon lenders and therefore raise the cost of providing funds to borrowers that can qualify for such treatment.”
* <http://www.cbo.gov/ftpdocs/89xx/doc8916/Frontmatter.2.1.shtml>
- ❑ H.R. 3609 covers subprime and non-traditional mortgage loans originated between January 1, 2000, and the bill’s enactment date, and for which claim holders have provided notice that they may foreclose. The bill has a seven-year sunset.
- ❑ H.R. 3609 may be taken up on the Floor of the House at any time.

Credit Union Regulation & Taxation

- 1. The League is opposed to the Credit Union Regulatory Improvements Act of 2007 (H.R. 1537).**
 - 2. The League urges that credit unions that want to provide bank-like services be subject to taxation and regulation on the same basis as banks.**
 - 3. Credit unions that wish to convert to a savings bank charter should be able to do so without interference from the NCUA.**
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- ❑ A small, but aggressive, group of nontraditional credit unions are pushing the Credit Union Regulatory Improvements Act of 2007 (CURIA) in order to increase their business lending authority and weaken their capital requirements.
- ❑ Increasing commercial lending authority is inconsistent with the historic mission of credit unions. Credit unions were created to serve low- and moderate- income individuals who did not have access to financial services. For that reason they were given an exemption from federal and state income taxes. However, several recent studies, including one by the Government Accountability Office (GAO), have shown banks are doing a better job of serving low- and moderate-income individuals than credit unions are, despite the credit unions' tax exemption. The powers these aggressive, new breed credit unions are asking for will only take them further from their congressionally mandated mission to serve people of modest means.
- ❑ CURIA also includes provisions that would weaken the capital standards for credit unions. Credit unions, as member-owned cooperatives, can only build capital through retained earnings. To protect the safety and soundness of the credit union industry, Congress subjected credit unions to higher minimum capital requirements.
- ❑ Community credit unions want to expand their memberships to include undefined "underserved" areas. The GAO has stated that NCUA does not have any way to measure credit union service to people of modest means. Until credit unions have Community Reinvestment Act requirements to ensure that they are doing what they were created for, the consideration of expanding their membership should be opposed.
- ❑ Giving even more powers to credit unions that aren't fulfilling their original mission doesn't make sense. If these new -breed credit unions want to be banks, let them change their charters. Otherwise, they should refocus their attention on their original mission.
- ❑ The National Community Reinvestment Coalition recently told the House Financial Services Committee that studies conducted by his group found that credit unions lag behind banks and thrifts in serving low- and moderate-income families and minorities.

Industrial Loan Companies

The League supports legislation (S.1356) that would prohibit commercial firms from prospectively chartering or acquiring an ILC and will establish a bright-line test regarding who may own an ILC in the future. Banking and commerce must be kept separate.

- ❑ Although federal law prohibits the mixing of banking and commerce, several commercial firms have found a way around it. They are acquiring state-chartered industrial loan companies (ILCs) in states that permit commercial ownership of these FDIC-insured financial institutions.
- ❑ This loophole in federal law was brought into focus when Wal-Mart and Home Depot attempted to acquire FDIC-insured ILCs. In response to an outcry from Congress, the banking industry and the public, last July the FDIC imposed a six-month moratorium on approval of all applications for deposit insurance by commercially owned ILCs. On January 31, 2007, the FDIC extended the moratorium an additional year to allow Congress to resolve the issue.
- ❑ On May 10, 2007, Senate Banking Committee members Sherrod Brown (D-OH), Tim Johnson (D-SD) and Wayne Allard (R-CO) introduced S. 1356, the Industrial Bank Holding Company Act of 2007. Like its House companion, this legislation will prohibit commercial firms from prospectively chartering or acquiring an ILC and will establish a bright-line test regarding who may own an ILC in the future.
- ❑ The Senate Banking Committee approved S. 1356 on February 13 and is now waiting action in the full Senate.
- ❑ We urge support of S. 1356, the Industrial Bank Holding Company Act of 2007, and help stop the mixing of commerce and banking.

Mortgage Reform Bill Subprime / Predatory Lending

The League urges that any mortgage reform legislation not impair the availability of credit to credit-worthy borrowers. The League has concerns with H.R. 3915, Mortgage Reform and Anti-Predatory Lending Act of 2007.

- ❑ The League deplores predatory lending practices but urges that Congress not pass legislation that adversely impacts the pricing and availability of prime mortgages as it seeks to prevent abuses.
- ❑ The League opposes any effort to place into federal law a suitability standard for mortgage lenders. Banks are able to determine specific factors related to the underwriting of a loan, such as a consumer's ability to repay a loan. Due to the wide variety of loan types and repayment options, banks are not able to make a "suitability" determination on behalf of a borrower. That can only be done by the consumers themselves.
- ❑ We support the new licensing requirements for the loosely regulated, mortgage originators operating outside of insured depositories. Bank employees are already subject to significant background checks, educational requirements, and examination and should not be subject to licensing and registration regulatory requirements.
- ❑ We support the ability to repay standard that has been adopted in guidance by federal regulators and has been put into practice by the banking industry through underwriting standards.
- ❑ To ensure that new products and services can be introduced to meet credit needs in a changing market, regulatory flexibility must be part of any reform to avoid unintended curtailment of mortgage lending by community banks.
- ❑ The "reason to know" standard is very subjective and will likely lead to litigation. Lenders should not be held to an unreasonable standard of knowledge of the borrower's behavior, but instead should be held to knowledge provided by the borrower or obtained in good faith by the lender.
- ❑ A provision that prohibits a foreclosing creditor from evicting a renter with a valid lease would greatly disrupt an investor's ability to transfer a property after foreclosure and would certainly increase the cost of loans to individuals that lease properties. It would also likely lead to a reluctance to finance rental housing.

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- The bill would reduce the HOEPA fee trigger from 8% to 5% and include both the prepayment penalty, and additional fees in the trigger. By doing so, it will push many more loans into the “high cost” category. While well-intentioned, it will have unintended consequences that may create a greater restriction of credit than the bill intended.
- Reform legislation should include broad national federal preemption to provide a level playing field for all lenders.
- The League continues to believe that consumer education is the best defense against predatory lending practices.
 - The League is an active member of the New Jersey Coalition for Financial Education, working to further strengthen consumer education curriculum within the school systems and to other consumers. League members also volunteer to provide financial literacy education in high schools through a program sponsored by the New Jersey Department of Banking and Insurance.

Data Security

Data Security: HR 3316, S 495, S 806, S 1260, HR 1685, HR 958, HR 948, HR 3046

The League strongly supports comprehensive data security legislation that creates a national standard, exempts institutions subject to existing GLBA data security requirements, maintains functional regulation, and provides full reimbursement of costs to protect consumers by those responsible for security breaches.

- ❑ While banks have had the mandate under the Gramm-Leach-Bliley Act and other legislation to safeguard sensitive customer information for years, the growth of the Internet and electronic commerce has made compiling and selling sensitive personal information easier for a multitude of companies.
- ❑ In recent years, a number of high profile breaches that exposed millions of Americans' sensitive account and personal information to criminals is evidence that retailers are failing to provide an appropriate level of data security, thereby exposing consumers to serious risk of identity theft, and imposing significant operational and reputation costs on community banks serving those customers.
- ❑ While S. 495, *Personal Data Privacy and Security Act of 2007*, is designed to put in place a uniform, national data breach standard, it does so in a way that would result in a duplicative and inconsistent system of federal and state regulation and enforcement that will have far-reaching and negative consequences for the financial services system and its customers.
- ❑ In particular, while S. 495 acknowledges that financial institutions are subject to a comprehensive regulatory system by providing an exception in Title III, Subtitle A, from the data security requirements for institutions already covered by GLBA's data security requirements, it does not provide an exception from the notice requirements in Subtitle B for institutions that comply with GLBA's notice requirements.
- ❑ Any legislation enacted into law must provide uniform national data protection and notice standards, enforcement by financial institutions' functional regulators, and recognition that institutions regulated by the Gramm-Leach-Bliley Act (GLBA) are in compliance with data-security requirements.
- ❑ Legislation should include provisions for reimbursement for the costs that banks bear in a data breach. Included among these costs are re-issuance of the credit/debit card, fraudulent charges from stolen card numbers, and closing accounts placed at risk by those responsible for the breach.

Regulatory Relief

The League strongly supports efforts to reduce the regulatory burden on depository institutions without impairing safety and soundness.

- Unnecessary regulation is costly to depository institutions and their customers, results in lost business opportunities and is especially burdensome to smaller institutions.
- The League strongly supports H.R. 323 (The Seasoned Customer CTR Exemption Act), which was passed by the U.S. House of Representatives by a voice vote January 23, 2007. The bill would permit financial institutions to stop filing Currency Transactions Reports for business customers that have held deposits with them for at least a year.
 - The League urges the Senate to act on this matter in the 110th Session. The House passed a similar bill twice last year but the Senate took no action.
- The League urges the introduction of a regulatory relief bill similar to that overwhelmingly passed by the U.S. House of Representatives in the last session (H.R. 3505) that would:
 - Eliminate the requirement to provide an annual privacy notice to customers for banks that do not share personal financial information with non-affiliates and have not changed their privacy policy.
 - Increase commercial lending limits for federal savings associations and grant federal savings associations the same authority as national and state banks to make investments to promote community development.
 - Exempt banks from filing CTRs for “seasoned” customers (*those who have had an account for at least 12 months and are engaged in multiple transactions.*)
 - Give thrifts the same authority as national and state banks to make investments primarily designed to promote community development.
- The League also encourages legislative reforms to:
 - Reduce excessive compliance costs imposed by the internal control requirements of the Sarbanes-Oxley Act.
 - Simplify and coordinate the disclosure requirements imposed by the Truth-in-Lending Act and the Real Estate Settlement Procedures Act.

Regulation of Government Sponsored Enterprises: Freddie Mac and Fannie Mae

A new, independent regulator is needed to oversee the operations of Freddie Mac and Fannie Mae. These GSE entities must not engage in primary market activities.

- ❑ The League supports H.R. 1427, the Federal Housing Finance Reform Act, which has been passed in the House and is now being considered by the Senate.
- ❑ Any new GSE regulatory agency should be an independent agency within the Treasury Department. The agency should be modeled on other Treasury regulatory agencies, and should not be reliant upon the appropriations process for funding.
- ❑ Any new agency with oversight of Fannie Mae and Freddie Mac should have authority to regulate mission adherence, product approval, and safety and soundness of these enterprises. Establishment and review of specialized affordable housing goals should be done in consultation with the Department of Housing and Urban Development.
- ❑ The new agency should not impede the enterprises' access to the capital markets beyond the current authority of the Treasury Department to regulate "traffic flow" to the markets.
- ❑ Any new agency must take into consideration the considerable differences among the GSEs, and particularly with regard to the Federal Home Loan Banks, that there are significant differences between the FHLBs and Fannie and Freddie with regard to their missions, their lines of business, and the customers they serve. These differences must be reflected in the organizational structure and the regulatory agenda of the new agency.
- ❑ These housing-related GSE's should not be allowed to expand their services into the primary mortgage market, including, but not limited to:
 - Identifying, soliciting or contacting potential borrowers
 - Advising, pre-qualifying, and consulting borrowers
 - Taking loan applications, obtaining third-party reports (i.e. appraisals) and handling other aspects of loan processing
 - Making decisions to extend credit, which may include use of an underwriting system
 - Obtaining or providing other settlement services

Thrift Charter and Independence of the Office of Thrift Supervision

The federal thrift charter and unitary thrift holding company structure should be preserved. The authority of the states to design an array of state charters including state thrifts should be preserved. The Office of Thrift Supervision should remain independent within the Treasury Department.

THE FEDERAL AND STATE THRIFT CHARTERS SHOULD BE PRESERVED

- ❑ Charter choice, supported by a system of specialized financial adaptability works well in promoting the vitality, innovation, and adaptability necessary for financial institutions to adjust to the changing needs of their customers. At the same time, the current regulatory structure, developed over the past 150 years, has fostered a vibrant, creative, and resilient regulatory environment that promotes the overall safety and soundness of our nation's banking institutions.
- ❑ The federal and state thrift charters are models for financial modernization and offer thrift institutions the powers needed in an environment of ever increasing competition from securities firms and other companies not subject to the same strict regulation.
- ❑ There has been talk in the past of introducing legislation to merge the federal savings association and national bank charters on the basis that thrifts and banks are now one and the same. This is not the case.
- ❑ While it is true that some thrift institutions have increased their lending to small businesses, thrift institutions continue to focus primarily on home mortgage lending and the majority of their loan and investment portfolios are in mortgages and mortgage-related assets. In New Jersey, mortgages and mortgage-related assets represent over 80% of total assets.
- ❑ The unitary thrift holding company structure continues to provide thrift institutions with unique powers.
- ❑ Preserving the dual banking system promotes innovation and gives depository institutions the flexibility they need to best serve the needs of their customers.

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**THE OFFICE OF THRIFT SUPERVISION (“OTS”) SHOULD REMAIN AN
INDEPENDENT AGENCY UNDER THE DEPARTMENT OF THE TREASURY**

**IT SHOULD NOT BE MERGED INTO THE OFFICE OF THE COMPTROLLER OF THE
CURRENCY (“OCC”)**

- Because thrift institutions do have different powers and investment priorities, they need a regulator that understands and can better supervise their operations.
 - The OTS has a competent and skilled staff that knows the operations of thrift institutions.
 - The OTS has expertise in areas of particular importance for thrift institutions, such as the management of interest rate risk.
 - As a separate division within the Department of the Treasury, the OTS has a much stronger voice than it would as a division of the OCC, giving it the flexibility to tailor examinations and supervision to the particular operations of thrift institution.
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- As regulation continues to evolve, it must always have as its primary objective facilitating the ability of financial institutions to meet the needs of their customers.

Preserve the Mutual Charter

Preserving the mutual charter is extremely important to New Jersey savings institutions. Neither Congress nor federal regulatory agencies should take actions that would directly or indirectly force companies to abandon the traditional thrift charter or the mutual holding company (MHC) form of ownership.

- For nearly two centuries, the nation's mutual institutions have contributed to the quality of life in their cities and towns by building an industry of independent, strongly capitalized and highly efficient institutions with a commitment to community service.
- Thirty (30) of the 59 New Jersey-based savings institutions are either mutuals or are owned by mutual holding companies with no public stock outstanding. Another twelve (12) are owned by mutual holding companies that have issued minority stock to the public.
- Mutual institutions are extremely well capitalized. The average equity capital level of New Jersey's mutual institutions is 12.1 percent or more than double the minimum required level of 4.0 percent. The mutual form of organization is not unique to the thrift industry and works extremely well for the nation's credit unions and many insurance companies.
- Minority shareholder groups (holding less than 50% of shares) must not be permitted to undermine the voting rights of the majority in a savings association mutual holding company ("MHC").

Federal Home Loan Bank System

The Federal Home Loan Bank System must maintain its cooperative nature with a primary mission of providing community banks with access to advances for housing and community development lending.

- The FHLB System is unique from other government sponsored enterprises such as and Fannie and Freddie Mac. The FHLBank System is a cooperative made up of 12 independent district banks with joint and several liability. Each bank is primarily capitalized through the purchase of stock by its member institutions.
- The League supports Congressional efforts to strengthen the regulation of the FHLB System. Any legislation creating new GSE regulator for the FHLB System should reflect these differences, including:
 - Be independent and not subject to the Congressional appropriations process;
 - Be funded in a manner that provides that the System's assessments be allocated predominately to regulation and supervision of the system;
 - Possess similar supervision and enforcement powers to those of the federal banking regulators;
 - Be organized with a strong emphasis on preserving the current statutory authorities and the cooperative structure of the system;
 - Not impede or limit the district Banks' access to the capital markets.
- Any new significant policy and regulation adopted by the Federal Housing Finance Board, or future regulator, should only be adopted after a formal notice and comment period.
- Neither the Finance Board nor the district Banks should act to diminish members' ownership rights to the Banks' retained earnings.

Secret Ballot Elections and Card Check

The League opposes H.R. 800, which would effectively do away with secret ballot elections by permitting the waiver of elections after a majority of employees sign authorization cards.

- ❑ Deciding whether or not to support a union seeking recognition is among the most important workplace decisions an employee may have to make. Our nation's labor laws provide a mechanism -- federally supervised secret ballot elections -- to ensure that workers can obtain necessary information from all sides during an organizing campaign while protecting employee privacy and reducing the opportunity for coercion.
- ❑ Unfortunately, while the law provides for secret ballot elections, it does not require them and today unions are more likely to seek representation through "card check" campaigns that do not include the important protections provided for in law. Under a card check campaign an employee would typically be given a union authorization card by a union organizer and asked right then and there to indicate whether he or she supports the union.
- ❑ Unfortunately, as demonstrated countless times in actual organizing campaigns, card check campaigns are often accompanied by stories of coercion, intimidation, and abuse, including threats of physical harm to employees or their family members.
- ❑ Card checks provide a less accurate reflection of employees' desires than secret ballot elections.
- ❑ The League urges protection of the right to protect federally supervised private ballot election.