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Inside the Beltway Insights

Luncheon with Keynote Speaker Samuel J. Gerdano

**Sponsored by the Consumer Financial Education
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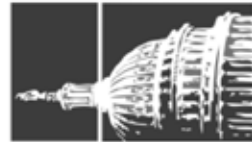
Samuel J. Gerdano

Executive Director, American Bankruptcy Institute; Alexandria, Va.

Inside the Beltway Insights

Presented by Samuel J. Gerdano, Esq.
Executive Director, American Bankruptcy Institute

ABI Northeast Consumer Bankruptcy Winter Forum
January 19, 2009

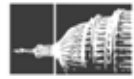


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Snapshot of Economic Turmoil

- **Consumer Debt Rising to Historic Levels**
 - Credit card, auto loan, HELOC delinquencies at highest levels since 1980 in 2008 Q3
 - At same time, consumer spending growth declines for the 1st time in 17 years
- **Home Mortgage Meltdown**
 - 2.25M foreclosures started in `08; 1.7M+ projected in `09 (5 million more subprime, Alt-A at risk)
 - Poor underwriting and abuses in subprime markets; Fannie/Freddie fuel
- **Consumer Bankruptcy Filings Trending Up Sharply**
 - 2008: Up 33% to over 1,000,000
- **Industries Under Stress**
 - Autos: lowest sales since `92; more TARP funds or BK in 2009?
 - Home Building/Trades: free-falling land value effect; reduced demand (2-3 yr. inventories)
 - Retail R.E.: Strip center vacancies highest since `94; mall rate highest since `01

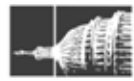


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Administrative/Regulatory/Industry Housing Response

- Tax Change to Forgive Income from Mortgage Debt Cancellation (P.L. 2007)
 - Extended by “TARP” through 2012. Should tax benefits be extended to other canceled debt?
- HOPE NOW Alliance to Reach At-risk S/P Borrowers: “950,000” Claimed Modifications
 - Servicers criticized for failure to modify mortgages in voluntary program
 - Public relations or real results?
- Troubled Asset Relief Program (TARP) Gov’t. Bailout
 - Should part of \$700B be used for nat’l home loan modification?
 - FDIC supports aggressive mortgage modification (spend \$24B to refinance 1.5M homeowners)
 - Pay servicers to modify loans
 - Gov’t eats 50% of losses from post-modification defaults



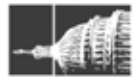
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Mortgage Loan Modification in Ch 13

(Introduced 1/6/09 in Senate and House)

- Amend Code §1322(b)(2) to give courts broad authority to modify primary residential home mortgage; raises secured debt limit to account for high cost-homes
- Not limited to “nontraditional” (interest only/negative authorization) and subprime loans made after Jan. 1, 2000
- Strip lien to FMV and allow for payment up to 40 years (reduced by years of current mortgage) at fixed lower interest rate, plus reasonable risk premium
- Credit counseling requirements of BAPCPA waived
- Waives prepayment penalties
- Protects mortgagee’s lien and claim, notwithstanding modification and discharge
- But prohibits lender claims arising from TILA or other law violations
- No sunset. Included in new stimulus package?



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Bankruptcy Solution Arguments:

- Create incentive for lenders to work out loans before default; modification permitted for vacation homes/farms in Ch. 12 w/o adverse effect on cost/availability of credit
- “Prevent 600,000 foreclosures w/o taxpayer money”; “communities retain \$89M in tax revenue”; stops neighborhood foreclosure blight
- Addresses the securitization/liability issue in a way voluntary plans cannot
- BK judges find FMV every day in Ch. 11 cases
- Proposal rejected 58-36 in April; NOT included in TARP. But conditions (both economic and political) have changed



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Competing Considerations:

- Moral hazard: disincentive for solvent borrowers to keep making payments
- BK option encourages servicers to push borrowers to file for Ch. 13
- Raise borrowing costs and lower available credit to risky borrowers
- One-size-fits-all solution undermines other less costly options
- No shared appreciation for when housing markets rebound
- High Ch. 13 failure rate (2/3 of current cases)



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Is Every Borrower a Victim? Is Every Lender a Predator?

- Abuses by Mortgage Companies in the Bankruptcy Process
 - Mistakes and misbehavior pursued by courts, U.S. Trustee
 - Countrywide: \$8.4B settlement w/AGs suspends F/C, reworks mortgages
 - Covers 400,000 borrowers in 11 states, including Massachusetts
 - Subprime, option ARMs covered
 - Revise payment not to exceed 34% of income; interest rate reductions
 - But see, suits filed by investors against B of A
- The “Walkaway” Phenomena (www.Uwalkaway.com)
 - Rise of the “Won’t Pay” population
- Are Debtors Free to Lie?
 - Criminal referrals by UST up 26% in FY ’07



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Credit Cardholders Bill of Rights

- Passed House (9/23) by 312-112
- Bans Retroactive Interest Rate Hikes (45-day notice req'd.)
- Bans Double-Cycle Billing
- Bans “Any Time, Any Reason” Change in Terms
- More Regulation, Supervision, Data Collection
- Enhanced Disclosures of Terms & Conditions
- Alt: Federal Reserve Rule Published in Dec. `08
 - Criticized for 2010 start date for key provisions



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“Credit Card Safety Star Act”

(S. 2411; Widen–Obama)

- Incentive-based Disclosure System to Help Consumers Compare Safety of Credit Cards as You Would for Physical Products
- Modeled after New Car Assessment Program – 5-star Rating System for Crash Resistance
- New Gov’t. Commission Gives “1-5 star” Rating Based on Favorable Card Features
- No Arbitration, No Over-limit Fees, No Multiple-cycle Billing, No Late Fees w/in 2 Days of Due date, No Changes in Terms w/in 90 Days, No Complicated Terms (Plain English)
- Ratings Displayed Prominently in All Card Promotions



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Legislation as Multi-year Process

- Elections Have Consequences
 - 2008 Elections: Changed both ends of Pennsylvania Ave.
 - No W.H. veto, virtually filibuster-proof Senate
 - New groups of influence (Center for Responsible Lending; Center for American Progress)
- Legislative, Executive Branch Unification (not seen since 1992)
 - Full agenda vs. stalemate, incremental change
 - Satisfy 8-year pent-up demand to legislate, regulate
 - Aggressive interest groups, net-roots demand results
- Re-open Bankruptcy Policy for Both Consumers, Business
 - Note organized labor's bankruptcy agenda



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Legislation by Other Means

(Not all laws “made” in 20510/20515)

- Regulation (Federal Reserve, FDIC, FTC, OCC, IRS, SEC, New Oversight Panel for TARP Activities)
- State Law (Payday Lending, Usury Caps, Subprime Interest Rates, A.G. Enforcement, Foreclosure Moratorium)
- State and Federal Courts (Politicians Wearing Robes)
 - Law-making by litigation (e.g., mandatory arbitration clauses in consumer credit contracts)
 - Massachusetts SJC to subprime lenders: Clean up your own mess

ABI Legislative Resources

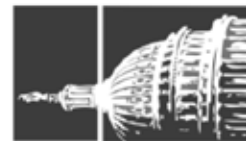
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Thank you ...



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