January 24, 2010

Responsive answers to Questions for the Record Submitted by Senator Jeff Sessions:

1. <u>Please explain in what way(s) cramdown of a residential real estate loan would differ from cramdown of a second home and automobile loan.</u>

The Bankruptcy Code distinguishes long-term and short-term debt. For purposes of a Chapter 13 bankruptcy case, long-term means a period of time greater than the length of the Chapter 13 Plan. In a five-year plan, a debt expected to be paid off in greater than five years would be considered a long-term debt. "Cramdown" (see 11 U.S.C. § 506, Determination of secured status) or reduction of the principal amount owed on a debt from the contract balance due to replacement value of the collateral securing the debt, has been, and is currently available in a Chapter 13 bankruptcy case only for short-term debt, that is, those debts that can be paid off during the term of a plan. Cramdown currently may be applied to loans secured by non-residential real estate or purchase-money automobile loans older than 910 days pre-petition [see the hanging paragraph of 11 U.S.C. § 1325(a)(9)] only so long as the debt can be paid off during the length of the plan.

In my experience, the vast majority of residential mortgage debt treated in a Chapter 13 bankruptcy plan is long-term, that is, the term of the debt is greater than the length of the Chapter 13 plan. Providing for cramdown of long-term residential debt under the bankruptcy code would constitute a radical departure from the American tradition of permitting cramdown only on short-term debt and nearly never on residential real-estate debt.

2. <u>Article I, section 8 of the federal Constitution gives Congress the authority to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States[.] In your view, and personal experience as a practicing bankruptcy attorney, for whose benefit do we craft bankruptcy legislation</u>?

For my perspective as a practitioner, not a scholar, bankruptcy serves to provide a fresh start (Chapter 7) or debt consolidation (Chapter 13) to individuals mired in debt so they can overcome very unlucky circumstances, such as job layoff or medical catastrophe, or reconcile and resolve their financial lapses or errors and reinitiate a financially productive life so they will not be a financial burden on their families and others in their community. Bankruptcy is not welfare; it is a reconciliation process to reclaim individuals lost to terrible bad luck or financial profligacy.

Respectfully submitted,

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