



February 26, 2021

Honorable Shelly Boshart Davis
Oregon House of Representatives
900 Court Street N.E.
Suite H-389
Salem, Oregon 97301

Re: Comments on HB 2009

Dear Ms. Boshart,

Oregon State Credit Union takes pride in its ability to serve the historically underserved areas throughout your district and beyond. Starting from a shoebox on the campus of Oregon State University in 1954, our credit union has now grown to serve over 125,000 members in 24 counties, employs over 260 team members, and has supported thousands of Oregonians in making their dreams of homeownership a reality.

During the pandemic, and in accordance with the previously enacted HB 4204, Oregon State Credit Union has deferred thousands of dollars in principal, interest, and escrow payments for our qualifying member home-owners who have faced a loss of income as a result of COVID-19. Following the expiration of HB 4204 (and the Governor's extension), we continue to work with our members in need.

The purpose of this letter is to address a number of issues that concern us with the newly-proposed HB 2009. While we understand the state's desire to help Oregonians, we are concerned that: (1) the scope of the bill (as written) may be greater than legislators intended; (2) the requirements for qualifying for deferment are not clearly spelled out; (3) the Bill may lend itself to abuse by borrowers who wish to take advantage of the relief provided (to the detriment of financial institutions and their members/customers that ultimately bear the burden); and, (4) financial institutions have little if any recourse to require certification, documentation, or even updated financial need requests from borrowers seeking deferment. We hope that the remainder of this letter provides a more detailed explanation of these reasonable concerns, and that you find our suggestions helpful when discussing potential revisions.

Scope of Coverage

A portion of HB 4204 covered owner-occupied properties and "mom-and-pop" landlords. This limited coverage was clearly expressed when the legislature used the term "four or fewer dwelling units" when discussing qualifications.

HB 2009, on the other hand, applies to residential properties with "four or fewer improvements used primarily and designed solely for residential use." The term "improvements," however, is not defined by HB 2009, nor is it defined by ORS § 86.705, which sets forth the definitions of any statutes being added to ORS §§ 86.705- 815 (where the finalized version of the Bill would be located). Because it is

undefined, the term “improvements” could potentially be interpreted to mean 4 or fewer residential buildings. For example ORS § 87.005 defines the term “improvements” to include “a building.”

Absent a definition clarifying and limiting the term “improvements,” property owners of enormous apartment complexes could argue that they qualify for deferment, so long as the apartments within a parcel are located in 4 or fewer buildings. Given the significant penalties that face lenders who run afoul of HB 2009, many lenders may be compelled to provide deferments to these large apartment owners unless the term “improvements” is defined in a more limited way.

Requirements for Qualification

Unlike HB 4204, it does not appear that there is an express obligation in HB 2009 for the borrower to notify the lender of the reason the borrower is unable to make the periodic payments. Under HB 2009 section 3(a), a lender must defer payments if the borrower notifies the lender that the borrower “cannot make the periodic installment payment or other payment.” In contrast, HB 4204 expressly provided that “[i]f the subject property is a residence with four or fewer dwelling units, the notification must attest that the borrower’s failure to pay is a result of loss of income related to the COVID-19 pandemic.”

While there are portions of HB 2009 that indicate the legislature may have actually intended to create “loss of income related to the COVID-19 pandemic” as a requirement to qualify for relief, none of these portions of the Bill expressly require this.

For example, paragraph 9(a) states that lenders must notify borrowers who cannot make periodic payments because of a “loss of income related to the COVID-19 pandemic” that they may be entitled to relief. This, however, does not require borrowers to actually tell lenders that they are unable to make a payment due to loss of income related to the COVID-19 pandemic.

Likewise, paragraph 3(c) states that, for the purpose of negotiating a foreclosure avoidance measure, a lender may “request” that the borrower confirm in writing that the borrower cannot make a payment “because of a loss of income that is related to the COVID-19 pandemic....” This paragraph goes on to note, however, that a borrower’s failure to provide the requested documentation does not disqualify the borrower from relief. Further, this ability of lenders to request additional information does not even apply to borrowers who are simply seeking deferment.

Finally, paragraph 3(e)(A) provides that if a borrower provides notice orally, a lender “may” request confirmation in writing that the borrower cannot make payments as a result of loss of income related to COVID-19. As with the previous paragraphs, this paragraph does not require a borrower to actually provide a response to this request to qualify, nor is there anything in the Bill that would permit the lender to request additional information if the borrower’s initial request for deferment was in writing.

If the legislature wanted to include loss of income as a requirement for relief (as it should be), this requirement should be expressly incorporated in paragraph 3(a), or elsewhere.

Lack of Oversight, Certification, Documentation, and Request for Continued Need

HB 2009 does not require a borrower to provide written certification that the borrower is unable to make payments. HB 2009 does not require a borrower to provide documentation of an inability to pay upon the lender’s request. HB 2009 could potentially apply through the end of the year, and requires lenders

to defer any and all payments after a borrower makes a single request, even if the borrower's financial condition changes. Lenders that service mortgages and maintain deposit accounts for the same borrower cannot even take into account the financial status of a borrower's deposit accounts if the borrower states that they cannot make a periodic payment.

HB 2009 sets forth significant penalties for lenders that fail to defer payments, but does not provide any penalty or enforcement provisions for borrowers who falsely claim an inability to pay. While deferment may be a life-line to many borrowers, absent enforcement, written certification, documentation, and ongoing re-certification, HB 2009 is drafted in a way that makes these protections a target for those who would otherwise abuse the program. Given that the weight of this program falls on financial institutions and, ultimately, their members and customers, some measure of oversight and review should be provided for.

Suggestions

Because of the foregoing, we would ask you to consider the following:

1. HB 2009 should be revised to clarify that the term "improvement" means a residential dwelling unit, as opposed to a building with numerous residential dwelling units within it.
2. Borrowers should be required to provide written certification that the borrower is unable to make periodic payments or other payments as a result of loss of income due to the COVID-19 pandemic.
3. Lenders should be permitted to request documentation from the borrower substantiating the borrower's certification for all requests for relief, and not just those tied to negotiations surrounding foreclosure avoidance measures.
4. Lenders should be permitted to deny deferment where a borrower is unable to establish that the borrower has a loss of income that makes the borrower unable to make a payment.
5. Borrowers should be required to provide periodic re-certification of the borrower's inability to continue making periodic payments during deferment throughout the emergency period.
6. HB 2009 should provide some measure of enforcement by the state against borrowers who fraudulently claim an inability to pay.

Oregon State Credit Union remains committed to helping its members throughout the pandemic. We urge you to help us continue to do so by addressing the issues outlined in this letter with your fellow committee members.

Sincerely,



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