

December 10, 2020

The Honorable Lindsey Graham
Chairman
Senate Judiciary Committee
Washington, D.C., 20510

Dear Chairman Graham:

On behalf of the members of the American Bankers Association, the leading trade association for America's banking industry, I am writing to express concerns about a counterproductive fee that would be imposed on creditors as the result of the revenue offset contained in H.R. 8235, the Open Courts Act, which was passed by the House on December 8.

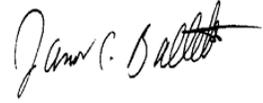
H.R. 8235 would allow free access to Pacer, the electronic records system for the federal courts. Pacer currently charges fees for anyone seeking access to records on federal court dockets. The bill is intended to make it easier and cheaper for those wishing to access federal court records. The bill, however, also contains a revenue offset to cover the funds that will no longer be collected by the federal courts for the use of the Pacer system. One of these offsets would be a fee charged to any creditor who files a Proof of Claims (POC) in a bankruptcy case. The amount of the fee is left to the discretion of the federal courts. This would be a new and unfair fee on creditors that would make them essentially pay for merely asserting their legal right to file a claim in a bankruptcy proceeding. In addition, the effect of a fee for POCs could deter community banks, and small businesses more generally, from participating in bankruptcy cases.

The offset in the House bill was put in place without hearings or any substantive discussion of its potential impact. For instance, POCs are the sole mechanism by which a creditor can communicate with or collect from a customer in bankruptcy. Creditors are not otherwise permitted to contact a customer in bankruptcy, or try to collect debts in any way. Therefore, the POC is a crucial mechanism for lenders seeking to communicate with customers in financial distress. Taxing lenders for trying to contact a customer in the only permissible way, as H.R. 8235 would do, is counterproductive and could lessen voluntary restructuring of debts. This is not a sound policy.

ABA strongly opposes H.R. 8235 as passed by the House and urge you to oppose any efforts to move forward on this bill, or similar legislation in the Senate. In particular, we urge you to oppose any effort to include H.R. 8235, or similar legislation that contains a fee or tax on lenders in any year end spending package.

Thank you for considering our views.

Sincerely,

A handwritten signature in black ink, appearing to read "James C. Ballentine". The signature is written in a cursive style with a long horizontal flourish extending to the right.

James C. Ballentine

cc: The Honorable Mitch McConnell, Majority Leader, United States Senate