

**Statement for the Record**

*On behalf of the*

**American Bankers Association**

*Submitted for a hearing on*

**“H.R. 3553, The Bankruptcy Administration Improvement  
Act of 2017”**

*before the*

**Subcommittee on Regulatory Reform, Commercial and  
Antitrust Law**

*of the*

**Committee on the Judiciary  
U.S. House of Representatives**



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**September 26, 2018**

Chairman Marino, Ranking Member Cicilline and members of the Subcommittee, the American Bankers Association (“ABA”) appreciates the opportunity to provide its views on the issue of Chapter 7 compensation and H.R. 3553, the Bankruptcy Administration Improvement Act. The ABA is the voice of the nation’s \$17 trillion banking industry, which is comprised of small, mid-sized, regional and large banks. Together, these institutions employ more than 2 million people, safeguard \$13 trillion in deposits and extend more than \$9.5 trillion in loans. As significant actors in the financial system and stakeholders, our members have a substantial interest in the bankruptcy process and we respectfully request that this statement be included as a part of the record for today’s hearing.

The ABA has been engaged in dialogue with the National Association of Bankruptcy Trustees (NABT) for several years regarding various proposed reforms to Chapter 7, most notably a possible increase in the fee paid the Chapter 7 trustees in so-called no asset bankruptcy cases. The ABA supports increasing this fee and further supports indexing this fee for inflation, all of which have been included in H.R. 3553.

It is important to put the bankruptcy system into context from the perspective of banks as creditors. ABA members extend credit to consumers based on underwriting procedures that are examined and accepted by various banking regulators. These standards include risk controls to minimize delinquent loans in the first place, and when they occur, procedures for collecting on delinquent loans. For example, the Office of the Comptroller of the Currency (OCC), which regulates national banks, has issued a “Handbook” for banks that provides standards for what is expected by the agency.<sup>1</sup> Further, as the OCC has noted in Congressional testimony, banks are expressly authorized to collect delinquent debts, and collection techniques are highly regulated and include

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<sup>1</sup> See, <https://www.occ.treas.gov/publications/publications-by-type/comptrollers-handbook/retail-lending/pub-ch-retail-lending.pdf>

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numerous strategies designed to minimize financial losses with appropriate protections for debtors.<sup>2</sup>

The filing of bankruptcy by a consumer interrupts the normal collections process and severely curtails a lender's ability to recoup losses. The automatic stay of litigation prevents, as a practical matter, all collection attempts. Thus, the role of the Chapter 7 trustee is crucial for banks. The Chapter 7 trustee has the legal right and obligation to examine the affairs of delinquent borrowers to determine what assets, if any, should be made available to creditors. In cases where the debtor has assets, the trustees receive a graduated percentage of the value of the assets they uncover. However, in many instances there are no assets to recover and they only receive a statutory flat fee for each case. The ABA supports increasing the current "no asset fee" because it is necessary to compensate trustees for the work of examining these types of bankruptcy petitions to ensure appropriate repayment and because this fee has not been updated since 1997. This function primarily benefits the bankruptcy system as a whole, and it would be unfair to place the funding burden on lenders who derive the least benefit from a Chapter 7 bankruptcy among the various stakeholders (debtors, trustees and lenders.)

It is also important to note, however, that the ABA has expressed concerns about several Chapter 7 and other bankruptcy proposals that have been made in the past with respect to trustee compensation legislation. In particular, we would oppose proposals that would further reduce recoveries on delinquent loans and potentially encourage the misuse of the bankruptcy system. For example, we would oppose raising the commissions paid to Chapter 7 trustees when distributing assets to lenders. Increasing trustee commissions would further reduce the amount available for lenders and would not result in trustees finding more assets for distribution. Any proposal to re-route funds returned to the bankruptcy estate away from creditors to trustees would also be of serious concern to the ABA.

Additionally, the ABA would oppose repealing or weakening current credit-counseling requirements. Under current law, borrowers must receive credit counseling prior to filing bankruptcy. This requirement permits the borrower to consider options other than bankruptcy. Bankruptcies can dramatically lower credit scores and make future borrowing more difficult and expensive. Providing consumers with a less harmful alternative benefits lenders and borrowers alike. In fact, based on calculations from the Department of Justice revealed at the 35<sup>th</sup> Annual Convention of the NABT, it appears that up to 15% of consumers use the credit-counseling program to find better alternatives to bankruptcy.

In conclusion, the ABA appreciates the opportunity to present its views to the Subcommittee. The ABA supports increasing the no asset fee for Chapter 7 trustees and H.R. 3553 as introduced. We look forward to working with the Subcommittee on this important issue.

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<sup>2</sup> See, <https://www.occ.treas.gov/news-issuances/congressional-testimony/2013/pub-test-2013-116-oral.pdf> at footnote 2.