

April 30, 2007

The Honorable Linda Sánchez
Chairman, Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Chris Cannon
Ranking Member, Subcommittee on Commercial and Administrative Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Sánchez and Rep. Cannon:

This letter contains the views of the undersigned organizations with respect to the Commercial and Administrative Law Subcommittee's May 1 hearing on "The Second Anniversary of the Enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 [PL 109-8]: Are Consumers Really Being Protected Under the Act?" Although the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) is still new, the bipartisan and balanced bankruptcy reform it put into effect is already working to benefit consumers and the economy.

Consumer bankruptcy filing rates have dropped dramatically, from an average of about 1.5 million cases pre-enactment to about half of that in 2007, but there is no evidence we are aware of that individual debtors in need of bankruptcy relief have been unable to obtain it. In fact, research conducted by SMR Research Corporation shows that bankruptcy filing rates have declined uniformly in all areas of the country and that there has not been a disproportionate impact upon certain groups. Specifically, there has not been a disproportionate decline in filings in low-income areas.¹ In addition, the Executive Office for U.S. Trustees (EOUST) recently reported that the use of IRS living expenses standards in the needs test calculation is providing Chapter 7 debtors with a monthly living allowance that is an average of \$400 per month higher than under the pre-BAPCPA Code, and that the effect is progressive – that is, it provides greater benefits to lower-income filers. These findings clearly contradict the dire predictions of BAPCPA opponents that the IRS expense standards would harm consumers.

Click here to read the SMR bankruptcy study (or copy-and-paste this link into your Web browser):
http://www.aba.com/aba/documents/grassroots/Bankruptcy_SMRStudy.pdf.

In addition, the percentage of consumers choosing Chapter 13 repayment plans over Chapter 7 is higher than under the pre-reform law. This indicates that consumers with mortgages in arrears are

¹ If BAPCPA were causing hardship for low-income people seeking bankruptcy relief (as some have alleged), filing rates in low-income areas would have declined much more significantly there than in wealthier areas. However, this is not the case. SMR looked at all 379 metro areas of the nation and found that filing rates have declined fairly uniformly in all of these areas.

utilizing that Chapter's provisions to cure those deficiencies and save their homes, and that higher income filers are voluntarily utilizing court-supervised repayment plans.

As important as the decline in filing rates, BAPCPA's requirement for pre-filing credit counseling sessions has resulted in an overall increase in credit counseling sessions compared to 2005 levels. This means that substantially more Americans are getting the benefit of high-quality credit counseling from Justice Department-approved credit counseling agencies. In fact, the Department of Justice reports that 10 percent of consumers who receive counseling chose an option other than bankruptcy. Individual debtors also enjoy substantial new benefits, such as the ability to shelter greater amounts of retirement funds and uniform disclosures to understand fully the implications of voluntary reaffirmations of debt.

The beneficial aspects of BAPCPA go far beyond its consumer bankruptcy provisions. For instance, small businesses now have access to a faster and less expensive filing process, the financial instruments netting provisions increase the stability of the global financial system, family farmers enjoy greater protections, and the cross-border provisions respond to the reality of the global marketplace. Moreover, the consumer privacy ombudsman provisions already have been implemented in a number of major Chapter 11 cases to ensure that personal data protection remains strong during corporate reorganizations.

While BAPCPA is new, its implementation so far has been relatively smooth and it is working remarkably well. In fact, many of the dark consequences predicted by opponents of the reform legislation have not materialized. Specifically, debtors are not being harmed by the new debtor counseling requirement, they are not being denied access to bankruptcy relief by the law's means testing provision, and they are not being subjected to harassment by creditors under non-dischargability or other provisions of the Act.

Regarding the debtor counseling requirement, GAO found in its April 2007 report that EOUST has established generally effective policies and procedures for selecting providers of credit counseling and financial education services, and is carefully monitoring the few counseling agencies undergoing IRS examinations. It also found that while the value of the pre-filing credit counseling requirement has been questioned, there is not yet enough data available to draw any conclusions. We agree that it is too soon to tell, but note that subjective feedback from approved counseling agencies indicate that even those debtors who subsequently file bankruptcy find the counseling sessions beneficial. GAO found that the pre-discharge financial education requirement enjoys broad support and is consistent with increased official attention to financial literacy efforts.

Further, despite arguments to the contrary by certain members of the consumer debtors' bar, there is no evidence that BAPCPA has exacerbated the problems in the sub-prime mortgage market. The basic premise that BAPCPA, in particular the means test, is exacerbating sub prime mortgage problems ignores the fact that bankruptcies have fallen by half since BAPCPA took effect. Moreover, only one-half of one percent of Chapter 7 filers are being directed into Chapter 13 under the means test, and almost all debtors in arrears on their mortgages voluntarily choose to file in Chapter 13 because of the opportunity it affords to cure mortgage defaults.

Therefore, we believe that there is no need for further revisions to the Bankruptcy Code at this point in time. Instead, we urge Congress to let the reforms mature before considering additional

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legislation. The implementation process and case law will add more context and detail to the new law, and Congress will then be in a better position to assess the long-term impact and effectiveness of the 2005 bankruptcy reform.

We look forward to working with you and others in Congress to ensure that bankruptcy reform realizes its full potential. Thank you for considering our views.

Sincerely,

American Bankers Association
America's Community Bankers
Consumer Bankers Association
Independent Community Bankers of America
The Financial Services Roundtable
Mortgage Bankers Association
U.S. Chamber of Commerce

Cc: Members of the Subcommittee