

American College of Bankruptcy



June 14, 2019

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Hon. David N. Cicilline
Chairman
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House of Representatives
Washington, D.C. 20515

Hon. F. James Sensenbrenner
Ranking Member
Subcommittee on Antitrust, Commercial
and Administrative Law
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Cicilline and Ranking Member Sensenbrenner:

The American College of Bankruptcy is an honorary association of almost 900 bankruptcy and insolvency professionals. The College plays an important role in sustaining professional excellence in the bankruptcy field. College Fellows include commercial and consumer bankruptcy attorneys, judges, insolvency accountants, turnaround and workout specialists, law professors, government officials and others in the bankruptcy and insolvency community. Its Fellows share a commitment to the administration and improvement of the Bankruptcy Code.

Please accept this letter as the ACB's endorsement of

1. H.R. 2336, the "Family Farmer Relief Act of 2019," which would increase the debt limits for the filing of chapter 12 cases from their existing limits (\$4,153,150 for farmers, and \$1,924,550 for fishermen) to \$10 million; and
2. the "Small Business Reorganization Act" (which as of the time of this writing has not yet been assigned a bill number in the House, but which we understand will be identical or substantially identical to S. 1091, its counterpart in the Senate), which would provide for a new subchapter V to chapter 11 that establishes a streamlined and much more cost-effective means to reorganize small businesses.

Chapter 12 addresses the needs and concerns of family farmers and fisherman, and while it is an important tool for them, it has not been updated to address the much higher levels of debt they have faced in recent years. If chapter 12 is to accomplish the salutary purposes for which it was enacted, it should be amended to increase the monetary limit for eligibility to invoke it.

Chapter 11 has long been of great value in preserving jobs, enhancing going concern value, and maximizing creditor recoveries for many businesses. But the present chapter 11 does not work efficiently for businesses of smaller size, which constitute the great bulk of business entities in financial distress. For small businesses, the present chapter 11 is seldom effective in achieving a reorganization due to extensive reporting requirements, complicated procedures, broad participation from groups of creditors at the debtor's expense, high costs, and stringent plan confirmation requirements that most small business owners likely cannot meet. Thus, seeking chapter 11 relief often is a path to liquidation rather than to a

restructuring. Accordingly, many small businesses (as well as many bankruptcy professionals) do not consider chapter 11 in its present form to be a viable option.

The streamlined processes built into the Small Business Reorganization Act would go far in addressing the failure of current chapter 11 to address the foregoing issues, and would make chapter 11 available for the very large community of small businesses, and their creditors, who are so often effectively foreclosed from benefitting from chapter 11. In that regard, the Small Business Reorganization Act would be even more effective in accomplishing its goals if the monetary debt cap for filing a small business chapter 11 case were amended to make it \$10 million – the same amount as the cap under a revised chapter 12.

In each case, the American College of Bankruptcy fully supports Congressional efforts to improve the utility of the bankruptcy system through the passage of the Family Farmer Relief Act and the Small Business Reorganization Act. You are welcome to publicly cite the College's support of each of these bills as you deem appropriate to secure the bills' passage.

We note that the views expressed in this statement are those of the American College of Bankruptcy, on whose behalf this statement is issued, and do not necessarily reflect the personal views, if any, of any judge or other Fellow of the College (or any firm or educational institution with which one or more Fellows may be affiliated).

On behalf of the College, we thank you and the co-sponsors of these bills for your service to the country, and, particularly for your work to help farmers, fishermen and small businesses in financial distress, as well as the creditors to whom they are indebted, to obtain the relief they need through our bankruptcy system.

We would be grateful if you would keep us abreast of developments with respect to these bills, and if you would let us know if there is anything more the College can do to support this legislation.

Sincerely,



Marc A. Levinson, Chair



Mark D. Bloom, President

cc: All Subcommittee Members, by electronic delivery