Statement of the Honorable Jerrold Nadler, Chair, for the Markup of H.R. 3311, the "Small Business Reorganization Act of 2019," by the Committee on the Judiciary

Thursday, July 11, 2019, at 10:00 a.m.
2141 Rayburn House Office Building

The Bankruptcy Code, either directly or indirectly, affects millions of Americans, and all types of businesses, from the largest to the smallest.

When the law works properly, it offers a critical economic second chance to individuals and businesses in financial distress. But various reforms are necessary to ensure that this critical goal of financial rehabilitation is effectively met.

The four bipartisan bills scheduled for consideration at today's markup address certain deficiencies and areas of unfairness in the Code.

But before I turn to the first bill listed for markup, I want to briefly discuss a bill that is not part of today's proceedings, but which we will be considering in the near future—H.R. 2648, the "Student Borrower Bankruptcy Relief Act," which I introduced along with Senator Dick Durbin.

Our legislation would address head-on the manifest unfairness that student loans—unlike every other unsecured debt, such as credit cards or auto loans—are effectively nondischargeable in bankruptcy. These measures would make student loan debt completely dischargeable.

Currently, 45 million Americans owe student loan debt estimated in excess of $1.5 trillion, an amount that exceeds outstanding credit card and auto loan debt combined. Some of this debt is attributable to for-profit education mills that deceptively promise much, but deliver little.

Some of this debt is also the result of predatory lending practices that target young Americans desperate to improve their lives and contribute to society, but who do not fully understand the terms of the loans they take on. And, some of this debt is disparately borne by minorities who, on average, owe more than their white counterparts, and who are more often the targets of predatory lending practices.

There is no reason that this one category of debt should be singled out for special treatment that severely undermines the Bankruptcy Code's vital goal of providing a financial fresh start to honest, but unfortunate, debtors. The problem of student loan debt, however, is multifaceted.

As discussed at last month's hearing on my bill and other bankruptcy measures in the Antitrust, Commercial, and Administrative Law Subcommittee, organizations such as the nonpartisan American Bankruptcy Institute's Consumer Bankruptcy Commission, as well as the National Association of Consumer Bankruptcy Attorneys and the National Consumer Law Center have proposed a number of reforms addressing various aspects of this problem.

In light of this interest in continuing to refine the bill, and in response to the request by our colleagues on the other side of the aisle, we are holding off taking up H.R. 2648 at least for now. But make no mistake, we will address the student loan problem in the context of bankruptcy reform at the very next opportunity.

We also plan to consider the need to promote greater transparency and integrity with respect to the ongoing financial reorganization of Puerto Rico under the guidance of the congressionally-authorized Financial Oversight and Management Board, particularly with regard to actual or potential conflicts of interest of professional persons retained by the Board in connection with that reorganization effort.

Now, turning to the first bill listed for markup, H.R. 3311, the "Small Business Reorganization Act of 2019," makes a series of reforms to current bankruptcy law needed to better facilitate the financial reorganization of small business debtors. These reforms are endorsed by the nonpartisan National Bankruptcy Conference as well as the American Bankruptcy Institute.

H.R. 3311 strikes an important balance between heightened administrative oversight of these types of cases and provisions intended to streamline the bankruptcy reorganization process for small business debtors.

Among its principal features, H.R. 3311 would require the appointment of an individual to serve as the trustee in a small business chapter 11 case to monitor the debtor's reorganization progress toward confirmation of a reorganization plan. In addition, it would authorize the court to confirm a plan over the objection of the debtor's creditors, under certain specified circumstances.

The bill also includes two provisions, not limited to small business chapter 11 cases, pertaining to the treatment of a transfer of property by the debtor made before the filing of the bankruptcy case that is preferential to a creditor and to the detriment of similarly situated creditors.

The first provision would require a bankruptcy trustee to exercise reasonable due diligence before seeking to recover a preferential transfer, based on the circumstances of the case and taking into account the transfer recipient's known or reasonably knowable affirmative defenses.

The second provision concerns the venue where such preferential transfer actions may be commenced. Current law requires this type of action to be commenced in the district where the defendant resides if the amount sought to be recovered by the action is less than $13,650. H.R. 3311 would increase this monetary limit to $25,000.

I thank the sponsors of this legislation, the Gentleman from Virginia, Mr. Cline, and the Chair of the Antitrust, Commercial, and Administrative Law Subcommittee, the Gentleman from Rhode Island, Mr. Cicilline, for their leadership on this measure.

I urge my colleagues to support H.R. 3311 and I yield back the balance of my time.