



# JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

September 25, 2018

Honorable Tom Marino  
Chairman  
House Judiciary Committee  
Subcommittee on Regulatory Reform,  
Commercial and Antitrust Law  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I write in my capacity as Secretary of the Judicial Conference of the United States, the policy-making body of the federal Judiciary, to express the Judiciary's views on H.R. 3553, the Bankruptcy Administration Improvement Act of 2017. The bill would increase compensation paid to trustees in Chapter 7 bankruptcy cases by increasing the statutory filing fee. The bill would also require every three years, without any additional increase to such fee, an inflationary adjustment of both the portion of the filing fee allocated to the trustee and the Judiciary's miscellaneous fee paid to the trustee. These inflationary mechanisms present significant problems for the Judiciary. The inflation adjustment in the trustee's portion of the filing fee presents a conflict among statutes that may be impossible to reconcile. In addition, the Judicial Conference opposes legislative efforts to raise trustee payments by increasing the Judiciary's miscellaneous fees.

We are grateful for the opportunity to meet with your staff to express our views and look forward to working together to address our concerns. We respectfully request that this letter be included in the record of the hearing held by the Subcommittee on Regulatory Reform, Commercial and Antitrust Law on the bill on September 26, 2018.

H.R. 3553 would raise the filing fee imposed by 28 U.S.C. § 1930 (a) (1) (A), presently \$245, to \$305, to increase trustee compensation by \$60. The Judicial Conference has no position on this increase in compensation for Chapter 7 bankruptcy trustees. However, those provisions in the bill that seek to adjust Chapter 7 trustee compensation for inflation present serious issues for the Judiciary. As noted above, in addition to raising the filing fee, the bill would adjust the portion of the fee allocated to trustee compensation by the rate of inflation every three years. As drafted, there is a technical problem with the legislation that will not allow it to be reconciled with other statutory mandates. The statutory filing fee is currently allocated by application of five statutes<sup>1</sup> to the trustee, the Treasury, the Judiciary, the Executive Office of U.S. Trustees,

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<sup>1</sup> See 11 U.S.C. § 330 (b) (2), 28 U.S.C. § 589a, 28 U.S.C. § 1931 notes, 31 U.S.C. § 3302 (b) and the Deficit Reduction Act of 2005 (P.L. 109 – 171).

and the Deficit Reduction Act fund. As the trustee's fee allocation increases without a corresponding increase in the underlying statutory fee, insufficient amounts will be collected to fund all current statutory allocations. The effort to reconcile these statutes will impose interpretative, operational, and funding challenges for the Judiciary as some of the relevant statutes allocate a specific amount, while others allocate according to a percentage. Eventually, the trustee allocation will consume the entire fee, eliminating the ability to make required statutory allocations to the Judiciary and other entities.

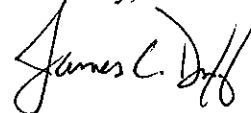
Second, the increase for inflation would also apply to the trustee compensation (\$15) under the Judiciary's miscellaneous fee schedule imposed by 11 U.S.C. § 330 (b) (2) and prescribed under 28 U.S.C. § 1914 (b). The legislation would require the Judiciary to adjust its own miscellaneous fee on a different schedule and according to a different index than the Judiciary uses to adjust other miscellaneous fees. This would impose significant operational challenges on the Judiciary. Further, the Judicial Conference is on record opposing legislation that would increase trustee compensation through an increase in the Judiciary's miscellaneous fees.

Moreover, principles considered by the Judiciary when assessing increases to its miscellaneous fees caution against increasing fees to the point at which they could discourage access to the courts. Depending on future rates of inflation, enacting legislation that includes automatic inflationary adjustments could impose additional burdens on debtors that in some cases may make it difficult for individuals to file for bankruptcy and obtain access to the courts.

Therefore, if the Congress sees fit to raise the fees paid to Chapter 7 bankruptcy trustees, the Judiciary urges it to do so in a manner that takes into account existing statutory allocations of the filing fee, does not create inflation adjusted increases in trustee compensation that will negatively impact the Judiciary's budget and other accounts and will ultimately be impossible to implement, and does not increase the payment to the trustees by directing a change to the Judiciary's miscellaneous fees.

We look forward to continuing to work with you and other stakeholders to address these issues. If you have any questions, please contact me or the Office of Legislative Affairs, Administrative Office of the United States Courts, at (202) 502-1700.

Sincerely,



James C. Duff  
Secretary

cc: Honorable Bob Goodlatte



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WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

September 25, 2018

Honorable David Cicilline  
Ranking Member  
House Judiciary Committee  
Subcommittee on Regulatory Reform,  
Commercial and Antitrust Law  
United States House of Representatives  
Washington, DC 20515

Dear Representative Cicilline:

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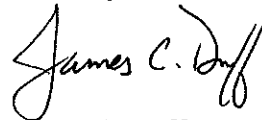
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Sincerely,



James C. Duff  
Secretary

cc: Honorable Jerrold Nadler