

FOR THE RECORD

**Statement of the Honorable Jerrold Nadler, Ranking Member,
Committee on the Judiciary, for the Hearing on H.R. 3553, the
“Bankruptcy Administration Improvement Act of 2017,” Before the
Subcommittee on Regulatory Reform, Commercial and Antitrust
Law**

**Wednesday, September 26, 2018, at 10:00 am
2237 Rayburn House Office Building**

Mr. Chairman, Chapter 7 trustees are fiduciaries appointed by the Justice Department to administer Chapter 7 bankruptcy cases. In so-called no-asset bankruptcy cases—which are cases in which the debtor has no property that must be forfeited to the trustee for repayment to creditors—the trustees currently receive \$60 per case as payment for administering the case.

The bill that is the subject of today’s hearing would double their payment to \$120, and would subject the fee to automatic inflation adjustment every three years. To pay for this increase, the filing fee that a Chapter 7 debtor—by definition, someone who is in severe financial straits—would have to pay to obtain bankruptcy relief would escalate to \$395, from an already steep \$335.

Given the fact that the \$60 no-asset trustee fee has remained the same since 1994, few would dispute that an increase is long-overdue. Unfortunately, however, H.R. 3553 takes the wrong approach. By making the debtor bear the *full* brunt of this increase, the bill simply makes obtaining bankruptcy relief even more expensive for those in our society who can least afford it.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, which I led the opposition to in Congress, placed numerous requirements on consumer debtors—many of which are burdensome, useless, or both—in order to obtain bankruptcy relief, and all of which carry price tags.

For example, a Chapter 7 debtor has to take a pre-bankruptcy credit counseling course, which can cost upwards of \$50. If a husband and wife file for Chapter 7, that is \$100 per couple. This requirement is mandatory, even though the Government Accountability Office found that it was useless where the debtors' "financial situations are dire, leaving them with no viable alternative to bankruptcy." As a result, the GAO concluded that the counseling requirement "may often serve more as an administrative obstacle than as a timely presentation of meaningful options."

In addition, the 2005 amendments imposed burdensome paperwork requirements for consumer debtors and their attorneys that have also increased the cost of obtaining bankruptcy relief. On average, attorneys' fees have nearly doubled since 2005 in response to these heightened requirements.

By increasing the filing fee for Chapter 7 debtors, H.R. 3553 just piles further costs on those least able to pay them, which is patently unfair and unjust.

About 8 years ago, the National Association of Consumer Bankruptcy Attorneys—the only national organization devoted to serving the needs of consumer bankruptcy attorneys and protecting the rights of consumer debtors in bankruptcy—joined in a good faith effort with the National Association of Bankruptcy Trustees to devise a balanced approach to raising the Chapter 7 trustees' fee. This effort was memorialized in bipartisan legislation introduced by our colleague, Representative Steve Cohen.

That bill adjusted the amount of compensation Chapter 7 trustees receive from asset cases by increasing the commission percentages based on the assets distributed to creditors. Although this compromise was acceptable to both the consumers and trustees, the American Bankers Association rejected it, and little progress has been made to date.

The ABA's opposition to this approach is hard to comprehend, given the fact that it is the creditors who benefit most from asset Chapter 7 cases. In these cases, trustees are required to search for, liquidate, and distribute the debtor's assets primarily for the benefit of creditors. In addition, the commission that a Chapter 7 trustee is eligible to receive is much less than a collection attorney would charge a creditor outside of bankruptcy.

On top of that, creditors are getting a tremendous bargain by having Chapter 7 trustees do this in the context of bankruptcy law, which gives trustees more far-reaching legal tools to reach assets otherwise unobtainable outside of bankruptcy.

Rather than placing the entire burden for this fee increase on debtors, who are already financially strapped, it would be far more equitable to have creditors bear some of this financial burden. In addition, it would make sense to loosen some of the costly mandatory paperwork demands and pre-petition credit counseling requirements when they would serve no purpose.

It is my hope that this hearing will lead to a more balanced legislative solution to addressing the need to increase Chapter 7 trustee compensation in no-asset cases than that reflected in H.R. 3553.

I thank Chairman Marino for holding this hearing and I very much look forward to the testimony of our witnesses today. I yield back the balance of my time.