

The Bankruptcy Reform Act of 2000

May 2, 2000

The Honorable Orrin Hatch
Chairman
Senate Committee on the Judiciary
224 Hart Senate Office Building
Washington, D. C. 20510

Subject: H.R. 833, The Bankruptcy Reform Act of 2000

Dear Mr. Chairman:

The undersigned organizations, representing thousands of employers and millions of their employees, as well as financial institutions that provide essential retirement services, write to express our strong opposition to adding any provision to the Bankruptcy Reform Act of 2000 (H.R. 833) that would cap the amount of retirement plan assets entitled to protection from creditors in bankruptcy.

We have strongly supported bankruptcy provisions to protect tax-qualified retirement plan assets during bankruptcy and commend you for your leadership role in accomplishing that goal. In addition, along with you and many Senators, we have strongly objected to the provision added in the managers amendment that would allow an individual to waive the protection of retirement plan assets &om creditors in bankruptcy. Under that provision, an individual could waive the protection by contract with creditors prior to the initiation of a bankruptcy proceeding. Again, we thank you for opposing this provision which so directly undermines important retirement security policy that Congress has developed over the past quarter century.

Now we understand that in lieu of a "waiver" provision, a proposal may be advanced to cap the amount of retirement assets that can be protected on some sort of a "sliding scale." The idea of a cap was discussed last year but rightly rejected as counterproductive to sound retirement security policy.

As you know, Congress has acted repeatedly in recent years to stress the importance of retirement savings and to provide new incentives that will help families accumulate retirement income through employer-sponsored retirement plans and IRAs. This critical savings message would be undercut by placing a dollar cap on the amount of retirement funds protected in bankruptcy. Congress would, in effect be saying that savings up to the level of the cap would be sufficient to achieve a secure retirement. Yet with increased life expectancy and the likelihood of substantial health-related expenses in retirement it is difficult to know exactly how much retirement income each American will need. The bankruptcy code is an inappropriate place to make this determination and any level of cap is likely to misjudge the retirement needs of Americans. It is also important to keep in mind that while the dollar figures at which a cap would be imposed may initially sound quite large, these figures are often exceeded over a lifetime by working-income savers such as teachers and government employees. Moreover, these figures often translate into yearly annuity payments in retirement that are quite modest.

The proponents of a cap have suggested that a cap is needed to prevent individuals from shielding assets from creditors by dumping substantial funds into retirement plans shortly before bankruptcy. Congress, however, in both ERISA and the Internal Revenue code, has fixed annual limits on the amount of contributions that may be made (and benefits that may be earned) under tax-qualified retirement plans. As the National Bankruptcy Review Commission recognized in its Final Report: "Because the tax provisions limit the amount of contributions in a single year, a debtor would not be able to make an extraordinary contribution to shield assets temporarily from creditors."

Thank you for your consideration of our views. We hope you will stand with us to extend retirement plan bankruptcy protections and oppose any counterproductive caps. Please call on any and all of the undersigned organizations if you need assistance as this important legislation makes its way to the floor.

Sincerely,

American Council of Life Insurers

American Society of Pension Actuaries
Association for Advanced Life Underwriting
Association of Private Pension and Welfare Plans
College and University Personnel Association
Committee of Annuity Insurers
Committee on Investment of Employee Benefit Assets
Employers Council on Flexible Compensation
ERISA Industry Committee
Government Finance Officers Association
Investment Company Institute
National Association of Manufacturers
National Association of State Retirement Administrators
National Council on Teacher Retirement
National Defined Contribution Council
National Employee Benefit Institute
National Rural Electric Cooperative Association
National Telephone Cooperative Association
Profit Sharing/401(k) Council of America
Securities Industry Association
Small Business Council of America
Society for Human Resource Management

cc: United States Senators Members of the House Judiciary Committee and House Leadership