Legislative Highlights

House Judiciary Committee Held Hearing on Several Bankruptcy Bills in June

The House Committee on the Judiciary subcommittee with jurisdiction over the Bankruptcy Code was scheduled to hold a legislative oversight hearing on June 25. Among the bills on the agenda were several that boasted bipartisan and bicameral support. These included the Small Business Bankruptcy Reform Act (S. 1091; H.R. bill number pending), also known as SBRA, which would provide small businesses with an opportunity to resolve liabilities through a streamlined and cost-effective chapter 11 proceeding.

Robert J. Keach

The SBRA is inspired by proposals contained in the ABI Commission to Study the Reform of Chapter 11 (2014), available for download at commission.abi.org/full-report. It offers small business owners with an opportunity to preserve their ownership interests in a company with a court-approved reorganization plan. Among other features, it would permit a small business to reorganize by committing its "disposable income" to creditor repayment, under trustee supervision as in chapters 12 and 13, but without required compliance with some of the more burdensome procedures more appropriate in larger cases. Commission Co-Chair **Robert J. Keach** (Bernstein Shur; Portland, Maine) testifed in support of the legislation. The bill is also supported by the American College of Bankruptcy (ACB).

Also on the agenda was a bill to raise the debt limit for chapter 12 eligibility to $10 million (H.R. 2336; S. 897). It has been widely reported that the agriculture economy is under stress and that the current debt limits in chapter 12 are not adequate to address a coming need for effective legal remedies. This bipartisan legislation is supported by the ACB and the American Farm Bureau Federation, among others. As the ACB noted in its letter of support, the SBRA would be even more effective in accomplishing its goals if the $10 million proposed for family farmers also applied to small business debtors.

Also on the agenda was the Honoring American Veterans in Extreme Need Act (H.R. 2938; S. 679), also known as as the HAVEN Act, to except from the chapter 7 means test veterans' disability benefits from the calculation of disposable income. Social Security disability benefits are currently excluded from the means test, and there is no explanation for the disparate treatment. The HAVEN Act has more than 40 bipartisan Senate co-sponsors and was recently introduced in the House with bipartisan support. The legislation is supported by the ABI Final Report of the Consumer Bankruptcy Commission (2019), several veterans' service organizations and the ACB, among others. The Consumer Commission's Final Report is available for download at ConsumerCommission.abi.org/commission-report.

The hearing also considered the Puerto Rico Recovery Accuracy in Disclosures Act (H.R. 683; S. 1675), which was introduced by Rep. Nydia Velazquez (D-N.Y.). The bill is designed to improve the transparency of disclosures by professional advisory firms under the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) law at issue in the Puerto Rico debt restructuring. The bill has bipartisan support in the House and Senate.

The subcommittee, chaired by Rep. David Cicilline (D-R.I.), is also expected to consider various proposals for dealing with student loan debt via the Bankruptcy Code, including the recommendations contained in the ABI Final Report of the Commission on Consumer Bankruptcy.

CFPB Delays Payday Lending Rule

The Consumer Financial Protection Bureau (CFPB) issued a final rule in early June to delay the compliance date for mandatory underwriting provisions of the 2017 payday lending rule. The move, which was expected, delays the compliance date for those provisions by 15 months, until Nov. 19, 2020.

In February, CFPB Director Kathy Kraninger proposed rescinding the strict underwriting requirements initially finalized under her predecessor, Richard Cordray, in 2017. That was necessary before separately delaying the compliance date, which was the agency's latest move. The delay might be part of the CFPB's strategy to bolster its legal position if it is sued by consumer advocates and state attorneys general for violating the Administrative Procedure Act, which prohibits agencies from issuing rules that are "arbitrary, capricious, and unsupported by substantial evidence." The CFPB is in the unusual position of trying to reverse its own rule and must provide evidence that its initial regulation was flawed.

This delay gives the CFPB more time to finalize its repeal of the mandatory underwriting provisions for small-dollar loans. Under the initial proposal, the plan would have required lenders to assess the borrower's ability to repay before extending a short-term loan, as well as limited the number of payday loans. Lenders have long objected, saying the ability-to-repay provisions threatened their business model.

Although the CFPB has proposed rescinding those underwriting requirements, the agency is leaving intact a second component of the 2017 final rule that sought to limit how often a lender could attempt to debit payments from a borrower's bank account. The payment provisions had originally been slated to go into effect on Aug. 19, but a federal judge earlier this year effectively halted the compliance date while the rule is in litigation. Many payday lenders ultimately expect that the final rule that goes into effect will be far narrower (without the underwriting requirement) than what was originally finalized under Cordray. abi