

Bankruptcy Reform and Update of NCUA Rules Regarding Qualified Financial Contracts

BACKGROUND

For several years, Congress has considered legislation to overhaul the bankruptcy laws to require debtors with the ability to repay some or all of their debt to do so.

The legislation would:

- Establish an income-based “means test” to determine which debtors are allowed to file for chapter 7 bankruptcy versus those who must file under chapter 13.
- Require debtors with incomes above regional median income (excluding living expenses and certain debts and priority claims) to submit a repayment plan.
- Enhance protection for children and spouses of persons who file for bankruptcy by making child support and alimony payments the highest payment priority.
- Discourage “bad faith” bankruptcies where debtors file repeatedly to stave off creditors indefinitely.
- Prevent debtors from reducing their obligations by switching their cases between bankruptcy chapters.
- Protect the right of credit union members to voluntarily reaffirm their debts.

LEGISLATIVE STATUS

U.S. House of Representatives

On March 19, 2003, the House approved legislation (HR 975), the Bankruptcy Abuse and Consumer Protection Act of 2003 by a vote of 315 to 113.

Title IX of HR 975 Regarding Qualified Financial Contracts

The House approved an amendment cosponsored by Representatives Patrick Toomey (R-PA) and Brad Sherman (D-CA) that revises the laws with respect to the termination and netting of financial contracts for federally insured credit unions. Title IX of HR 975 is the same as HR 2120.

The amendment clarifies the rights of the parties involved in a derivative contract and the treatment of that contract in the event of a counterparty failure. The amendment also clarifies NCUA’s role as the conservator of a failed credit union by allowing NCUA to transfer such contracts to a new solvent party.

U.S. Senate

Senate Judiciary Committee Chairman Orrin Hatch (R-UT) is expected to bypass the committee process and take a bill directly to the Senate floor.

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