

**Testimony of  
Mr. Steve Bartlett  
On Behalf of  
The Financial Services Roundtable  
To The  
Subcommittee on Administrative Oversight & the Courts  
Senate Judiciary Committee**

**December 6, 2006**

## **SUMMARY OF TESTIMONY**

Good morning, Mr. Chairman and Ranking Member Schumer, my name is Steve Bartlett and I am President & CEO of The Financial Services Roundtable. Thank you for inviting me to participate in this hearing to examine the implementation of Public Law 109-8, the bankruptcy reform statute that became effective on October 17, 2005. I would also like to express my appreciation to the Department of Justice for providing leadership in implementing the provisions of Public Law 109-8.

Mr. Chairman, I have several attachments to my statement and I would ask that they be included in the record.

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Our companies account directly for \$50.5 trillion in managed assets, \$1.1 trillion in revenue, and more than 2.4 million jobs. As you might imagine, Roundtable members are in a good position to assess impact of legislative changes such as bankruptcy reform.

The American consumer is the lifeblood Roundtable companies and it is in the best of interests of Roundtable member companies to have well-educated consumers who manage debt prudently.

Public Law 109-8 is just over one year old. So far, from the perspective of the American consumer and the economy, the new bankruptcy reform law is working quite well. Bankruptcy filings are down, more Americans than ever are getting credit counseling and, as a result, consumers are better educated about prudent financial management. Let me cite some statistics to demonstrate my point:

- consumer bankruptcy filing rates have dropped dramatically to an annualized rate 600,000 from an average annualized rate of 1.5 million for the prior 5 five years
- more consumers are choosing repayment plans under Chapter 13 repayment plans over Chapter 7 than under the old law, from 27.5% under the old law to 40% under the new law
- there were 157,417 total credit counseling sessions at Justice Department-accredited agencies in October of 2006 (73,171 for traditional counseling, 57,220 for pre-bankruptcy counseling and 26, 811 for pre-discharge education counseling), compared to an average of 57,087 total counseling sessions for per month for 2005

These numbers indicate that the means-test and the pre-bankruptcy credit counseling mandate are working. Recall that the principal policy objective of bankruptcy reform was to say that people with above-median income who can repay some or all of their debts ought to do so. That seems to be happening under the new law.

One major result of bankruptcy reform is increased credit counseling, which educates consumers. Credit counseling can help keep consumers from getting into financial trouble and, for those consumers for whom bankruptcy is an appropriate option, credit counseling keeps consumers out of financial trouble in the future.

In fact, the Department of Justice recently estimated that 10% of consumers who get pre-bankruptcy counseling don't file for bankruptcy. Counseling is widely available from numerous sources through multiple channels - in-person counseling, telephone counseling and Internet counseling. Frankly, we think the number of consumers who decide not to file for bankruptcy could be higher. We need to reach consumers much sooner in the financial cycle so that credit counseling can live up to its full potential. If consumers wait until they are completely underwater, counseling may not live up to its full potential.

The non-profit counseling agencies, both NFCC and AICCA agencies, have stepped up to the plate to make bankruptcy reform work. They applied to become certified agencies and promised to live by the ethical requirements established by the Justice Department. They perform a valuable public service by providing financial management advice to consumers and the lending industry is pleased they choose to participate in

the pre-bankruptcy counseling process. We are all better off for the efforts of these agencies. They are on the front lines and bear the heavy load.

Based on the reports we have received from most of the approved agencies, it seems clear these agencies are acting as Congress intended. For instance, we believe they are waiving counseling fees about for those who can't pay. In October, 2006, fees were waived for 22% of counseling sessions. And fees are relatively modest at about \$36 per session. The lending industry created a grants program for approved agencies, of which there are 153.

The industry has also created a website - [mymoneymanagement.com](http://mymoneymanagement.com) - which guides consumers to DOJ-approved agencies. Some of our member companies are already directing customers to this site as soon as they show signs of financial difficulties to assist consumers earlier in the process.

It is important to understand that Justice Department certification is a significant enhancement for the quality of credit counseling available to consumers. There has not been a governmental "seal of approval" that identifies quality agencies before. Also, the increased attention around bankruptcy reform and credit counseling has driven up demand for credit counseling.

While much of the attention has focused on pre-bankruptcy counseling, post-bankruptcy educational counseling is immensely important.

This counseling comes at a very important time for the average consumer. The consumer, having filed for bankruptcy, will be ready to learn new financial skills.

While much the public debate has focused on pre-bankruptcy counseling, the Roundtable believes that this requirement could be improved by regulations. In a comment letter, we suggested that pre-bankruptcy certificates should be valid for one year, rather than merely 6 months, to allow consumers more time to consider alternatives to bankruptcy. The Roundtable submitted a letter to the Department of Justice detailing regulatory changes and I have attached that letter to my statement.

The Roundtable strongly believes each issue can be addressed through regulatory implementation strategies designed to further Congressional intent.

To sum it up, Mr. Chairman, I would say "so far, so good." Bankruptcy reform is working. Prior to enacting Public Law 109-8, Congress had not reformed bankruptcy laws since 1978. We need to let the law mature before considering any legislative changes.

Congress did the right thing for consumer and the economy in passing bankruptcy reform; now it's time to make sure that this legislative success is implemented correctly.

However, there are implementation challenges. For instance, as will be discussed in my full statement, the forms being produced by the Judicial Conference have the potential to disrupt the means-test by allowing debtors to claim deductions for non-existent expenses, for a car they do not own, for example. Bankruptcy reform was surely not intended to allow above-median income debtors to escape repayment by deducting expenses they don't actually have. We feel that this issue, as well as any others, should be addressed through the rulemaking process.

In conclusion, I would make several points. The bankruptcy reform legislation passed both the House and the Senate by wide, bi-partisan margins. The new law is working for the consumer and the economy. Those in need still have full access to bankruptcy and above median income people who can repay a portion of their debts do so. Bankruptcies are down; quality credit counseling is up; consumers have access to better information about financial management. What we need now is careful, bi-partisan oversight.

I thank the Subcommittee for conducting this hearing, and I am grateful for this opportunity to testify. I look forward to answering your questions.

## **TESTIMONY OF STEVE BARTLETT**

Good morning, Mr. Chairman and Ranking Member Schumer, my name is Steve Bartlett and I am President & CEO of The Financial Services Roundtable. Thank you for inviting me to participate in this hearing to examine the implementation of Public Law 109-8, the bankruptcy reform statute that became effective on October 17, 2005. I would also like to express my appreciation to the Department of Justice for providing leadership in implementing the provisions of Public Law 109-8.

Mr. Chairman, I have several attachments to my statement and I would ask that they be included in the record.

### **THE FINANCIAL SERVICES ROUNDTABLE**

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$50.5 trillion in managed assets, \$1.1 trillion in revenue, and more than 2.4 million jobs. As you might imagine, Roundtable members are in a pretty good position to assess impact of legislative changes such as bankruptcy reform.

## **OVERVIEW OF IMPLEMENTATION AND MACROECONOMIC PERSPECTIVE ON REFORM**

Mr. Chairman, at least since the turn of the twentieth-century, the American people have always had access to bankruptcy when overwhelmed and unable to repay their debts. This is as it should be. There is no reason to force people to toil under the burden of debts they can never repay. For this reason, we have had a “fresh start” enshrined in our bankruptcy laws since 1898. During the Great Depression in 1930s, Congress created voluntary repayment plans as an alternative to straight liquidation.

However, as originally envisioned, straight liquidation under Chapter 7 was meant to be a last resort for people with no ability to pay. Congress continued America's progressive tradition by enacting Public Law 109-8 to channel higher income consumers into repayment plans while permitting the truly destitute and the poor to go into straight liquidation. The Roundtable supports both the letter and spirit of these important reforms.

Mr. Chairman, to provide a quick explanation of how the new law is being implemented, I would say the sense of the Roundtable member companies is that the law is working well and consumers as well as the economy are benefiting.

The number of bankruptcy filings has plummeted since 2004 and 2005. Some of this was certainly due to people rushing to file under the old law. Our companies and most analysts who have looked at the situation believe the drop off in filings is due to more than just people filing in 2005 to beat the new law.

We agree with those in Congress who have recently pointed out that losses to the economy that result from bankruptcy filings slow economic growth to some extent. When a business – any business, large or small - loses money because a customer files for bankruptcy, the business often has to increase what it charges other customers. I would submit that this is not good for consumers or the economy.

I know that some, including Senator Grassley who sits on this Subcommittee, have considered the effect of Public Law 109-8 and have put the total costs savings to the American economy at around \$60 billion. Reduced losses of this size are a positive for the economy.

This leads me to my first question I would identify for the Subcommittee: How has bankruptcy reform affected the American economy? The answer to that question will take a cumulative effect over the next few years, but it is an important question to ask.

The low rate of consumer bankruptcies presents other significant questions for the Subcommittee as it tries to assess the success or failure of Public Law 109-8.

- Is the infrastructure in place to handle a surge in filings; specifically, are there enough certified credit counselors?
- Does the Department of Justice have enough resources to implement the means test?

I don't know the answers to these questions yet. I would, however, urge diligent monitoring of the implementation of the new law to ensure there are adequate resources available to make the system work.

### **CREDIT COUNSELING**

I would also like to mention the potential for social and economic good coming from the pre-bankruptcy credit-counseling mandate. As the Subcommittee knows, in order to file for bankruptcy under the new law, a consumer must first get a certificate from an approved counseling agency attesting to the fact that the consumer has completed a counseling session. A certificate is good for 6 months. And, prior to receiving a discharge of debt, a consumer must undergo another counseling session designed to teach on-going financial skills.

The Department of Justice has publicly stated that they believe around 10% of the pre-bankruptcy certificates issued have not been used yet. This is a positive sign. But I think we can do better.

The industry funded a "no-strings-attached" grants program for every approved agency that sought a grant. There are 153 approved pre-bankruptcy counseling agencies and another 275 agencies have been approved to provide post-bankruptcy educational counseling.

These non-profit agencies, both NFCC and AICCA agencies, perform a valuable public service by providing financial management advice to consumers and we are pleased they choose to participate in the pre-bankruptcy counseling process. Based on the reports we have received from over 70% of approved agencies, it seems clear these agencies are acting as Congress intended. For instance, we believe they are waiving counseling fees about for those who can't pay. In October, 2006, fees were waived for 22% of counseling sessions. And fees are relatively modest at about \$36 per session.

In addition, there has been a dramatic increase in traditional credit counseling sessions this year as compared to last year, which may be linked to the new law. I have attached to my statement a report prepared for the

Roundtable that discusses what most approved counseling agencies are telling us about the situation on the ground.

One difficulty the Roundtable has identified is how to get to consumers sooner in the financial cycle. If we just wait until consumers are completely "under water," it may be that the counseling mandate will not live up to its full potential. To make counseling more effective, the Roundtable has created a website - [mymoneymanagement.com](http://mymoneymanagement.com) - that refers consumers to DOJ-approved agencies for credit counseling *before they are considering bankruptcy*. In fact, some of our member companies are now directing their customers who fall behind in payments to this website so those consumers can get help earlier. All of us in the responsible lending community hope this will help consumers sooner, to the benefit of everybody.

I have one final note on credit counseling. As can be seen in my attachment, the Roundtable has received scattered reports that bankruptcy attorneys have been seeking to blunt the effect of the counseling mandate by steering clients to agencies they consider "friendly." We have been told by counseling agencies that in some cases attorneys pay directly for the counseling services. I would suggest to the Subcommittee that these business practices, if they continue, could erode the significant potential

consumer benefits of pre-bankruptcy counseling. I am aware that members of the Subcommittee have written a letter to the Deputy Attorney General about one specific agency and the Roundtable applauds this oversight initiative.

### **THE MEANS TEST**

In addition to credit counseling, one of the centerpieces of bankruptcy reform was the means test. In this regard, I would make several observations to the Subcommittee. The good news is that during the last year, the number of objections to the means-testing filed in court has been modest. The Department of Justice is diligently implementing the means-test.

In addition, to date, no creditor has filed a means-test objection as it has the right to do under the new law. I think this is so in part because higher income debtors are either skipping bankruptcy or are self-selecting to go into Chapter 13. Thus, there is *no evidence* at all to support the fears expressed by some before enactment of Public Law 109-8 that creditors would use this new right inappropriately.

The Subcommittee should know that one positive effect of the new law which I attribute to the means test is an increase in the number of Chapter 13 cases relative to Chapter 7 cases. It seems as if more consumers

are opting for Chapter 13 in light of the new law. This is certainly a positive trend and one of the major goals of the legislation.

The final point I would make regarding the means-test involves the Judicial Conference rule making process. In particular, I would call the Subcommittee's attention to the fact that the forms created to measure repayment capacity to implement the means test seems to allow debtors to calculate repayment ability by deducting for expenses they don't actually have. For instance, consumers are directed to deduct an expense for owning a car even if they don't own one.

The Roundtable believes that this creates an inaccurate measure of repayment ability. The means test was designed by Congress to accurately measure repayment ability; allowing debtors to deduct phantom expenses is not consistent with Congressional intent. I have attached to my statement a letter submitted by associations commenting on the Interim Rules and making this point.

### **CONSTITUTIONAL CHALLENGES TO PUBLIC LAW 109-8**

Mr. Chairman, the very full legislative record developed by Congress before the enactment of Public Law 109-8 focused on the manner in which debtor attorneys were responsible for abuses of the system. I certainly

would never want to paint all attorneys as corrosive to the bankruptcy process. I know there are many well-intentioned and serious attorneys who represent consumers considering bankruptcy in an appropriate way. But, as the hearing record makes clear, there were bankruptcy mills that simply processed consumers without providing meaningful legal advice or looking out for the best interests of consumers. The Federal Trade Commission even issued a warning to the public about deceptive advertising by attorneys.

Congress sensibly reacted by imposing disclosure requirements on attorneys and prohibiting them from advising consumers to defraud creditors. These consumer protections were designed to help consumers by giving them full access to all the information they need to make informed choices.

So, it is with some concern that I must call the Subcommittee's attention to a lawsuit filed in Connecticut to have these consumer protections declared unconstitutional. The plaintiffs in this case believe that attorneys have a right under the Constitution to deceive the public or hide information from clients or advise consumers to commit fraud by running up debts just before filing for bankruptcy to game the means-test.

The Justice Department is aggressively litigating on the other side of the issue. However, if these consumer protections are invalidated by judges, I

hope Congress can find some way to protect unwary and unsophisticated consumers from the kinds of deceptive practices the Federal Trade Commission warned about.

## **CONCLUSION**

In conclusion, I would make several points. The Roundtable supported bankruptcy reform and was pleased to see the legislation pass both the House and the Senate by wide, bi-partisan margins. The new law seems to be working for the consumer and the economy. It is working better than anticipated – those in need still have full access to bankruptcy and upper income people seem to be skipping bankruptcy or opting for repayment plans. Bankruptcies are down; more Americans are getting quality credit counseling; consumers have access to better information about financial management. What we need now is careful, bi-partisan oversight.

I believe that Public law 109-8 has the potential to be of continuing great benefit to consumers and to the economy. As I said at the beginning of my testimony – "so far, so good." The work of the Congress is not over. There are challenges and surely there will be unforeseen bumps in the road. I thank the Subcommittee for conducting this hearing, and I am grateful for this opportunity to testify. I look forward to answering your questions.