

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

ORRIN G. HATCH, UTAH
LINDSEY O. GRAHAM, SOUTH CAROLINA
JOHN CORNYN, TEXAS
MICHAEL S. LEE, UTAH
TED CRUZ, TEXAS
BEN SASSE, NEBRASKA
JEFF FLAKE, ARIZONA
MIKE CRAPO, IDAHO
THOM TILLIS, NORTH CAROLINA
JOHN KENNEDY, LOUISIANA

DIANNE FEINSTEIN, CALIFORNIA
PATRICK J. LEAHY, VERMONT
RICHARD J. DURBIN, ILLINOIS
SHELDON WHITEHOUSE, RHODE ISLAND
AMY KLOBUCHAR, MINNESOTA
AL FRANKEN, MINNESOTA
CHRISTOPHER A. COONS, DELAWARE
RICHARD BLUMENTHAL, CONNECTICUT
MAZIE K. HIRONO, HAWAII

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
JENNIFER DUCK, *Democratic Staff Director*

April 27, 2017

VIA ELECTRONIC TRANSMISSION

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

I write to ask that the Department of Justice ensure that federal bankruptcy laws are enforced and applied in the best interest of all participants and as Congress intended. The United States Trustee Program (USTP), a component of the Department you now lead, serves as the “watchdog over the bankruptcy process.”¹ According to its mission statement, the USTP “promote[s] the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders – debtors, creditors, and the public.”² As the Department reviews its policies and priorities, which is routine for any new administration, I trust that the application and enforcement of the bankruptcy laws will receive meaningful consideration.

In 2005, Congress enacted sweeping, bipartisan bankruptcy reform legislation—legislation you supported as a Senator.³ The 2005 bankruptcy reform law contained many important changes to both consumer and business bankruptcy law. These broad reforms required the Department to issue rules and adjust its own practices in order to effectuate the changes. By way of example, two such provisions concerning consumers and businesses in bankruptcy merit review.

First, a key feature of the 2005 reform bill was the inclusion of pre-bankruptcy credit counseling for financially distressed consumers. This provision was “intended to give consumers in financial distress an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating—before they decide to file for bankruptcy relief.”⁴ The credit counseling requirement also encourages pre-bankruptcy debt

¹ *About the Program*, US DEPARTMENT OF JUSTICE, <https://www.justice.gov/ust/about-program> (last visited Apr. 27, 2017).

² *Strategic Plan & Mission*, US DEPARTMENT OF JUSTICE, <https://www.justice.gov/ust/strategic-plan-mission> (last visited Apr. 27, 2017).

³ Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). Pub. L. No. 109-8, 119 Stat. 23 (2005).

⁴ H.R. REP. NO. 109-31, at 18 (2005).

negotiations between consumers and their creditors. Creditors who fail to participate in these debt negotiations with consumers are subject to reduced claims should that consumer later file for bankruptcy.⁵ This is a significant tool intended to make credit counseling effective, and not just a formality, in order to help consumers restore their financial health. However, in 2013 under the Obama administration, the Department issued a final rule stating that credit counselors are “not required to negotiate an alternative repayment schedule” with creditors.⁶ I encourage you to review this rule, and others, to determine if the Department is implementing the law in a way that undermines Congress’s objective.

Second, another important provision of the 2005 law restricted bonuses to executives of businesses reorganizing under Chapter 11.⁷ In particular, this requirement addressed situations where corporate directors, executives, and managers at the helm of companies as they spiraled into bankruptcy were rewarded with bonuses during the bankruptcy process. Despite the plain language of the statute, some companies and their lawyers have sought to avoid this restriction in order to continue paying bonuses to executives. As I wrote to then-Attorney General Holder in 2012, I urge the Department to perform vigorous oversight of such practices in order to curb abuse and apply the laws as written.

It is the Department’s responsibility to protect the integrity of the bankruptcy system. I ask you to take the opportunity to review the Department’s implementation of the bankruptcy laws to determine whether they are being faithfully applied. If they are not, I encourage you take appropriate action, within your discretion, to carry out the laws as Congress intended, which will ultimately benefit consumers, the financial system, and the nation as a whole.

Thank you for considering my request.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

⁵ 11 U.S.C. §502(k).

⁶ Application Procedures and Criteria for Approval of Nonprofit Budget and Credit Counseling Agencies by United States Trustees, 78 Fed. Reg. 50, 16139 (Mar. 14, 2013).

⁷ 11 U.S.C. §503(c).