

**American Federation of State, County and Municipal Employees (AFSCME)**  
**American Federation of Teachers**  
**Council of State Governments**  
**College and University Personnel Association (CUPA)**  
**Fraternal Order of Police (FOP)**  
**International Association of Fire Fighters (IAFF)**  
**International City/County Management Association (ICMA)**  
**National Association of Counties (NACo)**  
**National Association of Government Deferred Compensation Administrators (NAGDCA)**  
**National Association of Police Organizations (NAPO)**  
**National Association of State Auditors, Comptrollers and Treasurers**  
**National Association of State Retirement Administrators (NASRA)**  
**National Conference on Public Employee Retirement Systems (NCPERS)**  
**National Conference of State Legislatures (NCSL)**  
**National Council on Teacher Retirement (NCTR)**  
**National Education Association (NEA)**  
**Service Employees International Union (SEIU)**

July 16, 1999

The Honorable Robert G. Torricelli  
United States Senate  
113 Dirksen Senate Office Building  
Washington, DC 20510

Dear Senator Torricelli:

The national organizations listed above represent state and local governments, public employee unions, public retirement systems, and millions of public employees, retirees, and beneficiaries. We write to express our concern regarding a possible amendment to bankruptcy legislation (S. 625), which, if adopted, could substantially undermine the protection of retirement savings, particularly in the public sector.

Section 224 of S. 625, as approved by the Senate Judiciary Committee, provides that retirement savings assets (including savings in plans established pursuant to Internal Revenue Code Sections 401, 403, 408, 408A, 414, 457, and 501(c)) would be exempt from a bankruptcy estate. This provision complements existing protections for the retirement savings of wage-earning Americans. Such protections include Section 541(c) of the Bankruptcy Code, as explained in *Patterson v. Shumate* and the cases that follow it, which exclude retirement plans with anti-alienation clauses from a debtor's estate. Among other things, Section 224 of the legislation would also extend protection to plans without anti-alienation provisions.

We write to express our concern regarding a possible amendment to Section 224, which could substantially undermine the protection of retirement savings afforded by the bill. Specifically, we understand the amendment would place a cap on the amount of retirement savings that may be deemed excludable from the bankruptcy estate.

The retirement savings of wage earning Americans must be preserved. The tax-favored retirement plans covered by Section 224 have been established by Congress to enable Americans to provide an adequate standard of living for themselves in retirement.

A cap is unnecessary because Congress has already limited the amounts that can be saved in these plans. The restrictions in the tax code prevent participants from sheltering excessive sums of money. Any perceived abuse by a handful of individuals should not become the excuse for allowing creditors to deplete the retirement savings of ordinary Americans.

While a specific cap, such as \$250,000, may seem like a large amount of money, it is not a sum that would be sufficient in and of itself to insure an adequate standard of living for most individuals and families, especially considering those savings are to be paid out over 20 or even 30 years after retirement has commenced. Moreover, any static figure may quickly prove to be woefully inadequate in the face of the eroding impact of inflation, increases in health care expenses due to unexpected illness and age-related decline in mental and physical condition, and other changes in circumstances which are unforeseen at retirement but inevitably occur. Finally, it fails to take into account the fact that the debtors who are likely to have substantial retirement savings will be in their 50's and 60's, if not older. If these debtors are deprived of those savings, they will have little or no opportunity to replenish their savings through employment.

We ask you to give careful consideration to the foregoing concerns, should an amendment be offered to cap the exemption created by Section 224. If you have any questions or need additional information, please contact the following members of our organizations:

Ed Jayne, AFSCME, (202) 429-1188  
Bill Cunningham, AFT, (202) 393-6301  
Kristin Cormier, CSG, (202) 624-6460  
Ned Gans, CUPA, (202) 429-0311  
Tim Richardson, FOP, (202) 547-8189  
Barry Kasinitz, IAFF, (202) 737-8484  
Michael Lawson, ICMA, (202) 962-3634  
Neil Bomberg, NACo, (202) 942-4205  
Susan White, NAGDCA, (703) 683-2573  
Bob Scully, NAPO, (202) 842-4420  
Relmond Van Deniker, NASACT, (606) 276-1147  
Jeannine Markoe Raymond, NASRA, (202) 624-1417  
Ed Braman, NCPERS, (202) 429-2230  
Gerri Madrid, NCSL, (202) 624-8670  
Cindie Moore, NCTR, (703) 243-3494  
David Bryant, NEA, (202) 822-7345  
Alison Reardon, SEIU, (202) 898-3413