BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

ON

H.R. 333

FEBRUARY 7 AND 8, 2001

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BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

WEDNESDAY, FEBRUARY 7, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner (chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN SENSENBRENNER

Chairman SENSENBRENNER. The Committee on the Judiciary will be in order.

Today, I wish to welcome the members and witnesses to the Judiciary Committee's inaugural legislative hearing in the 107th Congress. In that regard, it is particularly appropriate that we commence our legislative agenda with H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

[The bill, H.R. 333, follows:]

107TH CONGRESS
1ST SESSION

H. R. 333

To amend title 11, United States Code, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 2001

Mr. GEKAS (for himself, Mr. SENSENBRENNER, Mr. BOUCHER, Mr. MORAN of Virginia, Mr. ARMEY, Mr. CHABOT, Mr. GRAHAM, Mr. BARR of Georgia, Mr. ANDREWS, Mr. BARTON of Texas, Mr. BENTSEN, Mr. BEREUTER, Ms. BERKLEY, Mr. BURTON of Indiana, Mr. BUYER, Mr. CAMP, Mr. CASTLE, Mr. COOKSEY, Mr. CRAMER, Mr. CUNNINGHAM, Mrs. DAVIS of California, Mr. DOOLEY of California, Mr. DREIER, Mr. EHRLICH, Mr. ENGLISH, Mr. FOLEY, Mr. FROST, Mr. GOODE, Mr. GOODLATTE, Mr. HILLEARY, Mr. HOLDEN, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. KELLY, Mr. KLECZKA, Mr. LINDER, Mr. LUCAS of Kentucky, Mr. MALONEY of Connecticut, Mr. MENENDEZ, Mrs. MYRICK, Mr. NETHERCUTT, Mrs. NORTHUP, Mr. OXLEY, Ms. PRYCE of Ohio, Mr. ROTHMAN, Mr. ROYCE, Mr. SIMPSON, Mr. SISISKY, Mr. SMITH of Michigan, Mr. SMITH of Washington, Mr. STUMP, Mr. SUNUNU, Mr. SWEENEY, Mrs. TAUSCHER, Mr. TERRY, Mr. UPTON, Mr. WELDON of Florida, and Mr. WELLER) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title 11, United States Code, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001".

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation practices.

Subtitle B—Priority Child Support

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Sec. 212. Priorities for claims for domestic support obligations.
Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfer motions.
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Sec. 219. Collection of child support.
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Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
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Sec. 306. Giving secured creditors fair treatment in chapter 13.
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Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitation.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
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Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinance of security interest.
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Sec. 407. Amendments to section 330(a) of title 11, United States Code.
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Sec. 1401. Effective date; application of amendments.

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting "or consents to" after "requests".

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

"§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13"; and

(2) in subsection (b)—

(A) by inserting "(1)" after "(b)";

(B) in paragraph (1), as redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking "but not at the request or suggestion of" and inserting "trustee, bankruptcy administrator, or";

(II) by inserting ", or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title," after "consumer debts"; and

(III) by striking "a substantial abuse" and inserting "an abuse"; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

"(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

"(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

"(II) $10,000.

"(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act (42 U.S.C. 10408), or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

"(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, and siblings of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case) who is not a dependent and who is unable to pay for such reasonable and necessary expenses.

"(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

"(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child under the age of 18 years up to $1,500 per year per child to attend a private elementary or secondary school, if the debtor provides

documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary.

"(iii) The debtor's average monthly payments on account of secured debts shall be calculated as—

"(I) the sum of—

"(aa) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

"(bb) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; divided by

"(II) 60.

"(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as—

"(I) the total amount of debts entitled to priority; divided by

"(II) 60.

"(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

"(ii) In order to establish special circumstances, the debtor shall be required to—

"(I) itemize each additional expense or adjustment of income; and

"(II) provide—

"(aa) documentation for such expense or adjustment to income; and

"(bb) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

"(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

"(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

"(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

"(II) $10,000.

"(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

"(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not apply or has been rebutted, the court shall consider—

"(A) whether the debtor filed the petition in bad faith; or

"(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

"(4)(A) The court shall order the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fees, if—

"(i) a trustee appointed under section 586(a)(1) of title 28 or from a panel of private trustees maintained by the bankruptcy administrator brings a motion for dismissal or conversion under this subsection; and

"(ii) the court—

"(I) grants that motion; and

"(II) finds that the action of the counsel for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

"(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, at a minimum, the court shall order—

"(i) the assessment of an appropriate civil penalty against the counsel for the debtor; and

"(ii) the payment of the civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.

"(C) In the case of a petition, pleading, or written motion, the signature of an attorney shall constitute a certification that the attorney has—

"(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

"(ii) determined that the petition, pleading, or written motion—

"(I) is well grounded in fact; and

"(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

"(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

"(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion brought by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection if—

"(i) the court does not grant the motion; and

"(ii) the court finds that—

"(I) the position of the party that brought the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

"(II) the party brought the motion solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

"(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

"(C) For purposes of this paragraph—

"(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

"(I) has less than 25 full-time employees as determined on the date the motion is filed; and

"(II) is engaged in commercial or business activity; and

"(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

"(I) a parent corporation; and

"(II) any other subsidiary corporation of the parent corporation.

"(6) Only the judge, United States trustee, or bankruptcy administrator may bring a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.

"(7) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest may bring a motion under paragraph (2), if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.".

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

"(10A) 'current monthly income'—

"(A) means the average monthly income from all sources which the debtor, or in a joint case, the debtor and the debtor's spouse, receive with-

out regard to whether the income is taxable income, derived during the 6-month period preceding the date of determination; and

"(B) includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse), on a regular basis to the household expenses of the debtor or the debtor's dependents (and, in a joint case, the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes;".

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The trustee shall—"; and

(2) by adding at the end the following:

"(b)(1) With respect to an individual debtor under this chapter—

"(A) the United States trustee or bankruptcy administrator shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

"(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

"(2) The United States trustee or bankruptcy administrator shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee or bankruptcy administrator does not believe that such a motion would be appropriate, if the United States trustee or bankruptcy administrator determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

"(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census.

"(3) In any case in which a motion to dismiss or convert, or a statement is required to be filed by this subsection, the United States trustee or bankruptcy administrator may decline to file a motion to dismiss or convert pursuant to section 704(b)(2) if the product of the debtor's current monthly income multiplied by 12 exceeds 100 percent, but does not exceed 150 percent of—

"(A)(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census; or

"(ii) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; and

"(B) the product of the debtor's current monthly income, reduced by the amounts determined under section 707(b)(2)(A)(ii) (except for the amount calculated under the other necessary expenses standard issued by the Internal Revenue Service) and clauses (iii) and (iv) of section 707(b)(2)(A), multiplied by 60 is less than the lesser of—

"(i) 25 percent of the debtor's nonpriority unsecured claims in the case or $6,000, whichever is greater; or

"(ii) $10,000.".

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

"(d) In an individual case under chapter 7 in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has been triggered.".

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, as amended by this section, is amended by adding at the end the following:

"(c)(1) In this subsection—

"(A) the term 'crime of violence' has the meaning given that term in section 16 of title 18; and

"(B) the term 'drug trafficking crime' has the meaning given that term in section 924(c)(2) of title 18.

"(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victims dismiss a voluntary case filed by an individual debtor under this chapter if that individual was convicted of that crime.

"(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.".

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

"(7) the action of the debtor in filing the petition was in good faith;".

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting "to unsecured creditors" after "to make payments"; and

(2) by striking paragraph (2) and inserting the following:

"(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

"(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

"(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

"(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4.".

(i) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

"707. Dismissal of a case or conversion to a case under chapter 11 or 13.".

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the

Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

Section 342(b) of title 11, United States Code, is amended to read as follows:

"(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

"(1) a brief description of—

"(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

"(B) the types of services available from credit counseling agencies; and

"(2) statements specifying that—

"(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and

"(B) all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General.".

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the "Director") shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who are appointed under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate individual debtors on how to better manage their finances.

(b) TEST.—

(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) USE.—For an 18-month period beginning not later than 270 days after the date of enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.

SEC. 106. CREDIT COUNSELING.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

"(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a brief-

ing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

"(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency by reason of the requirements of paragraph (1).

"(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling service may be disapproved by the United States trustee or bankruptcy administrator at any time.

"(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

"(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

"(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

"(iii) is satisfactory to the court.

"(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.".

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking "or" at the end;

(2) in paragraph (10), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111.

"(12)(A) Paragraph (11) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of that district determines that the approved instructional courses are not adequate to service the additional individuals required to complete such instructional courses under this section.

"(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.".

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

"(g) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

"(h) Subsection (g) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.

"(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.".

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "The debtor shall—"; and

(2) by adding at the end the following:

"(b) In addition to the requirements under subsection (a), an individual debtor shall file with the court—

"(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

"(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).".

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"§ 111. Credit counseling services; financial management instructional courses

"(a) The clerk of each district shall maintain a publicly available list of—

"(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

"(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

"(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

"(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

"(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or course of instruction fully satisfies the applicable standards set forth in this section.

"(3) When an agency or course of instruction is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or course of instruction is initially approved if it did not appear on the approved list for the district under subsection (a) immediately prior to approval.

"(4) At the conclusion of the probationary period under paragraph (3), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or course of instruction which has demonstrated during the probationary or subsequent period that such agency or course of instruction—

"(A) has met the standards set forth under this section during such period; and

"(B) can satisfy such standards in the future.

"(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate United States District Court.

"(c)(1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

"(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

"(A) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

"(i) are not employed by the agency; and

"(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

"(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

"(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

"(D) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

"(E) provide adequate counseling with respect to client credit problems that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

"(F) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

"(G) demonstrate adequate experience and background in providing credit counseling; and

"(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

"(d) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management—

"(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

"(A) trained personnel with adequate experience and training in providing effective instruction and services;

"(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such course of instruction;

"(C) adequate facilities situated in reasonably convenient locations at which such course of instruction is offered, except that such facilities may include the provision of such course of instruction or program by telephone or through the Internet, if the course of instruction or program is effective; and

"(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such course of instruction or program, including any evaluation of satisfaction of course of instruction or program requirements for each debtor attending such course of instruction or program, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such course of instruction or program is offered; and

"(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

"(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

"(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

"(e) The District Court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The District Court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

"(f) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

"(g)(1) No credit counseling service may provide to a credit reporting agency information concerning whether an individual debtor has received or sought instruction concerning personal financial management from the credit counseling service.

"(2) A credit counseling service that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

"(A) any actual damages sustained by the debtor as a result of the violation; and

"(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"111. Credit counseling services; financial management instructional courses.".

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

"(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

"(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.".

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

"(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on unsecured consumer debts by not more than 20 percent of the claim, if—

"(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency described in section 111 acting on behalf of the debtor;

"(B) the offer of the debtor under subparagraph (A)—

"(i) was made at least 60 days before the filing of the petition; and

"(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

"(C) no part of the debt under the alternative repayment schedule is nondischargeable.

"(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

"(A) the creditor unreasonably refused to consider the debtor's proposal; and

"(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).".

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

"(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.".

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

"(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title), unless the plan is dismissed, in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

"(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

"(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

"(2) such act is in the ordinary course of business between the creditor and the debtor; and

"(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.".

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c), by striking paragraph (2) and inserting the following:

"(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;";

(2) by adding at the end the following:

"(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

"(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

"(3) The disclosure statement required under this paragraph shall consist of the following:

"(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

"(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy Code';

"(C) The 'Amount Reaffirmed', using that term, which shall be—

"(i) the total amount which the debtor agrees to reaffirm, and

"(ii) the total of any other fees or cost accrued as of the date of the disclosure statement.

"(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

"(i) 'The amount of debt you have agreed to reaffirm'; and

"(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

"(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

"(i) if, at the time the petition is filed, the debt is open end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

"(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)(5) and (6)), as applicable, as disclosed to the debtor in the most recent periodic statement prior to the agreement or, if no such periodic statement has been provided the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

"(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

"(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

"(ii) if, at the time the petition is filed, the debt is closed end credit as defined under the Truth in Lending Act (15 U.S.C. 1601 et seq.), then—

"(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act (15 U.S.C. 1638(a)(4)), as disclosed to the debtor in the most recent disclosure statement given the debtor prior to the reaffirmation agreement with respect to the debt, or, if no such disclosure

statement was provided the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

"(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

"(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

"(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act (15 U.S.C. 1601 et seq.), by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

"(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the obligations you are reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

"(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

"(i) by making the statement: 'Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

"(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party; or

"(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

"(I) The following statement: 'Note: When this disclosure refers to what a creditor 'may' do, it does not use the word 'may' to give the creditor specific permission. The word 'may' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirmation or what the law requires, talk to the attorney who helped you negotiate this agreement. If you don't have an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held.'.

"(J)(i) The following additional statements:

"'Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"'1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"'2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"'3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

"'4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.

"'5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"'6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"'7. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your agreement. The bankruptcy court must approve the agreement as consistent with your best interests, except that no court approval is required if the agreement is for a consumer debt secured by a mortgage, deed of trust, security deed or other lien on your real property, like your home.

"'Your right to rescind a reaffirmation. You may rescind (cancel) your reaffirmation at any time before the bankruptcy court enters a discharge order or within 60 days after the agreement is filed with the court, whichever is longer. To rescind or cancel, you must notify the creditor that the agreement is canceled.

"'What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy. That means that if you default on your reaffirmed debt after your bankruptcy is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of the agreement in the future under certain conditions.

"'Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"'What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

"(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"'6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

"(4) The form of reaffirmation agreement required under this paragraph shall consist of the following:

"'Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

"'Brief description of credit agreement:

"'Description of any changes to the credit agreement made as part of this reaffirmation agreement:

"'Signature: Date:

"'Borrower:

"'Co-borrower, if also reaffirming:

"'Accepted by creditor:

"'Date of creditor acceptance:'.

"(5)(A) The declaration shall consist of the following:

"'Part C: Certification by Debtor's Attorney (If Any).

"'I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor(s); (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

"'Signature of Debtor's Attorney: Date:'.

"(B) In the case of reaffirmations in which a presumption of undue hardship has been established, the certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

"(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

"(6)(A) The statement in support of reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"'Part D: Debtor's Statement in Support of Reaffirmation Agreement.

"'1. I believe this agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

"'2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

"(B) Where the debtor is represented by counsel and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)), the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

"'I believe this agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'

"(7) The motion, which may be used if approval of the agreement by the court is required in order for it to be effective and shall be signed and dated by the moving party, shall consist of the following:

"'Part E: Motion for Court Approval (To be completed only where debtor is not represented by an attorney.). I (we), the debtor, affirm the following to be true and correct:

"'I am not represented by an attorney in connection with this reaffirmation agreement.

"'I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and because (provide any additional relevant reasons the court should consider):

"'Therefore, I ask the court for an order approving this reaffirmation agreement.'.

"(8) The court order, which may be used to approve a reaffirmation, shall consist of the following:

"'Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

"(9) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

"(A) such creditor retains a security interest in real property that is the debtor's principal residence;

"(B) such act is in the ordinary course of business between the creditor and the debtor; and

"(C) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

"(l) Notwithstanding any other provision of this title:

"(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the court.

"(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith to be effective.

"(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

"(m)(1) Until 60 days after a reaffirmation agreement is filed with the court (or such additional period as the court, after notice and hearing and for cause, orders before the expiration of such period), it shall be presumed that the reaffirmation agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of the reaffirmation agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation which identifies additional sources of funds to make the payments as agreed upon under the terms of the reaffirmation agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor's discharge.

"(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)(iv)).".

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

"§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

"(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

"(b) UNITED STATES DISTRICT ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION—The individuals referred to in subsection (a) are—

"(1) a United States attorney for each judicial district of the United States; and

"(2) an agent of the Federal Bureau of Investigation (within the meaning of section 3107) for each field office of the Federal Bureau of Investigation.

"(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

"(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case which may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.".

(2) CLERICAL AMENDMENT.—The analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

"158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.".

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

"(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

"(A) owed to or recoverable by—

"(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

"(ii) a governmental unit;

"(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

"(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

"(i) a separation agreement, divorce decree, or property settlement agreement;

"(ii) an order of a court of record; or

"(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

"(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt;".

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as redesignated, by striking "First" and inserting "Second";

(4) in paragraph (3), as redesignated, by striking "Second" and inserting "Third";

(5) in paragraph (4), as redesignated—

(A) by striking "Third" and inserting "Fourth"; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as redesignated, by striking "Fourth" and inserting "Fifth";

(7) in paragraph (6), as redesignated, by striking "Fifth" and inserting "Sixth";

(8) in paragraph (7), as redesignated, by striking "Sixth" and inserting "Seventh"; and

(9) by inserting before paragraph (2), as redesignated, the following:

"(1) First:

"(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

"(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a government unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.".

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

"(14) If the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first become payable after the date on which the petition is filed.";

(2) in section 1208(c)—

(A) in paragraph (8), by striking "or" at the end;

(B) in paragraph (9), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.";

(3) in section 1222(a)—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period, beginning on the date that the first payment is due under the plan, will be applied to make payments under the plan.";

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

"(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;";

(5) in section 1225(a)—

(A) in paragraph (5), by striking "and" at the end;

(B) in paragraph (6), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(7) if the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order for such obligation that first become payable after the date on which the petition is filed.";

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid" after "completion by the debtor of all payments under the plan";

(7) in section 1307(c)—

(A) in paragraph (9), by striking "or" at the end;

(B) in paragraph (10), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.";

(8) in section 1322(a)—

(A) in paragraph (2), by striking "and" at the end;

(B) in paragraph (3), by striking the period at the end and inserting "; and"; and

(C) by adding in the end the following:

"(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.";

(9) in section 1322(b)—

(A) in paragraph (9), by striking "; and" and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

"(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and";

(10) in section 1325(a) (as amended by this Act), by adding at the end the following:

"(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first becomes payable after the date on which the petition is filed; and";

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting ", and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for in the plan) have been paid" after "completion by the debtor of all payments under the plan".

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

"(2) under subsection (a)—

"(A) of the commencement or continuation of a civil action or proceeding—

"(i) for the establishment of paternity;

"(ii) for the establishment or modification of an order for domestic support obligations;

"(iii) concerning child custody or visitation;

"(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

"(v) regarding domestic violence;

"(B) the collection of a domestic support obligation from property that is not property of the estate;

"(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order;

"(D) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16));

"(E) the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

"(F) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)) or under an analogous State law; or

"(G) the enforcement of medical obligations as specified under title IV of the Social Security Act (42 U.S.C. 601 et seq.);".

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

"(5) for a domestic support obligation;";

(B) in paragraph (15)—

(i) by inserting "to a spouse, former spouse, or child of the debtor and" before "not of the kind";

(ii) by inserting "or" after "court of record,"; and

(iii) by striking "unless—" and all that follows through the end of the paragraph and inserting a semicolon; and

(C) by striking paragraph (18); and

(2) in subsection (c), by striking "(6), or (15)" each place it appears and inserting "or (6)".

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

"(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));";

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting "of a kind that is specified in section 523(a)(5); or"; and

(3) in subsection (g)(2), by striking "subsection (f)(2)" and inserting "subsection (f)(1)(B)".

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

"(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;".

SEC. 218. DISPOSABLE INCOME DEFINED.

(a) CONFIRMATION OF PLAN UNDER CHAPTER 12.—Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting "or for a domestic support obligation that first becomes payable after the date on which the petition is filed" after "dependent of the debtor".

(b) CONFIRMATION OF PLAN UNDER CHAPTER 13.—Section 1325(b)(2)(A) of title 11, United States Code, is amended by inserting "or for a domestic support obligation that first becomes payable after the date on which the petition is filed" after "dependent of the debtor".

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking "and" at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

"(10) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c); and"; and

(2) by adding at the end the following:

"(c)(1) In any case described in subsection (a)(10), the trustee shall—

"(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides for assistance in collecting child support during and after the bankruptcy procedures;

"(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

"(iii) include in the notice an explanation of the rights of the holder of the claim to payment of the claim under this chapter; and

"(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 727, notify the holder of that claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking "and" at the end;

(B) in paragraph (7), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(8) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).";; and

(2) by adding at the end the following:

"(c)(1) In any case described in subsection (a)(7), the trustee shall—

"(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

"(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

"(B)(i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 1141, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (3), or (14) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "and" at the end;

(B) in paragraph (5), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (c).";; and

(2) by adding at the end the following:

"(c)(1) In any case described in subsection (b)(6), the trustee shall—

"(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

"(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

"(B)(i) notify, in writing, the State child support agency (of the State in which the holder of the claim resides) of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 1228, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "and" at the end;

(B) in paragraph (5), by striking the period and inserting "; and"; and

(C) by adding at the end the following:

"(6) if, with respect to an individual debtor, there is a claim for a domestic support obligation, provide the applicable notification specified in subsection (d).";; and

(2) by adding at the end the following:

"(d)(1) In any case described in subsection (b)(6), the trustee shall—

"(A)(i) notify in writing the holder of the claim of the right of that holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act (42 U.S.C. 664, 666) for the State in which the holder resides; and

"(ii) include in the notice under this paragraph the address and telephone number of the child support enforcement agency; and

"(B)(i) notify in writing the State child support agency of the State in which the holder of the claim resides of the claim;

"(ii) include in the notice under this paragraph the name, address, and telephone number of the holder of the claim; and

"(iii) at such time as the debtor is granted a discharge under section 1328, notify the holder of the claim and the State child support agency of the State in which that holder resides of—

"(I) the granting of the discharge;

"(II) the last recent known address of the debtor;

"(III) the last recent known name and address of the debtor's employer; and

"(IV) with respect to the debtor's case, the name of each creditor that holds a claim that—

"(aa) is not discharged under paragraph (2), (4), or (14) of section 523(a); or

"(bb) was reaffirmed by the debtor under section 524(c).

"(2)(A) A holder of a claim or a State child support agency may request from a creditor described in paragraph (1)(B)(iii)(IV) the last known address of the debtor.

"(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable to the debtor or any other person by reason of making that disclosure.".

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

"(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

"(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

"(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

"(B) any other educational loan that is a qualified education loan, as that term is defined in section 221(e)(1) of the Internal Revenue Code of 1986, incurred by an individual debtor;".

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking "a person, other than an attorney or an employee of an attorney" and inserting "the attorney for the debtor or an employee of such attorney under the direct supervision of such attorney";

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: "If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—

"(A) sign the document for filing; and

"(B) print on the document the name and address of that officer, principal, responsible person or partner."; and

(B) by striking paragraph (2) and inserting the following:

"(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

"(B) The notice under subparagraph (A)—

"(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

"(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

"(iii) shall—

"(I) be signed by—

"(aa) the debtor; and

"(bb) the bankruptcy petition preparer, under penalty of perjury; and

"(II) be filed with any document for filing.";

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking "(2) For purposes" and inserting "(2)(A) Subject to subparagraph (B), for purposes"; and

(ii) by adding at the end the following:

"(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer."; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking "(d)(1)" and inserting "(d)"; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

"(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

"(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

"(i) whether—

"(I) to file a petition under this title; or

"(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

"(ii) whether the debtor's debts will be eliminated or discharged in a case under this title;

"(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

"(iv) concerning—

"(I) the tax consequences of a case brought under this title; or

"(II) the dischargeability of tax claims;

"(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

"(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

"(vii) concerning bankruptcy procedures and rights.";

(6) in subsection (f)—

(A) by striking "(f)(1)" and inserting "(f)"; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking "(g)(1)" and inserting "(g)"; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) by inserting before paragraph (2), as redesignated, the following:

"(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.";

(C) in paragraph (2), as redesignated—

(i) by striking "Within 10 days after the date of filing a petition, a bankruptcy petition preparer shall file a" and inserting "A";

(ii) by inserting "by the bankruptcy petition preparer shall be filed together with the petition," after "perjury"; and

(iii) by adding at the end the following: "If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall in-

clude a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).";

(D) by striking paragraph (3), as redesignated, and inserting the following:

"(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

"(i) rendered by the preparer during the 12-month period immediately preceding the date of filing of the petition; or

"(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

"(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

"(C) An individual may exempt any funds recovered under this paragraph under section 522(b)."; and

(E) in paragraph (4), as redesignated, by striking "or the United States trustee" and inserting "the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,";

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

"(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on motion of the debtor, trustee, United States trustee, or bankruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor—";

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking "a violation of which subjects a person to criminal penalty";

(ii) in subparagraph (B)—

(I) by striking "or has not paid a penalty" and inserting "has not paid a penalty"; and

(II) by inserting "or failed to disgorge all fees ordered by the court" after "a penalty imposed under this section,";

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

"(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued upon motion of the court, the trustee, the United States trustee, or the bankruptcy administrator."; and

(11) by adding at the end the following:

"(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

"(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

"(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

"(B) advised the debtor to use a false Social Security account number;

"(C) failed to inform the debtor that the debtor was filing for relief under this title; or

"(D) prepared a document for filing in a manner that failed to disclose the identity of the preparer.

"(3) The debtor, the trustee, a creditor, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

"(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

"(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.".

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

"(10) Tenth, allowed claims for death or personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.".

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking "and" at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting "; and";

(iii) by adding at the end the following:

"(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986."; and

(iv) by striking "(2)(A) any property" and inserting:

"(3) Property listed in this paragraph is—

"(A) any property";

(B) by striking paragraph (1) and inserting:

"(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.";

(C) by striking "(b) Notwithstanding" and inserting "(b)(1) Notwithstanding";

(D) by striking "paragraph (2)" each place it appears and inserting "paragraph (3)";

(E) by striking "paragraph (1)" each place it appears and inserting "paragraph (2)";

(F) by striking "Such property is—"; and

(G) by adding at the end the following:

"(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

"(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from the estate.

"(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

"(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

"(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

"(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

"(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that direct transfer.

"(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that distribution.

"(ii) A distribution described in this clause is an amount that—

"(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

"(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount."; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking "subsection (b)(1)" and inserting "subsection (b)(2)"; and

(B) by adding at the end the following:

"(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking "or" at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon;

(3) by inserting after paragraph (18) the following:

"(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

"(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

"(B) in the case of a loan from a thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;"; and

(4) by adding at the end of the flush material at the end of the subsection, the following: "Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

"(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

"(B) a loan from the thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title.

Nothing in paragraph (18) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.".

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

"(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.".

(e) ASSET LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

"(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of that Code or a simple retirement account under section 408(p) of that Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 (which amount shall be adjusted as provided in section 104 of this title) in a case filed by an individual debtor, except that such amount may be increased if the interests of justice so require.".

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking "or" at the end;

(B) by redesignating paragraph (5) as paragraph (10); and

(C) by inserting after paragraph (4) the following:

"(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

"(A) only if the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

"(B) only to the extent that such funds—

"(i) are not pledged or promised to any entity in connection with any extension of credit; and

"(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

"(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

"(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

"(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

"(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

"(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;"; and

(2) by adding at the end the following:

"(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.".

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).".

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

"(3) 'assisted person' means any person whose debts consist primarily of consumer debts and whose non-exempt assets are less than $150,000;";

(2) by inserting after paragraph (4) the following:

"(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;"; and

(3) by inserting after paragraph (12) the following:

"(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other

valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

"(A) any person that is an officer, director, employee or agent of that person;

"(B) a nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

"(C) a creditor of the person, to the extent that the creditor is assisting the person to restructure any debt owed by the person to the creditor;

"(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such a depository institution or credit union; or

"(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.".

(b) CONFORMING AMENDMENT.—Section 104(b)(1) of title 11, United States Code, is amended by inserting "101(3)," after "sections".

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§ 526. Restrictions on debt relief agencies

"(a) A debt relief agency shall not—

"(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

"(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

"(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

"(i) the services that such agency will provide to such person; or

"(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

"(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

"(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

"(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

"(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and hearing, to have—

"(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

"(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

"(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

"(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

"(A) may bring an action to enjoin such violation;

"(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

"(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

"(4) The United States District Court for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

"(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

"(A) enjoin the violation of such section; or

"(B) impose an appropriate civil penalty against such person.".

"(d) No provision of this section, section 527, or section 528 shall—

"(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

"(2) be deemed to limit or curtail the authority or ability—

"(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

"(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting before the item relating to section 527, the following:

"526. Debt relief enforcement.".

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"§ 527. Disclosures

"(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

"(1) the written notice required under section 342(b)(1) of this title; and

"(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

"(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

"(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

"(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

"(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the proceeding under this title or other sanction including, in some instances, criminal sanctions.

"(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

"'IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

"'If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

"'The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

"'Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

"'If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

"'If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

"'If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

"'Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

"(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

"(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2)) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

"(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

"(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

"(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by this Act, is amended by inserting after the item relating to section 526 the following:

"527. Disclosures.".

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"§ 528. Requirements for debt relief agencies

"(a) A debt relief agency shall—

"(1) not later than 5 business days after the first date such agency provides any bankruptcy assistance services to an assisted person, but prior to such as-

sisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

"(A) the services such agency will provide to such assisted person; and

"(B) the fees or charges for such services, and the terms of payment;

"(2) provide the assisted person with a copy of the fully executed and completed contract;

"(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

"(4) clearly and conspicuously using the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

"(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

"(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

"(B) statements such as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

"(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

"(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

"(B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,' or a substantially similar statement.".

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by this Act, is amended by inserting after the item relating to section 527, the following:

"528. Debtor's bill of rights.".

SEC. 230. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by individual debtors under such title, the names and social security numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. REINFORCEMENT OF THE FRESH START.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking "by a court" and inserting "on a prisoner by any court",

(2) by striking "section 1915(b) or (f)" and inserting "subsection (b) or (f)(2) of section 1915", and

(3) by inserting "(or a similar non-Federal law)" after "title 28" each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking "and" at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(3) if a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

"(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

"(B) upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

"(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

"(i) as to all creditors, if—

"(I) more than 1 previous case under any of chapter 7, 11, or 13 in which the individual was a debtor was pending within the preceding 1-year period;

"(II) a previous case under any of chapter 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

"(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

"(bb) provide adequate protection as ordered by the court; or

"(cc) perform the terms of a plan confirmed by the court; or

"(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

"(aa) if a case under chapter 7, with a discharge; or

"(bb) if a case under chapter 11 or 13, with a confirmed plan which will be fully performed; and

"(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

"(4)(A)(i) if a single or joint case is filed by or against an individual debtor under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

"(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

"(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

"(C) a stay imposed under subparagraph (B) shall be effective on the date of entry of the order allowing the stay to go into effect; and

"(D) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

"(i) as to all creditors if—

"(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

"(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to pay adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

"(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

"(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of such creditor.".

SEC. 303. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

"(A) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

"(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under this subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after the date of entry of such order by the court, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (19), as added by this Act, the following:

"(20) under subsection (a), of any act to enforce any lien against or security interest in real property following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

"(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

"(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

"(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case;".

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a) (as so designated by this Act)—

(A) in paragraph (4), by striking ", and" at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

"(A) enters into an agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

"(B) redeems such property from the security interest pursuant to section 722 of this title.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee brought before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee."; and

(2) in section 722, by inserting "in full at the time of redemption" before the period at the end.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362—

(A) in subsection (c), by striking "(e), and (f)" inserting "(e), (f), and (h)";

(B) by redesignating subsection (h) as subsection (k); and

(C) by inserting after subsection (g) the following:

"(h)(1) In an individual case under chapter 7, 11, or 13, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

"(A) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate in that statement that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; and

"(B) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms.

"(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the proceeding on the motion."; and

(2) in section 521—

(A) in subsection (a)(2), as so designated by this Act, by striking "consumer";

(B) in subsection (a)(2)(B), as so designated by this Act—

(i) by striking "forty-five days after the filing of a notice of intent under this section" and inserting "30 days after the first date set for the meeting of creditors under section 341(a) of this title"; and

(ii) by striking "forty-five day" and inserting "30-day";

(C) in subsection (a)(2)(C), as so designated by this Act, by inserting ", except as provided in section 362(h) of this title" before the semicolon; and

(D) by adding at the end the following:

"(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title

shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.".

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

"(i) the plan provides that—

"(I) the holder of such claim retain the lien securing such claim until the earlier of—

"(aa) the payment of the underlying debt determined under nonbankruptcy law; or

"(bb) discharge under section 1328; and

"(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and".

(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following flush sentence:

"For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 5-year period preceding the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.".

(c) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by inserting after paragraph (13) the following:

"(13A) 'debtor's principal residence'—

"(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

"(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;"; and

(2) by inserting after paragraph (27), the following:

"(27A) 'incidental property' means, with respect to a debtor's principal residence—

"(A) property commonly conveyed with a principal residence in the area where the real estate is located;

"(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

"(C) all replacements or additions;".

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3)(A) of title 11, United States Code, as so designated by this Act, is amended—

(1) by striking "180 days" and inserting "730 days"; and

(2) by striking ", or for a longer portion of such 180-day period than in any other place" and inserting "or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place".

SEC. 308. RESIDENCY REQUIREMENT FOR HOMESTEAD EXEMPTION.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting "subject to subsections (o) and (p)," before "any property"; and

(2) by adding at the end the following:

"(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

"(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

"(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

"(3) a burial plot for the debtor or a dependent of the debtor;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 7-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.".

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking "and" at the end;

(2) in subparagraph (B)—

(A) by striking "in the converted case, with allowed secured claims" and inserting "only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12"; and

(B) by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(C) with respect to cases converted from chapter 13—

"(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the chapter 13 proceeding; and

"(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.".

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

"(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

"(2)(A) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

"(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

"(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

"(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.".

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, is amended—

(A) in clause (i), by striking "and" at the end;

(B) in clause (ii), by striking "or" at the end and inserting "and"; and

(C) by adding at the end the following:

"(iii) if—

"(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

"(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or".

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

"(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

"(A) proposed by the plan to the trustee;

"(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

"(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

"(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

"(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

"(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.".

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

"(C)(i) for purposes of subparagraph (A)—

"(I) consumer debts owed to a single creditor and aggregating more than $250 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

"(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

"(ii) for purposes of this subparagraph—

"(I) the term 'extension of credit under an open end credit plan' means an extension of credit under an open end credit plan, within the meaning of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.);

"(II) the term 'open end credit plan' has the meaning given that term under section 103 of Consumer Credit Protection Act (15 U.S.C. 1602); and

"(III) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.".

SEC. 311. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (21), as added by this Act, the following:

"(22) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement;

"(23) under subsection (a)(3), of the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated under the lease agreement or applicable State law;

"(24) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs;

"(25) under subsection (a) of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;".

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking "six" and inserting "8"; and

(2) in section 1328, by inserting after subsection (e) the following:

"(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 if the debtor has received a discharge in any case filed under this title within 5 years before the order for relief under this chapter.".

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

"(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

"(i) clothing;

"(ii) furniture;

"(iii) appliances;

"(iv) 1 radio;

"(v) 1 television;

"(vi) 1 VCR;

"(vii) linens;

"(viii) china;

"(ix) crockery;

"(x) kitchenware;

"(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor, but only 1 personal computer only if used primarily for the education or entertainment of such minor children;

"(xii) medical equipment and supplies;

"(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor; and

"(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor.

"(B) The term 'household goods' does not include—

"(i) works of art (unless by or of the debtor or the dependents of the debtor);

"(ii) electronic entertainment equipment (except 1 television, 1 radio, and 1 VCR);

"(iii) items acquired as antiques;

"(iv) jewelry (except wedding rings); and

"(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.".

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

"(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);".

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

"(1) provided for under section 1322(b)(5);

"(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

"(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

"(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.".

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (c)—

(A) by inserting "(1)" after "(c)";

(B) by striking ", but the failure of such notice to contain such information shall not invalidate the legal effect of such notice"; and

(C) by adding at the end the following:

"(2) If, within the 90 days prior to the date of the filing of a petition in a voluntary case, the creditor supplied the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number. In the event the creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if the creditor supplied the debtor in the last 2 communications with the current account number of the debtor and the address at which the creditor wishes to receive correspondence, then the debtor shall send any notice required under this title to the address provided by the creditor and such notice shall include the account number."; and

(2) by adding at the end the following:

"(e) At any time, a creditor, in a case of an individual debtor under chapter 7 or 13, may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. Five days after receipt of such notice, if the court or the debtor is required to give the creditor notice, such notice shall be given at that address.

"(f) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (e) with respect to a particular case.

"(g)(1) Notice given to a creditor other than as provided in this section shall not be effective notice until that notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases and establishes reasonable procedures so that bankruptcy notices received by the creditor are to be delivered to such department or person, notice shall not be considered to have been brought to the attention of the creditor until received by such person or department.

"(2) No sanction under section 362(k) or any other sanction that a court may impose on account of violations of the stay under section 362(a) or failure to comply with section 542 or 543 may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.".

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (a), as so designated by this Act, by striking paragraph (1) and inserting the following:

"(1) file—

"(A) a list of creditors; and

"(B) unless the court orders otherwise—

"(i) a schedule of assets and liabilities;

"(ii) a schedule of current income and current expenditures;

"(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

"(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition under section 110(b)(1) indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b); or

"(II) if no attorney for the debtor is indicated and no bankruptcy petition preparer signed the petition, of the debtor that such notice was obtained and read by the debtor;

"(iv) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days before the filing of the petition;

"(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

"(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;"; and

(2) by adding at the end the following:

"(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case, and the court shall make those documents available to the creditor who requests those documents.

"(2)(A) The debtor shall provide either a tax return or transcript at the election of the debtor, for the latest taxable period prior to filing for which a tax return has been or should have been filed, to the trustee, not later than 7 days before the date first set for the first meeting of creditors, or the case shall be dismissed, unless the debtor demonstrates that the failure to file a return as required is due to circumstances beyond the control of the debtor.

"(B) If a creditor has requested a tax return or transcript referred to in subparagraph (A), the debtor shall provide such tax return or transcript to the requesting creditor at the time the debtor provides the tax return or transcript to the trustee, or the case shall be dismissed, unless the debtor demonstrates that the debtor is unable to provide such information due to circumstances beyond the control of the debtor.

"(3)(A) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case.

"(B) The court shall make such plan available to the creditor who request such plan—

"(i) at a reasonable cost; and

"(ii) not later than 5 days after such request.

"(f) An individual debtor in a case under chapter 7, 11, or 13 shall file with the court at the request of any party in interest—

"(1) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

"(2) at the time filed with the taxing authority, all tax returns required under applicable law, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

"(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

"(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's income and expenditures in the preceding tax year and monthly income, that shows how the amounts are calculated—

"(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

"(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

"(g)(1) A statement referred to in subsection (f)(4) shall disclose—

"(A) the amount and sources of income of the debtor;

"(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

"(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

"(2) The tax returns, amendments, and statement of income and expenditures described in subsection (e)(2)(A) and subsection (f) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

"(h)(1) Not later than 180 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

"(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

"(3) Not later than 1 year and 180 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, the Director of the Administrative Office of the United States Courts shall prepare and submit to Congress a report that—

"(A) assesses the effectiveness of the procedures under paragraph (1); and

"(B) if appropriate, includes proposed legislation to—

"(i) further protect the confidentiality of tax information; and

"(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

"(i) If requested by the United States trustee or a trustee serving in the case, the debtor shall provide—

"(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; and

"(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.".

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(j)(1) Notwithstanding section 707(a), and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

"(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

"(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.".

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking "After" and inserting the following:

"(a) Except as provided in subsection (b) and after"; and

(2) by adding at the end the following:

"(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a).".

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

"(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

"(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

"(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.";

(2) in section 1325(b)(1)(B), by striking "three-year period" and inserting "applicable commitment period"; and

(3) in section 1325(b), as amended by this Act, by adding at the end the following:

"(4) For purposes of this subsection, the 'applicable commitment period'—

"(A) subject to subparagraph (B), shall be—

"(i) 3 years; or

"(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

"(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner last reported by the Bureau of the Census;

"(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals last reported by the Bureau of the Census; or

"(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals last reported by the Bureau of the Census, plus $525 per month for each individual in excess of 4; and

"(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period."; and

(4) in section 1329(c), by striking "three years" and inserting "the applicable commitment period under section 1325(b)(1)(B)".

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by an attorney be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(e)"; and

(2) by adding at the end the following:

"(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

"(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

"(B) that 60-day period is extended—

"(i) by agreement of all parties in interest; or

"(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.".

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

"§ 1115. Property of the estate

"(a) In a case concerning an individual debtor, property of the estate includes, in addition to the property specified in section 541—

"(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

"(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.".

"(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

"1115. Property of the estate.".

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking "and" at the end;

(2) in paragraph (7), by striking the period and inserting "; and"; and

(3) by adding at the end the following:

"(8) in a case concerning an individual, provide for the payment to creditors through the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.".

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, is amended by adding at the end the following:

"(15) In a case concerning an individual in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

"(A) the value of the property to be distributed under the plan on account of such claim is, as of the effective date of the plan, not less than the amount of such claim; or

"(B) the value of the property to be distributed under the plan is not less than the debtor's projected disposable income (as that term is defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the term of the plan, whichever is longer.".

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: ", except that in a case concerning an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14)".

(d) EFFECT OF CONFIRMATION—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "The confirmation of a plan does not discharge an individual debtor" and inserting "A discharge under this chapter does not discharge a debtor"; and

(2) by adding at the end the following:

"(5) In a case concerning an individual—

"(A) except as otherwise ordered for cause shown, the discharge is not effective until completion of all payments under the plan; and

"(B) at any time after the confirmation of the plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the plan only if—

"(i) for each allowed unsecured claim, the value, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

"(ii) modification of the plan under 1127 of this title is not practicable.".

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a case concerning an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

"(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

"(2) extend or reduce the time period for such payments; or

"(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

"(f)(1) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

"(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125, as the court may direct, notice and a hearing, and such modification is approved.".

SEC. 322. LIMITATION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 2-year period preceding the filing of the petition which exceeds in the aggregate $100,000 in value in—

"(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

"(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence; or

"(C) a burial plot for the debtor or a dependent of the debtor.

"(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

"(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of the 2-year period) into the debtor's current principal residence, where the debtor's previous and current residences are located in the same State.".

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking "522(d)," and inserting "522(d), 522(n), 522(p),"; and

(2) in paragraph (3), by striking "522(d)," and inserting "522(d), 522(n), 522(p),".

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

(a) IN GENERAL.—Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (6), as added by this Act, the following:

"(7) any amount—

"(A) withheld by an employer from the wages of employees for payment as contributions to—

"(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

"(ii) a health insurance plan regulated by State law whether or not subject to such title; or

"(B) received by the employer from employees for payment as contributions to—

"(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal Revenue Code of 1986, or a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986, except that amount shall not constitute disposable income, as defined in section 1325(b)(2) of this title; or

"(ii) a health insurance plan regulated by State law whether or not subject to such title;".

(b) APPLICATION OF AMENDMENT.—The amendments made by this section shall not apply to cases commenced under title 11, United States Code, before the expiration of the 180-day period beginning on the date of enactment of this Act.

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking "Notwithstanding" and inserting "Except as provided in subsection (e)(2), and notwithstanding"; and

(2) by striking subsection (e) and inserting the following:

"(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

"(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

"(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.".

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

"(1) For a case commenced—

"(A) under chapter 7 of title 11, $160; or

"(B) under chapter 13 of title 11, $150.".

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

"(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

"(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;";

(2) in paragraph (2), by striking "one-half" and inserting "three-fourths"; and

(3) in paragraph (4), by striking "one-half" and inserting "100 percent".

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking "pursuant to 28 U.S.C. section 1930(b) and 30.76 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931" and inserting "under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title".

SEC. 326. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

"(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.".

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting "(1)" after "(a)"; and

(2) by adding at the end the following:

"(2) In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.".

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: "other than a default that is a breach of a provision relat-

ing to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of paragraph (b)(l);"; and

(B) in paragraph (2)(D), by striking "penalty rate or provision" and inserting "penalty rate or penalty provision";

(2) in subsection (c)—

(A) in paragraph (2), by inserting "or" at the end;

(B) in paragraph (3), by striking "; or" at the end and inserting a period; and

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

(B) by redesignating paragraph (10) as paragraph (5); and

(4) in subsection (f)(1) by striking "; except that" and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting "or of a kind that section 365(b)(2) of this title expressly does not require to be cured" before the semicolon at the end;

(2) in subparagraph (C), by striking "and" at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following:

"(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a non-residential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and".

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is amended by inserting after paragraph (48) the following:

"(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);".

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (25), as added by this Act, the following:

"(26) under subsection (a), of—

"(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

"(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or

"(C) any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;".

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

"(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.".

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking "10" each place it appears and inserting "30".

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

"(4)(A) Subject to subparagraph (B), in any case under any chapter of this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

"(i) the date that is 120 days after the date of the order for relief; or

"(ii) the date of the entry of an order confirming a plan.

"(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days upon motion of the trustee or lessor for cause.

"(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.".

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking "subsection" the first place it appears and inserting "subsections (b) and".

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

"(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act (15 U.S.C. 632(a)(1))), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.".

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

"(3) A committee appointed under subsection (a) shall—

"(A) provide access to information for creditors who—

"(i) hold claims of the kind represented by that committee; and

"(ii) are not appointed to the committee;

"(B) solicit and receive comments from the creditors described in subparagraph (A); and

"(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).".

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection designated as subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (i); and

(2) by adding at the end the following:

"(j)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

"(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any applicable State statute that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, or any successor thereto.".

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking "(A) In" and inserting "In"; and

(B) by inserting "to an examiner, trustee under chapter 11, or professional person" after "awarded"; and

(2) by adding at the end the following:

"(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326 of this title.".

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

"(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.".

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

"(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

"(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

"(B) made according to ordinary business terms;";

(2) in paragraph (8), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.".

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting ", or a nonconsumer debt against a noninsider of less than $10,000," after "$5,000".

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking "On" and inserting "(1) Subject to paragraph (2), on"; and

(2) by adding at the end the following:

"(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

"(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.".

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking "dwelling" the first place it appears;

(2) by striking "ownership or" and inserting "ownership,";

(3) by striking "housing" the first place it appears; and

(4) by striking "but only" and all that follows through "such period" and inserting "or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,".

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: "Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.".

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

"(14) 'disinterested person' means a person that—

"(A) is not a creditor, an equity security holder, or an insider;

"(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

"(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;".

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, as amended by this Act, is amended—

(1) in subparagraph (D), by striking "and" at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

"(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and".

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(b)"; and

(2) by adding at the end the following:

"(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

"(B) Upon the filing of a report under subparagraph (A)—

"(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

"(ii) the service of any trustee appointed under subsection (d) shall terminate.

"(C) In the case of any dispute arising out of an election described in subparagraph (A), the court shall resolve the dispute.".

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)"; and

(2) by adding at the end the following:

"(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

"(i) a cash deposit;

"(ii) a letter of credit;

"(iii) a certificate of deposit;

"(iv) a surety bond;

"(v) a prepayment of utility consumption; or

"(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

"(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

"(2) Subject to paragraphs (3) through (5), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

"(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

"(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

"(i) the absence of security before the date of filing of the petition;

"(ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; or

"(iii) the availability of an administrative expense priority.

"(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided

to the utility by the debtor before the date of filing of the petition without notice or order of the court.".

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking "Notwithstanding section 1915 of this title, the" and inserting "The"; and

(2) by adding at the end the following:

"(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such debtor has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

"(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

"(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.".

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon "and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information"; and

(2) by striking subsection (f), and inserting the following:

"(f) Notwithstanding subsection (b), in a small business case—

"(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

"(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

"(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

"(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 20 days before the date of the hearing on confirmation of the plan; and

"(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.".

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, as amended by this Act, is amended by striking paragraph (51C) and inserting the following:

"(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

"(51D) 'small business debtor'—

"(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $3,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

"(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $3,000,000 (excluding debt owed to 1 or more affiliates or insiders);".

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting "debtor" after "small business".

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

"§ 308. Debtor reporting requirements

"(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

"(b) A small business debtor shall file periodic financial and other reports containing information including—

"(1) the debtor's profitability;

"(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

"(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

"(4)(A) whether the debtor is—

"(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

"(ii) timely filing tax returns and other required government filings and paying taxes and other administrative claims when due;

"(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

"(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

"308. Debtor reporting requirements.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative claims when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"§ 1116. Duties of trustee or debtor in possession in small business cases

"In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

"(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

"(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

"(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

"(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and hearing, upon a finding of extraordinary and compelling circumstances;

"(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

"(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

"(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

"(6)(A) timely file tax returns and other required government filings; and

"(B) subject to section 363(c)(2), timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

"(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, is amended by adding at the end of the matter relating to subchapter I the following:

"1116. Duties of trustee or debtor in possession in small business cases.".

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

"(e) In a small business case—

"(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

"(A) extended as provided by this subsection, after notice and hearing; or

"(B) the court, for cause, orders otherwise;

"(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

"(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e), within which the plan shall be confirmed, may be extended only if—

"(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

"(B) a new deadline is imposed at the time the extension is granted; and

"(C) the order extending time is signed before the existing deadline has expired.".

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

"(e) In a small business case, the plan shall be confirmed not later than 175 days after the date of the order for relief, unless such 175-day period is extended as provided in section 1121(e)(3).".

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking "and" at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and";

(2) in paragraph (5), by striking "and" at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

"(7) in each of such small business cases—

"(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

"(i) begin to investigate the debtor's viability;

"(ii) inquire about the debtor's business plan;

"(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

"(iv) attempt to develop an agreed scheduling order; and

"(v) inform the debtor of other obligations;

"(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

"(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

"(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.".

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking ", may"; and

(2) by striking paragraph (1) and inserting the following:

"(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and".

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by this Act is amended—

(1) in subsection (k), as redesignated by this Act—

(A) by striking "An" and inserting "(1) Except as provided in paragraph (2), an"; and

(B) by adding at the end the following:

"(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages."; and

(2) by adding at the end the following:

"(l)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) do not apply in a case in which the debtor—

"(A) is a debtor in a small business case pending at the time the petition is filed;

"(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

"(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

"(D) is an entity that has succeeded to substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C).

"(2) This subsection does not apply—

"(A) to an involuntary case involving no collusion by the debtor with creditors; or

"(B) to the filing of a petition if—

"(i) the debtor proves by a preponderance of the evidence that the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

"(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.".

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

"(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

"(2) The relief provided in paragraph (1) shall not be granted if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—

"(A) a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time; and

"(B) the grounds include an act or omission of the debtor—

"(i) for which there exists a reasonable justification for the act or omission; and

"(ii) that will be cured within a reasonable period of time fixed by the court.

"(3) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

"(4) For purposes of this subsection, the term 'cause' includes—

"(A) substantial or continuing loss to or diminution of the estate;

"(B) gross mismanagement of the estate;

"(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

"(D) unauthorized use of cash collateral harmful to 1 or more creditors;

"(E) failure to comply with an order of the court;

"(F) repeated failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

"(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure;

"(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or the bankruptcy administrator;

"(I) failure timely to pay taxes due after the date of the order for relief or to file tax returns due after the order for relief;

"(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

"(K) failure to pay any fees or charges required under chapter 123 of title 28;

"(L) revocation of an order of confirmation under section 1144;

"(M) inability to effectuate substantial consummation of a confirmed plan;

"(N) material default by the debtor with respect to a confirmed plan;

"(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

"(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.

"(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.".

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking "or" at the end;

(2) in paragraph (2), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.".

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting "or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later" after "90-day period)"; and

(2) by striking subparagraph (B) and inserting the following:

"(B) the debtor has commenced monthly payments that—

"(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

"(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or".

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking "and" at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

"(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);".

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting "notwithstanding section 301(b)" before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting "(a)" before "A voluntary"; and

(2) by striking the last sentence and inserting the following:

"(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.".

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting "555, 556," after "553,"; and

(2) by inserting "559, 560, 561, 562" after "557,".

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"§ 159. Bankruptcy statistics

"(a) The clerk of each district shall collect statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be on a standardized form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

"(b) The Director shall—

"(1) compile the statistics referred to in subsection (a);

"(2) make the statistics available to the public; and

"(3) not later than October 31, 2002, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

"(c) The compilation required under subsection (b) shall—

"(1) be itemized, by chapter, with respect to title 11;

"(2) be presented in the aggregate and for each district; and

"(3) include information concerning—

"(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

"(B) the current monthly income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

"(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

"(D) the average period of time between the filing of the petition and the closing of the case;

"(E) for the reporting period—

"(i) the number of cases in which a reaffirmation was filed; and

"(ii)(I) the total number of reaffirmations filed;

"(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

"(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

"(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

"(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

"(II) the number of final orders determining the value of property securing a claim issued;

"(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

"(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

"(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

"(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel or damages awarded under such Rule.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"159. Bankruptcy statistics.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"§ 589b. Bankruptcy data

"(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

"(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

"(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

"(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

"(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

"(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

"(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

"(3) appropriate privacy concerns and safeguards.

"(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

"(1) information about the length of time the case was pending;

"(2) assets abandoned;

"(3) assets exempted;

"(4) receipts and disbursements of the estate;

"(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

"(6) claims asserted;

"(7) claims allowed; and

"(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

"(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

"(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

"(2) length of time the case has been pending;

"(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

"(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

"(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

"(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

"(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"589b. Bankruptcy data.".

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

"(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001; and"; and

(2) by adding at the end the following:

"(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

"(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

"(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

"(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

"(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.".

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by this Act, is amended in each of paragraphs (3) and (4) by inserting "or an auditor appointed under section 586(f) of title 28" after "serving in the case".

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(4) the debtor has failed to explain satisfactorily—

"(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

"(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting "(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)" after "under this title";

(2) in subsection (b)(2), by inserting "(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a peti-

tion, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)" after "507(a)(1)"; and

(3) by adding at the end the following:

"(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

"(1) exhaust the unencumbered assets of the estate; and

"(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

"(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

"(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

"(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).".

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking "or" at the end;

(2) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.".

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

"(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement and, if so filed, shall be allowed as a single claim.".

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting "at the address and in the manner designated in paragraph (1)" after "determination of such tax";

(2) by striking "(1) upon payment" and inserting "(A) upon payment";

(3) by striking "(A) such governmental unit" and inserting "(i) such governmental unit";

(4) by striking "(B) such governmental unit" and inserting "(ii) such governmental unit";

(5) by striking "(2) upon payment" and inserting "(B) upon payment";

(6) by striking "(3) upon payment" and inserting "(C) upon payment";

(7) by striking "(b)" and inserting "(2)"; and

(8) by inserting before paragraph (2), as so designated, the following:

"(b)(1)(A) The clerk of each district shall maintain a listing under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

"(i) designate an address for service of requests under this subsection; and

"(ii) describe where further information concerning additional requirements for filing such requests may be found.

"(B) If a governmental unit referred to in subparagraph (A) does not designate an address and provide that address to the clerk under that subparagraph, any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of that governmental unit.".

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§ 511. Rate of interest on tax claims

"(a) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor

to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

"(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

"511. Rate of interest on tax claims.".

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting "for a taxable year ending on or before the date of filing of the petition" after "gross receipts";

(B) in clause (i), by striking "for a taxable year ending on or before the date of filing of the petition"; and

(C) by striking clause (ii) and inserting the following:

"(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

"(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

"(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period; plus 90 days."; and

(2) by adding at the end the following:

"An otherwise applicable time period specified in this paragraph shall be suspended for (i) any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus (ii) any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.".

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking "assessed" and inserting "incurred".

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314 of this Act, is amended by striking "paragraph" and inserting "section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),".

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

Section 1141(d) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt described in section 523(a)(2) or for a tax or customs duty with respect to which the debtor—

"(A) made a fraudulent return; or

"(B) willfully attempted in any manner to evade or defeat that tax or duty.".

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking "the debtor" and inserting "a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning an individual debtor's tax liability for a taxable period ending before the order for relief under this title".

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by striking "deferred cash payments," and all that follows through the end of the subparagraph, and inserting "regular installment payments in cash—

"(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

"(ii) over a period ending not later than 5 years after the date of the entry of the order for relief under section 301, 302, or 303; and

"(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for in the plan (other than cash payments made to a class of creditors under section 1122(b)); and"; and

(3) by adding at the end the following:

"(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).".

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: ", except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law".

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting "(a)" before "Any"; and

(2) by adding at the end the following:

"(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

"(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable period of time after the lien attaches by the trustee of a bankruptcy estate under section 554 of title 11; or

"(2) payment of the tax is excused under a specific provision of title 11.

"(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

"(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

"(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.".

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting "whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both," before "except".

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking "and" at the end;

(2) in subparagraph (C), by adding "and" at the end; and

(3) by adding at the end the following:

"(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;".

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting "or State statute" after "agreement"; and

(2) in subsection (c), by inserting ", including the payment of all ad valorem property taxes with respect to the property" before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking "before the date on which the trustee commences distribution under this section;" and inserting the following: "on or before the earlier of—

"(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

"(B) the date on which the trustee commences final distribution under this section;".

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting "or equivalent report or notice," after "a return,";

(B) in clause (i), by inserting "or given" after "filed"; and

(C) in clause (ii)—

(i) by inserting "or given" after "filed"; and

(ii) by inserting ", report, or notice" after "return"; and

(2) by adding at the end the following:

"For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.".

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by this Act, is amended by inserting "the estate," after "misrepresentation,".

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.".

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

"§ 1308. Filing of prepetition tax returns

"(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

"(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

"(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

"(B) for any return that is not past due as of the date of the filing of the petition, the later of—

"(i) the date that is 120 days after the date of that meeting; or

"(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

"(2) Upon notice and hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

"(A) a period of not more than 30 days for returns described in paragraph (1); and

"(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

"(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.".

(2) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

"1308. Filing of prepetition tax returns.".

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

"(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.".

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following ", and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required".

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting "including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case," after "records"; and

(2) by striking "a hypothetical reasonable investor typical of holders of claims or interests" and inserting "such a hypothetical investor".

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (26), as added by this Act, the following:

"(27) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, upon motion of the trustee and after notice and hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of that authority in the setoff under section 506(a);".

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—Section 346 of title 11, United States Code, is amended to read as follows:

"§ 346. Special provisions related to the treatment of state and local taxes

"(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

"(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make said returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

"(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

"(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

"(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

"(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

"(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

"(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

"(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

"(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

"(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the order for relief under this title to the extent that—

"(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

"(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

"(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

"(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

"(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

"(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.".

(b) CONFORMING AMENDMENTS.—

(1) Section 728 of title 11, United States Code, is repealed.

(2) Section 1146 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

(3) Section 1231 of title 11, United States Code, is amended—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(k)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

"(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.".

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

"Sec.
"1501. Purpose and scope of application.

"SUBCHAPTER I—GENERAL PROVISIONS

"1502. Definitions.
"1503. International obligations of the United States.
"1504. Commencement of ancillary case.
"1505. Authorization to act in a foreign country.
"1506. Public policy exception.
"1507. Additional assistance.
"1508. Interpretation.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"1509. Right of direct access.
"1510. Limited jurisdiction.
"1511. Commencement of case under section 301 or 303.
"1512. Participation of a foreign representative in a case under this title.
"1513. Access of foreign creditors to a case under this title.
"1514. Notification to foreign creditors concerning a case under this title.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"1515. Application for recognition.
"1516. Presumptions concerning recognition.
"1517. Order granting recognition.
"1518. Subsequent information.
"1519. Relief that may be granted upon filing petition for recognition.

"1520. Effects of recognition of a foreign main proceeding.
"1521. Relief that may be granted upon recognition.
"1522. Protection of creditors and other interested persons.
"1523. Actions to avoid acts detrimental to creditors.
"1524. Intervention by a foreign representative.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

"1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
"1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
"1527. Forms of cooperation.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"1528. Commencement of a case under this title after recognition of a foreign main proceeding.
"1529. Coordination of a case under this title and a foreign proceeding.
"1530. Coordination of more than 1 foreign proceeding.
"1531. Presumption of insolvency based on recognition of a foreign main proceeding.
"1532. Rule of payment in concurrent proceedings.

"§ 1501. Purpose and scope of application

"(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

"(1) cooperation between—

"(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

"(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

"(2) greater legal certainty for trade and investment;

"(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

"(4) protection and maximization of the value of the debtor's assets; and

"(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

"(b) This chapter applies where—

"(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

"(2) assistance is sought in a foreign country in connection with a case under this title;

"(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

"(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

"(c) This chapter does not apply to—

"(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

"(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

"(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

"(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

"SUBCHAPTER I—GENERAL PROVISIONS

"§ 1502. Definitions

"For the purposes of this chapter, the term—

"(1) 'debtor' means an entity that is the subject of a foreign proceeding;

"(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

"(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

"(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

"(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

"(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

"(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

"(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

"§ 1503. International obligations of the United States

"To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

"§ 1504. Commencement of ancillary case

"A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

"§ 1505. Authorization to act in a foreign country

"A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

"§ 1506. Public policy exception

"Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

"§ 1507. Additional assistance

"(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

"(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

"(1) just treatment of all holders of claims against or interests in the debtor's property;

"(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

"(3) prevention of preferential or fraudulent dispositions of property of the debtor;

"(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

"(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

"§ 1508. Interpretation

"In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

"SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"§ 1509. Right of direct access

"(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

"(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

"(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

"(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

"(3) a court in the United States shall grant comity or cooperation to the foreign representative.

"(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

"(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

"(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

"(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

"§ 1510. Limited jurisdiction

"The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

"§ 1511. Commencement of case under section 301 or 303

"(a) Upon recognition, a foreign representative may commence—

"(1) an involuntary case under section 303; or

"(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

"(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

"§ 1512. Participation of a foreign representative in a case under this title

"Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

"§ 1513. Access of foreign creditors to a case under this title

"(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

"(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

"(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

"(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

"§ 1514. Notification to foreign creditors concerning a case under this title

"(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

"(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

"(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

"(1) indicate the time period for filing proofs of claim and specify the place for their filing;

"(2) indicate whether secured creditors need to file their proofs of claim; and

"(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

"(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

"SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"§ 1515. Application for recognition

"(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

"(b) A petition for recognition shall be accompanied by—

"(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

"(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

"(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

"(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

"(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

"§ 1516. Presumptions concerning recognition

"(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding (as defined in section 101) and that the person or body is a foreign representative (as defined in section 101), the court is entitled to so presume.

"(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

"(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

"§ 1517. Order granting recognition

"(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

"(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

"(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

"(3) the petition meets the requirements of section 1515.

"(b) The foreign proceeding shall be recognized—

"(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

"(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

"(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

"(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court

shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be closed in the manner prescribed under section 350.

"§ 1518. Subsequent information

"From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

"(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

"(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

"§ 1519. Relief that may be granted upon filing petition for recognition

"(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

"(1) staying execution against the debtor's assets;

"(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

"(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

"(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

"(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§ 1520. Effects of recognition of a foreign main proceeding

"(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

"(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

"(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

"(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

"(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

"(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

"(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

"§ 1521. Relief that may be granted upon recognition

"(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

"(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

"(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

"(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

"(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

"(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

"(6) extending relief granted under section 1519(a); and

"(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

"(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

"(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

"(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

"(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (28) of section 362(b) or pursuant to section 362(l) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

"§ 1522. Protection of creditors and other interested persons

"(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

"(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

"(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

"(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

"§ 1523. Actions to avoid acts detrimental to creditors

"(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

"(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

"§ 1524. Intervention by a foreign representative

"Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

"SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

"§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

"(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

"(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

"§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

"(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

"(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

"§ 1527. Forms of cooperation

"Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

"(1) appointment of a person or body, including an examiner, to act at the direction of the court;

"(2) communication of information by any means considered appropriate by the court;

"(3) coordination of the administration and supervision of the debtor's assets and affairs;

"(4) approval or implementation of agreements concerning the coordination of proceedings; and

"(5) coordination of concurrent proceedings regarding the same debtor.

"SUBCHAPTER V—CONCURRENT PROCEEDINGS

"§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

"After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

"§ 1529. Coordination of a case under this title and a foreign proceeding

"If a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) If the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

"(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

"(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

"(2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

"(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

"(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

"(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

"(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

"§ 1530. Coordination of more than 1 foreign proceeding

"In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

"(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

"(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

"(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

"§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

"In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

"§ 1532. Rule of payment in concurrent proceedings

"Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.".

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

"15. Ancillary and Other Cross-Border Cases 1501".

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: ", and this chapter, sections 307, 362(l), 555 through 557, and 559 through 562 apply in a case under chapter 15"; and

(2) by adding at the end the following:

"(j) Chapter 15 applies only in a case under such chapter, except that—

"(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

"(2) section 1509 applies whether or not a case under this title is pending.".

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

"(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

"(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;".

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking "and" at the end;

(B) in subparagraph (O), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.".

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking "Nothing in" and inserting "Except with respect to a case under chapter 15 of title 11, nothing in".

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking "or 13" and inserting "13, or 15,".

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

"§ 1410. Venue of cases ancillary to foreign proceedings

"A case under chapter 15 of title 11 may be commenced in the district court for the district—

"(1) in which the debtor has its principal place of business or principal assets in the United States;

"(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

"(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.".

(d) OTHER SECTIONS OF TITLE 11.—

(1) Section 109(b)(3) of title 11, United States Code, is amended to read as follows:

"(3)(A) a foreign insurance company, engaged in such business in the United States; or

"(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101) in the United States.".

(2) Section 303(k) of title 11, United States Code, is repealed.

(3)(A) Section 304 of title 11, United States Code, is repealed.

(B) The table of sections at the beginning of chapter 3 of title 11, United States Code, is amended by striking the item relating to section 304.

(C) Section 306 of title 11, United States Code, is amended by striking ", 304," each place it appears.

(4) Section 305(a)(2) of title 11, United States Code, is amended to read as follows:

"(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

"(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.".

(5) Section 508 of title 11, United States Code, is amended—

(A) by striking subsection (a); and

(B) in subsection (b), by striking "(b)".

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting ", resolution, or order" after "any similar agreement that the Corporation determines by regulation".

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

"(ii) SECURITIES CONTRACT.—The term 'securities contract'—

"(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

"(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

"(III) means any option entered into on a national securities exchange relating to foreign currencies;

"(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or

sell any such security, certificate of deposit, loan, interest, group or index or option;

"(V) means any margin loan;

"(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) means any combination of the agreements or transactions referred to in this clause;

"(VIII) means any option to enter into any agreement or transaction referred to in this clause;

"(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

"(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.".

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

"(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

"(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

"(II) with respect to a foreign futures commission merchant, a foreign future;

"(III) with respect to a leverage transaction merchant, a leverage transaction;

"(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

"(V) with respect to a commodity options dealer, a commodity option;

"(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

"(VII) any combination of the agreements or transactions referred to in this clause;

"(VIII) any option to enter into any agreement or transaction referred to in this clause;

"(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

"(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.".

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

"(iv) FORWARD CONTRACT.—The term 'forward contract' means—

"(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days

after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

"(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

"(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

"(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

"(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).".

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

"(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

"(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

"(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

"(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

"(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).".

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

"(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

"(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

"(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

"(III) any combination of agreements or transactions referred to in this clause;

"(IV) any option to enter into any agreement or transaction referred to in this clause;

"(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

"(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), (IV), or (V).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.".

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.".

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking "paragraph (10)" and inserting "paragraphs (9) and (10)";

(B) in clause (i), by striking "to cause the termination or liquidation" and inserting "such person has to cause the termination, liquidation, or acceleration"; and

(C) by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);"; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

"(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);".

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting "section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Corporation".

SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking "other than paragraph (12) of this subsection, subsection (d)(9)" and inserting "other than subsections (d)(9) and (e)(10)"; and

(2) by adding at the end the following new subparagraphs:

"(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

"(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

"(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

"(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting "or the exercise of rights or powers by" after "the appointment of".

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

"(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

"(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

"(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

"(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

"(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

"(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

"(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

"(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

"(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contract and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

"(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

"(D) DEFINITION.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution.".

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking "the conservator" and all that follows through the period and inserting the following: "the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.".

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

"(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

"(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

"(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

"(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

"(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

"(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

"(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which

is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

"(i) A bridge bank.

"(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

"(I) immediately upon the organization of the institution; or

"(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.".

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

"(A) disaffirm or repudiate all qualified financial contracts between—

"(i) any person or any affiliate of such person; and

"(ii) the depository institution in default; or

"(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).".

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

"(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.".

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon ", or is exempt from such registration by order of the Securities and Exchange Commission"; and

(B) in subparagraph (B), by inserting before the period "or that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act";

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;"; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

"(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;";

(3) in paragraph (11), by inserting before the period "and any other clearing organization with which such clearing organization has a netting contract";

(4) by amending paragraph (14)(A)(i) to read as follows:

"(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and"; and

(5) by adding at the end the following new paragraph:

"(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.".

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).."; and

(2) by adding at the end the following new subsection:

"(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).".

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

"(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code)."; and

(2) by adding at the end the following new subsection:

"(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).".

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 408; and

(2) by inserting after section 406 the following new section:

"SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.

"(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, except that for such purpose—

"(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

"(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

"(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

"(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

"(c) REGULATORY AUTHORITY.—

"(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

"(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

"(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.".

SEC. 907. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking "means a contract" and inserting "means—

"(A) a contract";

(ii) by striking ", or any combination thereof or option thereon;" and inserting ", or any other similar agreement;"; and

(iii) by adding at the end the following:

"(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

"(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

"(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

"(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract on the date of the filing of the petition;";

(B) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and inserting "at any time before";

(C) by amending paragraph (47) to read as follows:

"(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

"(A) means—

"(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the

transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

"(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

"(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

"(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

"(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

"(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;";

(D) in paragraph (48), by inserting ", or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission," after "1934"; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'—

"(A) means—

"(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including—

"(I) a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

"(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

"(III) a currency swap, option, future, or forward agreement;

"(IV) an equity index or an equity swap, option, future, or forward agreement;

"(V) a debt index or a debt swap, option, future, or forward agreement;

"(VI) a credit spread or a credit swap, option, future, or forward agreement;

"(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

"(VIII) a weather swap, weather derivative, or weather option;

"(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—

"(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

"(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

"(iii) any combination of agreements or transactions referred to in this subparagraph;

"(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

"(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

"(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), but not to exceed the actual value of such contract on the date of the filing of the petition; and

"(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.";

(2) in section 741(7), by striking paragraph (7) and inserting the following:

"(7) 'securities contract'—

"(A) means—

"(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

"(ii) any option entered into on a national securities exchange relating to foreign currencies;

"(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

"(iv) any margin loan;

"(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

"(vi) any combination of the agreements or transactions referred to in this subparagraph;

"(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

"(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

"(ix) any security agreement or arrangement or other credit enhancement, related to any agreement or transaction referred to in this subparagraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

"(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan."; and

(3) in section 761(4)—

(A) by striking "or" at the end of subparagraph (D); and

(B) by adding at the end the following:

"(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

"(G) any combination of the agreements or transactions referred to in this paragraph;

"(H) any option to enter into an agreement or transaction referred to in this paragraph;

"(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not

a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

"(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;".

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

"(22) 'financial institution' means—

"(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741, such customer; or

"(B) in connection with a securities contract, as defined in section 741, an investment company registered under the Investment Company Act of 1940;";

(2) by inserting after paragraph (22) the following:

"(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;"; and

(3) by striking paragraph (26) and inserting the following:

"(26) 'forward contract merchant' means a Federal reserve bank, or an entity, the business of which consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;".

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

"(38A) 'master netting agreement'—

"(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing; and

"(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

"(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;".

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended—

(A) in paragraph (6), by inserting ", pledged to, and under the control of," after "held by";

(B) in paragraph (7), by inserting ", pledged to, and under the control of," after "held by";

(C) by striking paragraph (17) and inserting the following:

"(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin, guarantee, secure, or settle any swap agreement;"; and

(D) by inserting after paragraph (27), as added by this Act, the following new paragraph:

"(28) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; or".

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(l) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (28) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.".

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking "under a swap agreement"; and

(B) by striking "in connection with a swap agreement" and inserting "under or in connection with any swap agreement"; and

(2) by adding at the end the following:

"(k) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.".

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking "and" at the end;

(2) in subparagraph (D), by striking the period and inserting "; and"; and

(3) by adding at the end the following new subparagraph:

"(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.".

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract";

and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract";

and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement";

and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement";

(2) in the first sentence, by striking "termination of a swap agreement" and inserting "liquidation, termination, or acceleration of one or more swap agreements"; and

(3) by striking "in connection with any swap agreement" and inserting "in connection with the termination, liquidation, or acceleration of one or more swap agreements".

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

"§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

"(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

"(1) securities contracts, as defined in section 741(7);

"(2) commodity contracts, as defined in section 761(4);

"(3) forward contracts;

"(4) repurchase agreements;

"(5) swap agreements; or

"(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

"(b) EXCEPTION.—

"(1) IN GENERAL.—A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

"(2) COMMODITY BROKERS.—If a debtor is a commodity broker subject to subchapter IV of chapter 7—

"(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under that subchapter IV; and

"(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

"(3) CONSTRUCTION.—No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

"(A) a cross-margining agreement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under section 5(a)(12)(A) of the Commodity Exchange Act and has been approved; or

"(B) any other netting agreement between a clearing organization, as defined in section 761, and another entity that has been approved by the Commodity Futures Trading Commission.

"(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

"(d) CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15 of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).".

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

"561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.".

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

"§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

"Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.".

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting before the period the following: "(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(28), 555, 556, 559, 560, or 561 of this title)"; and

(2) in subsection (b)(1), by striking "362(b)(14)," and inserting "362(b)(17), 362(b)(28), 555, 556, 559, 560, 561".

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking "financial institutions," each place such term appears and inserting "financial institution, financial participant,";

(2) in section 546(e), by inserting "financial participant," after "financial institution,";

(3) in section 548(d)(2)(B), by inserting "financial participant," after "financial institution,";

(4) in section 555—

(A) by inserting "financial participant," after "financial institution,"; and

(B) by inserting before the period at the end ", a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice"; and

(5) in section 556, by inserting ", financial participant," after "commodity broker".

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

"555. Contractual right to liquidate, terminate, or accelerate a securities contract.
"556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.";

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

"559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.
"560. Contractual right to liquidate, terminate, or accelerate a swap agreement.";

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

"767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.";

and

(B) by inserting after the item relating to section 752 the following:

"753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.".

SEC. 908. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

"(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.".

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

"(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

"(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

"(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

"(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

"(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.".

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by this Act, the following:

"§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

"If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

"(1) the date of such rejection; or

"(2) the date of such liquidation, termination, or acceleration."; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by this Act) the following:

"562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.".

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting "(1)" after "(g)"; and

(2) by adding at the end the following:

"(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.".

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

"(C) EXCEPTION FROM STAY.—

"(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101 and 741 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

"(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

"(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.".

SEC. 912. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting after paragraph (7), as added by this Act, the following:

"(8) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);"; and

(2) by adding at the end the following new subsection:

"(f) For purposes of this section—

"(1) the term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, including, without limitation, all securities issued by governmental units, at least one class or tranche of which was rated investment grade by one or more nationally recognized securities rating organizations, when the securities were initially issued by an issuer;

"(2) the term 'eligible asset' means—

"(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, whether or not the same are in existence as of the date of the transfer, including residential and commercial mortgage loans, consumer receivables, trade receivables, assets of governmental units, including payment obligations relating to taxes, receipts, fines, tickets, and other sources of revenue, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

"(B) cash; and

"(C) securities, including without limitation, all securities issued by governmental units;

"(3) the term 'eligible entity' means—

"(A) an issuer; or

"(B) a trust, corporation, partnership, governmental unit, limited liability company (including a single member limited liability company), or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

"(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

"(5) the term 'transferred' means the debtor, under a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(8) (whether or not reference is made to this title or any section hereof), irrespective and without limitation of—

"(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

"(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

"(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.".

SEC. 913. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—This title shall take effect on the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

TITLE X—PROTECTION OF FAMILY FARMERS

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and amended by this Act, is reenacted.

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on July 1, 2000.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, is amended by adding at the end the following:

"(4) The dollar amount in section 101(18) shall be adjusted at the same times and in the same manner as the dollar amounts in paragraph (1) of this subsection, beginning with the adjustment to be made on April 1, 2001.".

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

"(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

"(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

"(B) the holder of a particular claim agrees to a different treatment of that claim;".

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by this Act, is amended by striking "a State or local governmental unit" and inserting "any governmental unit".

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, is amended—

(1) by redesignating paragraph (27A), as added by this Act, as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

"(27A) 'health care business'—

"(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

"(i) the diagnosis or treatment of injury, deformity, or disease; and

"(ii) surgical, drug treatment, psychiatric, or obstetric care; and

"(B) includes—

"(i) any—

"(I) general or specialized hospital;

"(II) ancillary ambulatory, emergency, or surgical treatment facility;

"(III) hospice;

"(IV) home health agency; and

"(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

"(ii) any long-term care facility, including any—

"(I) skilled nursing facility;

"(II) intermediate care facility;

"(III) assisted living facility;

"(IV) home for the aged;

"(V) domiciliary care facility; and

"(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;".

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

"(40A) 'patient' means any person who obtains or receives services from a health care business;

"(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;".

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"§ 351. Disposal of patient records

"If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

"(1) The trustee shall—

"(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

"(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the last known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

"(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

"(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

"(A) if the records are written, shredding or burning the records; or

"(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 350 the following:

"351. Disposal of patient records.".

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as that term is defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

"(A) in disposing of patient records in accordance with section 351; or

"(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business;

"(9) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or related to a failure to operate or penalty provisions, for the period of 2 years following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6); and".

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) IN GENERAL.—

(1) APPOINTMENT OF OMBUDSMAN.—Subchapter II of chapter 3 of title 11, United States Code, is amended by inserting after section 331 the following:

"§ 332. Appointment of ombudsman

"(a) IN GENERAL.—

"(1) AUTHORITY TO APPOINT.—Not later than 30 days after a case is commenced by a health care business under chapter 7, 9, or 11, the court shall order the appointment of an ombudsman to monitor the quality of patient care to represent the interests of the patients of the health care business, unless the court finds that the appointment of the ombudsman is not necessary for the protection of patients under the specific facts of the case.

"(2) QUALIFICATIONS.—If the court orders the appointment of an ombudsman, the United States trustee shall appoint 1 disinterested person, other than the United States trustee, to serve as an ombudsman, including a person who is serving as a State Long-Term Care Ombudsman appointed under title III or VII of the Older Americans Act of 1965 (42 U.S.C. 3021 et seq., 3058 et seq.).

"(b) DUTIES.—An ombudsman appointed under subsection (a) shall—

"(1) monitor the quality of patient care, to the extent necessary under the circumstances, including interviewing patients and physicians;

"(2) not later than 60 days after the date of appointment, and not less frequently than every 60 days thereafter, report to the court, at a hearing or in writing, regarding the quality of patient care at the health care business involved; and

"(3) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised, notify the court by motion or written report, with notice to appropriate parties in interest, immediately upon making that determination.

"(c) CONFIDENTIALITY.—An ombudsman shall maintain any information obtained by the ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. The ombudsman may not review confidential patient records, unless the court provides prior approval, with restrictions on the ombudsman to protect the confidentiality of patient records.".

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 331 the following:

"332. Appointment of ombudsman.".

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter proceeding subparagraph (A), by inserting "an ombudsman appointed under section 331, or" before "a professional person"; and

(2) in subparagraph (A), by inserting "ombudsman," before "professional person".

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(11) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

"(A) is in the vicinity of the health care business that is closing;

"(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

"(C) maintains a reasonable quality of care.".

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended by striking "sections 704(2), 704(5), 704(7), 704(8), and 704(9)" and inserting "paragraphs (2), (5), (7), (8), (9), and (11) of section 704(a)".

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (28), as added by this Act, the following:

"(29) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act (42 U.S.C. 1320a–7b(f)) pursuant to title XI of such Act (42 U.S.C. 1301 et seq.) or title XVIII of such Act (42 U.S.C. 1395 et seq.).".

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by this Act, is amended—

(1) by striking "In this title—" and inserting "In this title the following definitions shall apply:";

(2) in each paragraph, by inserting "The term" after the paragraph designation;

(3) in paragraph (35)(B), by striking "paragraphs (21B) and (33)(A)" and inserting "paragraphs (23) and (35)";

(4) in each of paragraphs (35A) and (38), by striking "; and" at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting "who is not a family farmer" after "debtor" the first place it appears; and

(B) by striking "thereto having aggregate" and all that follows through the end of the paragraph;

(6) by striking paragraph (54) and inserting the following:

"(54) The term 'transfer' means—

"(A) the creation of a lien;

"(B) the retention of title as a security interest;

"(C) the foreclosure of a debtor's equity of redemption; or

"(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

"(i) property; or

"(ii) an interest in property."; and

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, as amended by section 322 of this Act, is amended by inserting "522(f)(3)," after "522(d)," each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking "922" and all that follows through "or", and inserting "922, 1201, or".

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking "subsection (c) or (d) of"; and

(2) in section 552(b)(1), by striking "product" each place it appears and inserting "products".

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so designated by this Act, is amended by striking "attorney's" and inserting "attorneys'".

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting "on a fixed or percentage fee basis," after "hourly basis,".

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting "of the estate" after "property" the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting "subparagraph (A), (B), (C), (D), or (E) of" before "paragraph (3)".

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by this Act, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14);

(2) in subsection (a)(9), by striking "motor vehicle" and inserting "motor vehicle, vessel, or aircraft"; and

(3) in subsection (e), by striking "a insured" and inserting "an insured".

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking "section 523" and all that follows through "or that" and inserting "section 523, 1228(a)(1), or 1328(a)(1), or that".

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting "student" before "grant" the second place it appears; and

(2) in paragraph (2), by striking "the program operated under part B, D, or E of" and inserting "any program operated under".

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting "365 or" before "542".

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by this Act, is amended—

(1) in subsection (b), by striking "subsection (c)" and inserting "subsections (c) and (i)"; and

(2) by adding at the end the following:

"(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.".

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting "an interest in" after "transfer of" each place it appears;

(2) by striking "such property" and inserting "such real property"; and

(3) by striking "the interest" and inserting "such interest".

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking "1009,".

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, as amended by this Act, is amended by inserting "1123(d)," after "1123(b),".

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking "section 11347" and inserting "section 11326(a)".

SEC. 1219. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking "1222(b)(10)" each place it appears and inserting "1222(b)(9)".

SEC. 1220. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking "made under this subsection" and inserting "made under subsection (c)"; and

(2) by striking "This subsection" and inserting "Subsection (c) and this subsection".

SEC. 1221. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting "(1) the term" before "'bankruptcy"; and

(B) by striking the period at the end and inserting "; and"; and

(2) in the second undesignated paragraph—

(A) by inserting "(2) the term" before "'document"; and

(B) by striking "this title" and inserting "title 11".

SEC. 1222. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking "only" and all that follows through the end of the subsection and inserting "only—

"(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

"(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.".

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(g) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.".

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1223. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "20" and inserting "30".

SEC. 1224. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the "Bankruptcy Judgeship Act of 2001".

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the district of Delaware.

(D) Two additional bankruptcy judgeships for the southern district of Florida.

(E) One additional bankruptcy judgeship for the southern district of Georgia.

(F) Two additional bankruptcy judgeships for the district of Maryland.

(G) One additional bankruptcy judgeship for the eastern district of Michigan.

(H) One additional bankruptcy judgeship for the southern district of Mississippi.

(I) One additional bankruptcy judgeship for the district of New Jersey.

(J) One additional bankruptcy judgeship for the eastern district of New York.

(K) One additional bankruptcy judgeship for the northern district of New York.

(L) One additional bankruptcy judgeship for the southern district of New York.

(M) One additional bankruptcy judgeship for the eastern district of North Carolina.

(N) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(O) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(P) One additional bankruptcy judgeship for the district of Puerto Rico.

(Q) One additional bankruptcy judgeship for the western district of Tennessee.

(R) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) shall not be filled if the vacancy—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1).

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under paragraphs (1), (3), (7), (8), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to temporary judgeship positions referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: "Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the United States court of appeals for the circuit in which such district is located."; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking "2" and inserting "3"; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . 1".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act.

SEC. 1225. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "and";

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

"(A) by prorating such amount over the remaining duration of the plan; and

"(B) by monthly payments not to exceed the greater of—

"(i) $25; or

"(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan."; and

(2) by adding at the end the following:

"(d) Notwithstanding any other provision of this title—

"(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior proceeding under this title; and

"(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).".

SEC. 1226. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

"(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the filing of the petition;".

SEC. 1227. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

SEC. 1228. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

"(c)(1) Except as provided in subsection (d) of this section and subsection (c) of section 507, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, not later than 45 days after the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

"(A) not later than 45 days after the date of receipt of such goods by the debtor; or

"(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

"(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(7).".

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by this Act, is amended by adding at the end the following:

"(10) the value of any goods received by the debtor not later than 20 days after the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.".

SEC. 1229. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1230. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying

the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1231. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, is amended by inserting after paragraph (8), as added by this Act, the following:

"(9) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

"(A) the tangible personal property is in the possession of the pledgee or transferee;

"(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

"(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b) of this title; or".

SEC. 1232. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting "(1)" after "(d)"; and

(2) by adding at the end the following:

"(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.".

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

"(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

"(4) The Attorney General shall prescribe procedures to implement this subsection.".

SEC. 1233. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

"The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.".

SEC. 1234. EXPEDITED APPEALS OF BANKRUPTCY CASES TO COURTS OF APPEALS.

(a) IN GENERAL.—Section 158 of title 28, United States Code, is amended—

(1) by striking subsection (d) and inserting the following:

"(d)(1) In a case in which the appeal is heard by the district court, the judgment, decision, order, or decree of the bankruptcy judge shall be deemed a judgment, decision, order, or decree of the district court entered 31 days after such appeal is filed with the district court, unless not later than 30 days after such appeal is filed with the district court—

"(A) the district court—

"(i) files a decision on the appeal from the judgment, decision, order, or decree of the bankruptcy judge; or

"(ii) enters an order extending such 30-day period for cause upon motion of a party or upon the court's own motion; or

"(B) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision.

"(2) For the purpose of this subsection, an appeal shall be considered filed with the district court on the date on which the notice of appeal is filed, except that in a case in which the appeal is heard by the district court because a party has made an election under subsection (c)(1)(B), the appeal shall be considered filed with the district court on the date on which such election is made.

"(e) The courts of appeals shall have jurisdiction of appeals from—

"(1) all final judgments, decisions, orders, and decrees of district courts entered under subsection (a);

"(2) all final judgments, decisions, orders, and decrees of bankruptcy appellate panels entered under subsection (b); and

"(3) all judgments, decisions, orders, and decrees of district courts entered under subsection (d) to the extent that such judgments, decisions, orders, and decrees would be reviewable by a district court under subsection (a).

"(f) In accordance with rules prescribed by the Supreme Court of the United States under sections 2072 through 2077, the court of appeals may, in its discretion, exercise jurisdiction over an appeal from an interlocutory judgment, decision, order, or decree under subsection (e)(3).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Section 305(c) of title 11, United States Code, is amended by striking "section 158(d)" and inserting "subsection (e) or (f) of section 158".

(2) Section 1334(d) of title 28, United States Code, is amended by striking "section 158(d)" and inserting "subsection (e) or (f) of section 158".

(3) Section 1452(b) of title 28, United States Code, is amended by striking "section 158(d)" and inserting "subsection (e) or (f) of section 158".

SEC. 1235. EXEMPTIONS.

Section 522(g)(2) of title 11, United States Code, is amended by striking "subsection (f)(2)" and inserting "subsection (f)(1)(B)".

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

"(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

"(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

"(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

"(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

"(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

"(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752)), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

"(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking and Financial Services of the House of Representatives a report on the program described in subclause (I).

"(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

"(H) The Board shall—

"(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

"(ii) establish the table required under clause (i) by assuming—

"(I) a significant number of different annual percentage rates;

"(II) a significant number of different account balances;

"(III) a significant number of different minimum payment amounts; and

"(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

"(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

"(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

"(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

"(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the "Board") shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking "CONSULTATION OF TAX ADVISER.—A statement that the" and inserting the following: "TAX DEDUCTIBILITY.—A statement that—

"(A) the"; and

(B) by striking the period at the end and inserting the following: "; and

"(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.".

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking "If any" and inserting the following:

"(1) IN GENERAL.—If any"; and

(B) by adding at the end the following:

"(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.".

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

"(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

"(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges."; and

(B) in subsection (b), by adding at the end the following:

"(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.".

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

"(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

"(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

"(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.".

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

"(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

"(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

"(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

"(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

"(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

"(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

"(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

"(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

"(D) DEFINITIONS.—In this paragraph—

"(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

"(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

"(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

"(7) INTERNET-BASED APPLICATIONS AND SOLICITATIONS.—

"(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

"(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

"(ii) the information described in paragraph (6).

"(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

"(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

"(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

"(C) DEFINITIONS.—For purposes of this paragraph—

"(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

"(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

"(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

"(B) The amount of the late payment fee to be imposed if payment is made after such date.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

"(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.".

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Ad-

ministration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term "clear and conspicuous", as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

SEC. 1310. ENFORCEMENT OF CERTAIN FOREIGN JUDGMENTS BARRED.

(a) IN GENERAL.—Notwithstanding any other provision of law or contract, a court within the United States shall not recognize or enforce any judgment rendered in a foreign court if, by clear and convincing evidence, the court in which recognition or enforcement of the judgment is sought determines that the judgment gives effect to any purported right or interest derived, directly or indirectly, from any fraudulent misrepresentation or fraudulent omission that occurred in the United States during the period beginning on January 1, 1975, and ending on December 31, 1993.

(b) EXCEPTION.—Subsection (a) shall not prevent recognition or enforcement of a judgment rendered in a foreign court if the foreign tribunal rendering judgment giving effect to the right or interest concerned determines that no fraudulent misrepresentation or fraudulent omission described in subsection (a) occurred.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

Chairman SENSENBRENNER. This bill is virtually identical to the conference report that accompanied H.R. 2415, which passed the House by voice vote last October and passed the Senate with a veto proof vote of 70 to 28 less than 2 months ago. The bill was unfortunately pocket vetoed by the former President.

H.R. 333 is yet another perfection of legislation that has been the subject of intense congressional consideration and debate for more than 3 years. It is the fruition of 15 hearings that have focused on various aspects of bankruptcy reform since 1997. With respect to H.R. 333's predecessors alone, H.R. 3150, the Bankruptcy Reform Act of '98, and H.R. 833, the Bankruptcy Reform Act of '99, the Subcommittee on Commercial and Administrative Law held eight hearings at which more than 120 witnesses testified. These witnesses represented nearly every major constituency in the bankruptcy community.

Second, it is important to note that the committee has commenced its legislative agenda with a bill that has been marked by bipartisan contribution and cooperation. The House on not one but

on four occasions has registered its unqualified bipartisan support for this legislation's predecessors.

H.R. 333 consists of a comprehensive package of reforms pertaining to consumer and bankruptcy—and business bankruptcy law. It includes provisions regarding the treatment of health care providers, tax claims, enhanced data collection and international insolvencies.

The purpose of this latest round of hearings is to provide an opportunity for the new Congress to examine the bill. We expect this round will be a forum for the expression of all views on all issues.

Today's hearing, in particular, will permit some of us to refresh our recollection and for others to broaden their understanding of why such reforms are necessary, given the current state of the bankruptcy law and the economy. This hearing should help us become better aware of how the bill addresses abuses under the current law, how the bill helps women and children, how the current bankruptcy system impacts on small businesses and nonprofits.

I would now like to turn to my colleague, the gentleman from Michigan, Mr. Conyers, the distinguished ranking member of this committee, for any opening remarks that he may have.

Mr. CONYERS. Thank you, Mr. Chairman. And members, good morning. I'd like the record to show that I was here before the Chairman, which will hold me in good stead in the course——

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS [continuing]. In the course of the coming months. And I'd also like to thank him for deciding and agreeing to have a full day of hearing of our witnesses tomorrow. I think that's very much in the spirit of the good relationships that we have had as we start off the 107th Congress.

Now, let me point out that more of our citizens come into contact with the bankruptcy courts than all other Federal courts combined, and at a time of record consumer debt and with our economy dramatically slowing, there's no doubt that any changes to the bankruptcy code will have a significant impact on our personal and national financial well-being.

So I began these hearings by agreeing that we need to amend the code to prevent individuals who can afford to repay their debts from seeking refuge in bankruptcy. But on the for real side, I think that the Republicans in the committee and the Congress should agree that in our headlong rush to protect creditors we must also make sure that the honest debtors who's truly fallen on hard times can obtain viable bankruptcy relief, and unfortunately, the measure that is currently before us fails the fundamental test, and I have three examples.

One is the means test, in which we decide that we cannot allow the judge's discretion to exempt persons whose financial difficulties, illness, death of spouse, loss of a job, something clearly traumatic and clearly distinguishable from reckless spending, it seems to me we ought to be able to make that much clearer than in this present measure before us.

By subjecting all debtors to the bill's expensive and burdensome disclosure requirements and by failing to allow any appreciable flexibility in IRS expense standards, the bill in effect throws the baby out with the bath water and could truly harm deserving debt-

ors. An example, Charles and Linda Trapp, had this bill been law, faced with medical bills exceeding a hundred thousand dollars because their daughter contracted muscular dystrophy and was forced to live on a respirator, could have been foreclosed from obtaining meaningful bankruptcy relief. I doubt that any member serving on the committee would want to support such a result, but still that's the way the bill is drawn up.

The second point I make is with regard to the bill's impact on women and children. Now, I applaud the sponsors for attempting to enhance the status of alimony and child support payments in bankruptcy, but if that's truly our goal, why does the same legislation also elevate the claims of ordinary creditors and place them in direct competition with alimony and child support payments? There's only so much money to go around, and in small bankruptcy proceedings very little, and every dollar that goes to a credit card company means that much less for child support.

I believe we can figure out a way to guarantee that before a credit card company receives a penny in extra benefits under this bill, the alimony and child support are paid in full.

And finally, in terms of business bankruptcy, I agree with the bill's sponsors who say that we need to streamline and expedite small business cases, but in our haste to act we need to make sure that the new requirements are rational. If we can't make a deadline because of a regulatory process, for example, such as a hearing on an environmental claim, which must take place before a plan can be developed, we should give the court the discretion to waive the deadline. The last thing we want to do is worsen the current economic situation of a businessman by forcing him to liquidate or lay off workers to comply with an arbitrary deadline.

Now, this bill may be a done deal, but let me tell you this. The conference report passed the House and Senate last year. The presidential veto appears to be gone, but I would remind the members that we've never had a real conference, and scores of the provisions of this 419-page bill were added at the last minute without benefit of public scrutiny. And so although this has been the first order of business and I don't have any quarrel with that, I suggest that we soon look at election reform, which cries out for our immediate attention.

If we are going to be working together, I respect the choice of the Chairman. However, I hope you would join me in looking at this bill anew and consider these concerns before we rush to judgment. If you're willing to offer a modicum of compromise and common sense, we will be willing to meet you more than halfway, and our Nation's debtors and creditors alike will benefit.

Thank you for this opportunity.

Chairman SENSENBRENNER. I thank the gentleman from Michigan. Without objection, the gentleman's entire statement will be placed in the record, and without objection, all members may place their statements in the record at this point. Is there any objection? Hearing none, so ordered.

[The prepared statement of Chairman Sensenbrenner follows:]

PREPARED STATEMENT OF THE HONORABLE F. JAMES SENSENBRENNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

I welcome the members and witnesses to the Judiciary Committee's inaugural legislative hearing in the 107th Congress.

In that regard, it is particularly appropriate that we commence our legislative agenda with H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001. This bill is virtually identical to the Conference Report that accompanied H.R. 2415, which passed the House by voice vote last October, and passed the Senate with a veto-proof vote of 70 to 28 less than two months ago. The bill was unfortunately pocket vetoed by the president.

H.R. 333 is yet a further perfection of legislation that has been the subject of intense Congressional consideration and debate for more than three years. It is the fruition of 15 hearings that have focused on various aspects of bankruptcy reform over the past four years. With respect to H.R. 333's predecessors alone, H.R. 3150 (the Bankruptcy Reform Act of 1998) and H.R. 833 (the Bankruptcy Reform Act of 1999), the Subcommittee on Commercial and Administrative Law held eight hearings at which more than 120 witnesses testified. These witnesses represented nearly every major constituency in the bankruptcy community.

Second, it is important to note that the Committee has commenced its legislative agenda with a bill that has been marked by bipartisan contribution and cooperation. The House on not one, but on four occasions has registered its unqualified bipartisan support for this legislation's predecessors.

H.R. 333 consists of a comprehensive package of reforms pertaining to consumer and business bankruptcy law. It also includes provisions regarding the treatment of tax claims, enhanced data collection, and international insolvencies.

The purpose of this latest round of hearings is to provide an opportunity for the new Congress to examine the bill. We expect that this round will be a forum for the expression of all views on all issues.

Today's hearing, in particular, will—for some of us refresh our recollection and for others of us cover new territory—broaden our understanding of why such reforms are necessary, given the current state of the bankruptcy law and the economy. This hearing should help us become better aware of how the bill addresses abuses under the current law, how the bill helps women and children, and how the current bankruptcy system impacts on small businesses and non-profits.

[The prepared statement of Mr. Barr follows:]

PREPARED STATEMENT OF THE HONORABLE BOB BARR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Thank you, Mr. Chairman, and a hearty welcome to our witnesses today with my deepest appreciation for their testimony. Also, Mr. Gekas is to be commended for his tireless leadership and hard work on behalf of bankruptcy reform during the 105th and 106th Congress. It is encouraging that he has once again reported for service on behalf of this crucial issue.

This hearing marks more than six years of careful analysis and review of our nation's current bankruptcy system—a review that began with the creation of the National Bankruptcy Review Commission back in 1994. That Commission spent two years studying our bankruptcy laws and produced a report with numerous recommendations, many of which are memorialized in H.R. 333. The 105th Congress responded to the Commission's report by passing in both the House and the Senate bankruptcy reform legislation. Although the House adopted the Conference Report accompanying that legislation, the Senate was unable to act before that Congress adjourned. During the 106th Congress, both bodies again acted, as they had previously, by overwhelmingly passing reform legislation which this time was presented to President Clinton. Unfortunately, the President did not sign that legislation and it was pocket-vetoed after the Congress adjourned, less than two months ago.

With today's hearing we embark for the third time on the long voyage to bankruptcy reform. Each time we have come closer to port and let us hope that this third time is a charm.

Over the past four years, the Committee has heard from—and considered—virtually every major viewpoint on bankruptcy reform, expressed by more that 120 witnesses. This week's hearings bring together and recapitulate the views and recommendations of this vast array and, hopefully, will provide the basis for early action on legislation that is long overdue.

I wish also to compliment the Chairman of the full Committee, Mr. Sensenbrenner, for the manner in which he responded to the request of the gentleman from

New York, Mr. Nadler, to conduct these hearings. I think it shows his commitment not only to act quickly, but also to act fairly . . . taking into account a broad crosssection of opinion that is inclusive of divergent views.

Mr. Chairman, we must act and we must act now. In the midst of a period of general economic well-being, we continue to be shocked by the rate of bankruptcy filings, which last year topped 1.3 million. These statistics evidence the overwhelming need for comprehensive reform, not just tinkering or minor refinement of the current system.

Our mandate is clear and unequivocal: to reduce abuse and restore public confidence in the integrity of the bankruptcy system. It is my sincere hope that we can work cooperatively to achieve these goals.

Chairman SENSENBRENNER. Without objection, the Chair will be authorized to declare recesses of the committee today at any point. Hearing none, so ordered.

I am now pleased to introduce the witnesses for today's hearing. Mr. Kenneth Beine is President of the Shoreline Credit Union Located in Two Rivers, Wisconsin. He appears on behalf of the Credit Union National Association, which represents more than 90 percent of the 10,500 Federal and State credit unions across our Nation. He is expected to testify on how the current consumer bankruptcy law hurts small businesses, especially nonprofit enterprises like credit unions.

Joining Mr. Beine is our Bruce Josten, Executive Vice-president for Government Affairs at the U.S. Chamber of Commerce. The Chamber is the world's largest federation of business organizations. It represents more than 3 million businesses and professional organizations. He will discuss the economic impact of the current bankruptcy system on our businesses' bottom lines and on our pocketbooks.

Our next witness, Phillip Strauss, is an Assistant District Attorney in the Family Support Bureau of the District Attorney'S Office in San Francisco, California. He appears today on behalf of the California Family Support Council and the California District Attorneys Association. Mr. Strauss will explain how this bill advances the interests of women and children who hold claims for support.

The final witness will be George Wallace, a partner in the law firm of Eckert, Seamans, Cherin & Mellot, LLC. Mr. Wallace speaks today on behalf of the Coalition for Responsible Bankruptcy Laws, which represents a broad spectrum of consumer creditors, including retailers, banks, credit unions, savings institutions, mortgage companies, sales finance companies and financial service providers. Mr. Wallace will highlight the differences between the version of the bill as it originally passed the House in May 1999 and the pending legislation.

Gentlemen, it is my intention during my chairmanship of the committee to swear in all the witnesses before the committee and subcommittee. So would you all please stand and raise your right hand.

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record show that each of the witnesses answered in the affirmative. Without objection, the full statements of each of the witnesses will be included in the record at this point. I would like to ask each of you to summarize your testimony in about 5 minutes, and you will be timed on the little device that is on the table, and after each of you have testified members of the committee will be recognized under the 5-minute

rule in the order on each side in which they appeared, and I will alternate from one side to the other. So there is a premium for coming early.

Mr. Beine, you are first.

TESTIMONY OF KENNETH H. BEINE, PRESIDENT, SHORELINE CREDIT UNION, REPRESENTING THE CREDIT UNION NATIONAL ASSOCIATION

Mr. BEINE. Good morning, Chairman Sensenbrenner and other members of the committee.

I am Kenneth Beine, President of Shoreline Credit Union in Two Rivers, Wisconsin, a $50 million State chartered, federally insured credit union. I appreciate the opportunity to be here to tell you about our concerns with bankruptcies and how they are impacting credit unions, and my credit union in particular. I am speaking on behalf of the Credit Union National Association, CUNA, which represents over 90 percent of the 10,500 State and Federal credit unions nationwide.

We are very pleased that the committee is holding today's hearing on bankruptcy abuse prevention legislation, H.R. 333. Credit unions have consistently had three top priorities for bankruptcy reform legislation: a needs-based formula; mandatory financial education; and maintenance of the ability of credit union members to voluntarily reaffirm their debts. Last year's conference report, while a product of compromise, did a good job of balancing these issues. We strongly urge the 107th Congress to pass this compromise bill as soon as possible. Any further dilutions may result in the bill not addressing the real bankruptcy problems facing America's consumers.

CUNA strongly supports the provisions of H.R. 333 that require a person contemplating bankruptcy to receive a briefing about available credit counseling and assistance in performing a budget analysis, and prohibits a Chapter 7 or 13 debtor from receiving a discharge if the debtor does not complete a course in personal financial management. Any sensible bankruptcy reform should include education requirements to give debtors the tools they need to make wise decisions about filing for bankruptcy and to succeed financially after bankruptcy.

I am confident that early financial education would have helped some young adult members of Shoreline Credit Union to make different decisions than they did. In one case, a couple in their mid-20's decided that they wanted a clean slate prior to getting married. They ran up credit card purchases. One prepaid on an auto loan with us to have the cosigner released, which was the father. Both were employed full time. They both then filed for Chapter 7. My credit union's share of their version of financial planning was a write-off of almost 3,000 in credit card debt plus another couple of hundred dollars on disposal of the auto.

Credit unions strongly believe that reaffirmations are a benefit both to the credit union, which would avoid a loss, and to the member/debtor, who by reaffirming with the credit union continues to have access to financial services and to reasonably priced credit. As not-for-profit financial cooperatives, losses to the credit union have a direct impact on the entire membership due to a potential in-

crease to loan rates or decrease in interest on savings accounts. CUNA was pleased that the original House passed bankruptcy bill in the 106th Congress did not materially amend the reaffirmation provisions. CUNA could not support bankruptcy reform legislation that undermined the ability of credit unions and their members to work out reaffirmation agreements.

Perhaps the best demonstration of the credit union movement's position that reaffirmation benefits both the member and the credit union comes from another real life example. We had a middle aged couple file for Chapter 7 in 1999 due to severe—or several medical problems and a loss of employment. They reaffirmed their automobile loans with Shoreline. Although not required to repay their credit card loans, they were adamant about doing so, and did so quite voluntarily after discharge. I assure you we did not pressure them. Needless to say, today they are members in good standing and they need only ask to be granted future loans.

Credit unions are very anxious to see Congress enact meaningful bankruptcy reform and believe that needs-based bankruptcy presents the best opportunity to achieve this important public policy goal. Credit unions believe that consumers who have the ability to repay all or some part of their debts should be required to file a Chapter 13, rather than have all their debt erased in Chapter 7. Therefore, CUNA supports the needs-based provision that is contained in H.R. 333. This provision was a compromise developed out of the bankruptcy reform bills that received overwhelming support in the 106th Congress.

The 106th Congress strongly supported needs-based bankruptcy and CUNA supported these efforts. Today's hearing shows that the 107th Congress is continuing to move toward passage of bankruptcy abuse reform legislation, and we hope that bankruptcy reform will become law in the coming months.

Thank you. I'll be happy to answer any questions.

[The prepared statement of Mr. Beine follows:]

PREPARED STATEMENT OF KENNETH H. BEINE, PRESIDENT, SHORELINE CREDIT UNION, REPRESENTING THE CREDIT UNION NATIONAL ASSOCIATION

Good morning, Chairman Sensenbrenner and other members of the Committee. I am Kenneth Beine, president of Shoreline Credit Union in Two Rivers, Wisconsin, and I appreciate the opportunity to be here to tell you about our concerns with bankruptcies and how they are impacting credit unions—and my credit union in particular. I am speaking on behalf of the Credit Union National Association (CUNA), which represents over 90 percent of the 10,500 state and federal credit unions nationwide.

We are very pleased that the Committee is holding today's hearing on bankruptcy abuse prevention legislation, H.R. 333. Credit unions have consistently had three top priorities for bankruptcy reform legislation: a needs based formula, mandatory financial education, and maintaining the ability of credit union members to voluntarily reaffirm their debts. Last year's conference report, while a product of compromise, did a good job of balancing these issues. We strongly urge the 107th Congress to pass this compromise bill as soon as possible. Any further dilutions may result in this bill not addressing the real bankruptcy problems facing America's consumers.

Shoreline is a $50 million state-chartered, federally insured credit union. We have a community-based charter, serving everyone who lives or works in Manitowoc County, and have almost 12,000 members. Currently we have $38 million in loans to our members—some $14 million in car loans, more than $16 million in home-secured loans, and almost one-half million in personal loans. In addition, we have issued about 1,600 credit cards for another $1.5 million.

Nationwide, non-business bankruptcy filings were almost 925,000 in the first nine months of 2000. While final full-year data is not yet available, the results from the first nine months suggest that full-year filings will exceed 1.2 million—very close to the 1.39 million record level of 1998. The 2000 total is likely to be about 4 percent lower than in 1999, but viewed in a broader historical context the results are disturbing: *1.2 million filings is double the national total in 1989 and four times higher than the total in 1984.*

Furthermore, the current near-record level of filings has occurred in the best of economic times. The U.S. economy grew at its fastest annual pace in 16 years in 2000 and unemployment rates hovered near 30-year lows throughout the year. As the economy slows, the number of filings will undoubtedly begin to climb. We expect overall filings to grow by roughly 5 percent in 2001, though some industry experts believe the increases will be even higher. In fact, according to SMR Research, bankruptcy filings are predicted to increase nationwide in 2001 by up to 20 percent to record heights for a variety of economic reasons.

Credit unions are quite concerned about bankruptcies in the last few years because they have seen similar trends in the number of credit union members who file. Data from credit union call reports to the National Credit Union Administration (NCUA) suggest that roughly 220,000 credit union member-borrowers will file in 2000. This figure is nearly 66 percent higher than the level of filings we witnessed just six years ago. In addition, CUNA estimates that over 40 percent of all credit union losses in 2000 will be bankruptcy-related, and those losses will total approximately $475 million.

In Wisconsin we expect a 2.5 percent increase in the total number of credit union borrower bankruptcies in 2000. This translates to a total of roughly 4,150 filings.

At Shoreline Credit Union, bankruptcy filings and losses have shown a steady increase since 1996. In 1996 we had 1 member who filed for bankruptcy; in 1997 we had 3; 1998 brought 5 filings; in 1999 it rose to 8; and we hit 10 in 2000. We had only one Chapter 13 bankruptcy filing during the same period. In our case over 60 percent of our charge-offs are Chapter 7 filings.

As the number of member bankruptcies has increased, so too have the dollar losses to my credit union. Our loss from the one bankruptcy in 1996 was only $1,875, but in just one year the losses increased to $9,883—an increase of over 500 percent. As noted in the Fact Sheet attached to my testimony, our bankruptcy losses have doubled each of the past three years.

Shoreline is a careful lender. We cannot afford to be otherwise. We do a good job with scrutinizing loan applications and carefully determining that the applicant is creditworthy before extending credit. We examine credit reports, verify income, and see that a reasonable debt-to-income ratio is maintained by the borrower. We even look at the applicant's disposable income to determine that the applicant can make the payments. We routinely monitor our credit cards and do not make across-the-board increases to the credit limit.

In an effort to combat the number of bankruptcies at the credit union, Shoreline has tightened its credit policies. We now use bankruptcy predictors as part of the credit granting process. We have increased collateral requirements and opt to require a co-signer or co-maker on more loans than in the past. We do not reissue cards to those members who are overextended or have a poor repayment history with the credit union. We are also looking into introducing "risk-based lending" procedures in the near future.

If a member is experiencing financial problems and mentions bankruptcy to us, our loan officers inform the member of the downside to such an action—damaged credit, loss of services—and let the member know that the credit union is there to help them through the financial difficulty. We attend all 341 hearings, where creditors are permitted to question the debtor, and encourage reaffirmations by offering debtor-friendly terms.

CREDIT UNIONS SUPPORT FINANCIAL EDUCATION

Credit unions clearly recognize the value of financial counseling for their members. According to a recent CUNA bankruptcy survey, 70 percent of credit unions counsel financially troubled members at the credit union. A similar percentage of credit unions may also refer members to an outside financial counseling organization, such as the Consumer Credit Counseling Service (CCCS), and many do both.

Shoreline regularly refers members who are experiencing financial difficulties to the local CCCS and have found the program to be beneficial for the members and their families. We also try to educate our members about alternatives to bankruptcy. We address credit issues in our newsletter and recently added a consumer credit session to our annual spring Home Buying Seminar series.

CUNA strongly supports the provision in H.R. 333 that requires a person contemplating bankruptcy to receive a briefing about available credit counseling and assistance in performing a budget analysis. We also strongly support the provision in this legislation that would prohibit the Chapter 7 or 13 debtor from receiving a discharge if the debtor does not complete a course in personal financial management. Any sensible bankruptcy reform should include education requirements to give debtors the tools they need to make wise decisions about filing for bankruptcy and to succeed financially after bankruptcy.

We also strongly support amendments to Section 527 that would require a debt relief agency providing bankruptcy assistance to analyze the benefits of different forms of debt relief with the debtor and to emphasize the need for full and accurate disclosure of assets, liabilities and income.

CUNA is also an active supporter of the *Youth Financial Education Act* (H.R. 61) as introduced by Representatives David Dreier (R-CA) and Earl Pomeroy (D-ND). This legislation would authorize the U.S. Department of Education to provide grants to state educational agencies to develop and integrate youth financial education programs. It would also require these funds to be used to carry out programs for students in kindergarten through grade 12, based on the concept of achieving financial literacy through the teaching of personal financial management skills, and the basic principles involved with earning, spending, saving and investing.

Credit unions recognize that financial education needs to be available early on and before consumers experience financial problems. We are pleased that a financial management training test program is included as part of H.R. 333, as well as the provision encouraging states to develop personal finance curricula for elementary and high schools.

Financial education is a high priority for our national trade association. Last year, CUNA and the National Endowment for Financial Education (NEFE) entered into a partnership whereby credit union volunteers teach financial education in our nation's schools. It is based on the philosophy that discipline in managing money is best achieved if it is learned early in life. Many credit unions had already been working with their local schools, as well as devoting office space for consumer libraries that enable members to use a wide range of financial periodicals, manuals, and books to learn more about money management.

I am confident that early financial education would have helped some young adult members of Shoreline Credit Union to make different decisions than they did. In one case, a couple in their mid-twenties decided that they wanted a "clean slate" prior to getting married. They ran up credit card purchases. One prepaid on an auto loan with us to have the cosigner released. (Both were employed full-time.) They both then filed for Chapter 7. My credit union's share of their version of financial planning was a write-off of almost $3,000 in credit card debt plus another couple of hundred dollars on the disposal of the auto.

In another case, an expectant young mother who lived at home with her parents (with a stable part-time job and a small automobile loan at Shoreline) wanted to quit her job, but didn't want to "burden her child with her credit problems," and asked if we would accept the car in full payment of the loan balance. My loan officer offered to rewrite the loan terms or suspend payments for several months and also informed her that she would still be responsible for the remaining balance on the loan after the sale of the car. She was not interested. She subsequently filed Chapter 7 and turned over the vehicle to us. We incurred about a $3,000 loss.

Even with financial counseling, I recognize there are instances in which bankruptcy may be the only alternative for some members, the way for them to get a much needed "fresh start." But I am not convinced that in either of these examples, bankruptcy was the right solution.

CREDIT UNIONS SUPPORT REAFFIRMATIONS AS A BENEFIT BOTH TO THE MEMBER AND TO THE CREDIT UNION

Because we are not-for-profit financial cooperatives, losses to the credit union have a direct impact on the entire membership due to a potential increase to loan rates or decrease in interest on savings accounts. Credit unions strongly believe that reaffirmations are a benefit both to the credit union, which does not suffer a loss, and to the member/debtor, who by reaffirming with the credit union continues to have access to financial services and to reasonably priced credit. CUNA could not support bankruptcy reform legislation if any amendment would undermine the ability of credit unions and their members to work out reaffirmation agreements.

CUNA was pleased that the original House-passed bankruptcy bill in the 106th Congress did not materially amend the reaffirmation provisions. The bankruptcy bill eventually passed by both houses and presented to the President in December con-

tained a lengthy disclosure statement for reaffirmations, which is contained in Section 203 of H.R. 333. The form is intended to assure that debtors entering into a reaffirmation agreement understand all aspects of signing that contract. CUNA appreciates the work of this committee to recognize in the Section 203 language the unique relationships that credit unions have with their members.

Shoreline, like most credit unions, has a policy that if a member causes a loss to the credit union, services to that member, aside from maintaining a share account, will be withheld. Most credit union members take this seriously and continue to reaffirm on their credit union loans. However, we are beginning to see that some members do not care if they cause a loss and are denied service because they believe they can get credit elsewhere—even though it may be at a higher rate. We continue to see more surprise bankruptcies, where the member is a long-time member and is current on his or her debt at the time the bankruptcy petition is received.

Perhaps the best defense of the credit union movement's position that reaffirmation benefits *both* the member and the credit union is to provide another real life example. We had a middle aged couple file for Chapter 7 in 1999 due to several medical problems and loss of employment. They reaffirmed their automobile loans with Shoreline. Although not required to repay their credit card loans, they were adamant about doing so, and did so quite voluntarily after discharge. Needless to say, today they are members in good standing, and need only ask to be granted future loans.

CREDIT UNIONS SUPPORT NEEDS-BASED BANKRUPTCY

Credit unions are very anxious to see Congress enact meaningful bankruptcy reform and believe that "needs-based bankruptcy " presents the best opportunity to achieve this important public policy goal. Credit unions believe that consumers who have the ability to repay all or some part of their debts should be required to file a Chapter 13, rather than have all their debt erased in Chapter 7. Therefore, CUNA supports the needs-based provision that is contained in H.R. 333. This provision was a compromise developed out of the bankruptcy reform bills that received overwhelming support in the 106th Congress.

Let me tell you about a case at my credit union that illustrates why needs-based bankruptcy and its provisions are needed. A young woman had an automobile loan from Shoreline Credit Union, with her mother as a co-signer. The daughter fell behind on the payments, and the mother offered to take over the loan completely if the credit union was willing to remove the daughter's name from the loan. Since the mother had a good credit and employment history, we agreed to do so. The woman filed for Chapter 7 *before* the due date of the first payment. We lost $6,000. We eventually learned that she had previously filed for bankruptcy and "didn't want her daughter to have the same credit problems."

What this member did borders on fraud. People should not be able to use the bankruptcy code as a tool to avoid inconvenient obligations by transferring their debts to fellow consumers—my members—your constituents. This is wrong. This is abuse.

You have the power to make it right.

Again, let me say that I am pleased you are holding this hearing today. Credit unions are very anxious to see Congress enact meaningful bankruptcy reform and believe that a needs-based bankruptcy system presents the best opportunity to achieve this important public policy goal. The 106th Congress strongly supported needs-based bankruptcy, and CUNA supported these efforts. These hearings that are being held on H.R. 333 show that the 107th Congress is continuing to move toward passage of bankruptcy abuse reform legislation, and we hope that bankruptcy reform will become law in the coming months.

Thank you, and I will be happy to answer any questions.

Chairman SENSENBRENNER. Thank you very much, Mr. Beine. Mr. Josten.

TESTIMONY OF BRUCE JOSTEN, EXECUTIVE VICE PRESIDENT FOR GOVERNMENT AFFAIRS, U.S. CHAMBER OF COMMERCE

Mr. JOSTEN. Chairman Sensenbrenner, Congressman Conyers and members of the committee, thank you for the opportunity to present our views on H.R. 333. At the outset let me state that the U.S. Chamber of Commerce is not here to advocate reducing or eliminating the ability for anyone to obtain the protection of the

bankruptcy system. However, we do believe that the level of abuse that is prevalent in the system today for well-to-do individuals does demonstrate that the system is in need of reform.

The cost of abusive bankruptcy filings hurts everybody who issues and everybody who uses credit. These abuses must be dealt with in a fair and balanced way, and H.R. 333 represents, we believe, such a balance, and I commend Congressmen Gekas and Boucher for their leadership on this issue.

In recent years the number of bankruptcy filings has skyrocketed despite almost 9 years of unprecedented economic growth. In 1994, the number of total personal bankruptcies was less than 800,000. By 1998 they reached a record of almost 1.4 million, or an increase of greater than seventy percent and an increase of nearly 400 percent since 1980. The primary factor driving this incredible rise in bankruptcies is not the need to get out from crushing debt, but instead appears in fact to be a desire to walk away from debts, and under current law there is no requirement that debtors repay their debts, particularly if they have the financial means to do so.

Estimates of the number of abusers does vary, from a low of 3 percent to a high of about 15 percent of filers. Regardless of the actual number, however, thousands of people appear to be abusing the system, wiping out billions of dollars every year.

When some abuse the system, we all pay a price. These abusive filings have serious effects. The losses are passed on to consumers in the form of more restrictive access to credit and/or higher interest rates. In turn, this leads to an even more significant impact on those who are most in need of credit and lower interest rates, those on the lower end of the economic scale.

Additionally, while large banks and credit card companies can anticipate and absorb some of these losses, the hardest hit sector are small businesses. These companies work with slim profit margins and even smaller margin for error. They can ill afford losses associated with abuse of the bankruptcy system.

To combat this abuse, the bankruptcy reform bill institutes a deliberate and straightforward needs-based test, which utilizes, we believe, objective, easy to apply criteria, enabling debtors to quickly and easily determine their eligibility for Chapter 7 protection. Even if they earn more than the median income and demonstrate the ability to pay, the filer may still appeal his case to a bankruptcy judge, who has the final authority to allow a debtor to file in Chapter 7.

Overall this compromise legislation, which has passed the House by voice vote and the Senate by a vote of 70 to 28, represents an effective, bipartisan and reasonable approach to bankruptcy reform and is a significant improvement over current law. The bankruptcy bill also takes steps to keep debtors out of financial trouble in the first place. The bill provides substantial new credit card disclosures for consumers. It requires credit card companies to prominently display a warning about the long-term costs of making only the minimum monthly payment, along with a toll free number that enables credit card holders to learn how many months it would take to repay their balance making only minimum payments.

The bankruptcy bill also gives consumers in financial distress an opportunity to learn about other opportunities for getting out of

debt, aside from bankruptcy, such as credit counseling prior to filing for bankruptcy so that they can avoid these problems in the future.

In conclusion, this bill does not close the door to bankruptcy protection for anyone, and we would not advocate any such proposal. Instead it requires those debtors who earn over the median income, with a demonstrated ability to pay a portion of their debts, to do so.

This bipartisan reform legislation has already passed the House and the Senate. The U.S. Chamber calls upon Congress to act quickly to pass what we consider to be common sense, bipartisan reform to protect both debtors and consumers. Thank you.

[The prepared statement of Mr. Josten follows:]

PREPARED STATEMENT OF BRUCE JOSTEN, EXECUTIVE VICE PRESIDENT FOR GOVERNMENT AFFAIRS, U.S. CHAMBER OF COMMERCE

Chairman Sensenbrenner, Ranking Member Conyers, and Members of the Committee, thank you for inviting me to this important hearing on H.R. 333, Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

I am Bruce Josten, Executive Vice President of the United States Chamber of Commerce. The U.S. Chamber is the world's largest federation of business organizations, representing more than three million businesses and professional organizations of every size, sector and region in the country.

I. Introduction

There are a host of challenges and issues facing the business community, and ending bankruptcy abuse is one of them. Make no mistake, the cost of abusive bankruptcy filings hurts consumers, and every body who issues and uses credit. Congress is moving rapidly to address this issue, and we applaud those efforts.

The U.S. Chamber of Commerce is not advocating reducing or eliminating the protection of the bankruptcy system for those who need its protection—we are strong advocates of the ability to obtain an automatic stay and fresh start. However, the level of abuse that is prevalent in the bankruptcy system clearly demonstrates that the system is in desperate need of reform.

II. Current Abuse of the Bankruptcy System

In recent years, the number of bankruptcy filings has sky-rocketed, despite an historically strong economy: in 1994, the number of total personal bankruptcies was less than 800,000; in 1998, they reached a record of almost 1.4 million, an increase of more than 72 percent.

This figure becomes even more alarming when you consider that a substantial factor driving this incredible rise in bankruptcies is not the need to get out from crushing debt, but a desire to abuse the system and walk away from your debts.

Estimates of the number of abusers vary—from a low of 3% of filers to a high of about 15%. Ernst & Young, in one of the most comprehensive studies in this area, found that roughly 8–10% of the filers abuse the system and could afford to repay at least a portion of their debt.

When some abuse the system, we all pay the price.

These lost dollars are not simply losses that credit card issuers and other lenders suffer and anticipate. In reality, these abusive filings have much more pervasive effects than simply reducing the bottom line of credit card companies:

- The actual cost of these abusive filings is billions of dollars every year.
- These losses from abuse of the system are passed on to consumers in the form of more restrictive access to credit and/or higher interest rates. In turn, this leads to a far greater and more significant impact on those who are most in need of credit and lower interest rates—those on the bottom end of the economic scale.
- Finally, while large banks and credit card companies can anticipate and absorb some of these losses, the hardest hit sector are small businesses. These companies work with slim profit margins and an even smaller margin for error. They can ill afford the astronomical losses associated with abuse of the bankruptcy system.

III. Stemming the Tide of Abuse

To combat this abuse, the bankruptcy reform bill institutes a deliberate and straight forward "needs-based test." This test would require wealthy debtors to work out a repayment plan under Chapter 13 of the Bankruptcy Code.

The needs-based test relies upon objective, easy to apply criteria, giving debtors the ability to quickly and easily determine their eligibility for Chapter 7 protection. For example, if a debtor earns below the median income or cannot afford to repay a significant portion of their debts, then that person can file in Chapter 7, just as under current law. However, only debtors who pass ALL of the criteria set out in the bill may have their access to Chapter 7 restricted. This criteria includes earning more than the median income and possessing the ability to repay a significant portion of their debt. Even if a debtor does meet all of that criteria, the filer may still appeal to a bankruptcy judge, who has the authority to allow a debtor to file in Chapter 7.

H.R. 833 passed this Committee and the U.S. House of Representatives with a vote of 313–108. Its Senate counterpart, S. 625, passed the Senate by an overwhelming vote of 83–14. These two major bills took similar but different approaches to the needs based test: to identify debtors who have the ability to repay some portion of their debts out of future income, while enabling those who are in need protection quick, easy and unfettered access to the system.

Although the House and Senate bills took similar approaches, the needs-based test that is reflected in H.R. 333 is a fair compromise between the House and Senate bills. While there are different provisions, compromise requires give and take. Overall, this legislation represents an effective, bipartisan and reasonable approach to bankruptcy reform, and is a significant improvement over current law.

IV. Specific Provisions

This important legislation is a dramatic improvement over current law in a number of areas. One of the most significant is the protection that it provides to consumers, particularly women and children.

Under current law, the filing of a bankruptcy petition bankruptcy stops all collection efforts, *including those of the dependent children of debtors.* Additionally, child support creditors are often forced to stand in line for their payments behind lawyers and other creditors. The bankruptcy reform legislation would address these and other short-comings in current law by moving child support to FIRST priority and by allowing child support collection efforts to continue even after a bankruptcy petition has been filed. It would also take substantial steps to further enhance the ability of parents with dependent children to collect child support. It is worth noting that many advocates for child support, such as the National District Attorneys Association, the National Association of Attorneys General, and the National Child Support Enforcement Association (which represents more than 60,000 child support professionals across the United States), have referred to these and other critical provisions in the bill as long overdue.

Additionally, the bankruptcy bill will give consumers in financial distress an opportunity to learn about other opportunities for getting out of debt aside from bankruptcy , such as credit counseling, prior to filing for bankruptcy. The bill will also inform debtors of the consequences of bankruptcy, along with instructions on how to manage their finances, so that they can avoid these problems in the future.

Finally, the bill provides substantial new credit card disclosures for consumers—some of the most significant pro-consumer legislation considered by the Congress in a decade—to enable consumers to avoid getting into financial trouble. It requires credit card companies to prominently display a warning about the long-term costs of making only the minimum monthly payment on credit card statements, along with a toll-free number that enables credit card holders to learn how many months it would take to repay their balance making only minimum monthly payments, and the costs of doing so. It also requires disclose about so-called "teaser" rates, low introductory rates that increase after a certain period of time, such as when they end and what the subsequent rate will be.

V. Conclusion

This modest, bipartisan reform legislation has already passed the House by voice vote, and the Senate by the overwhelming vote of 70–28. The U.S. Chamber of Commerce calls upon Congress to act quickly to pass this common-sense, bipartisan reform to protect debtors and consumers.

Chairman SENSENBRENNER. Thank you very much. Before recognizing you, Mr. Strauss, I would like to recognize the gentleman from Michigan to introduce a new member of the committee.

Mr. CONYERS. Thanks, Mr. Chairman. I'm delighted to introduce to the members as of probably this morning a new member to Judiciary Committee on the Democratic side, Attorney Steve Schiff who was in a previous life a U.S. attorney—Adam Schiff, excuse me, Adam Schiff, who was a U.S. attorney, who was the chairman of Judiciary Committee in the Senate. He was a State senator for many years and has a very admirable record. He hails from Pasadena, California, and as a result of the Democratic Caucus deliberations this morning, he is now our newest and probably only addition that we will have as it currently stands. And so I present him to you, Mr. Chairman, and to the members and welcome him.

Chairman SENSENBRENNER. The Chair would like to join with Mr. Conyers in welcoming the gentleman from California for 2 years of education.

Chairman SENSENBRENNER. Mr. Strauss.

TESTIMONY OF PHILIP L. STRAUSS, PRINCIPAL ATTORNEY, SAN FRANCISCO DEPARTMENT OF CHILD SUPPORT SERVICES, REPRESENTING THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND THE CALIFORNIA FAMILY SUPPORT COUNCIL AND THE NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION

Mr. STRAUSS. Mr. Chairman and members of the committee, good morning. My name is Phil Strauss and I am a principal attorney and head of the Legal Division of the Department of Child Support Services in San Francisco. I appear in addition to what was already announced on behalf of the National Child Support Enforcement Association, which is the largest—largest organization in the country whose professionals practice in the fields of child support establishment and enforcement.

My background is for 28 years I have been an Assistant District Attorney in San Francisco, 25 of which have been spent in the Family Support Division. That division is now an independent division known as the Department of Child Support Services, and for the last 13 years I have specialized in the enforcement of child support during bankruptcy. I have litigated issues. I have written about them, and I teach bankruptcy.

I'm here to discuss the effect H.R. 333 will have on the ability of custodial parents to survive after a noncustodial parent has filed a bankruptcy petition. I am very happy that this committee has invited me to speak today because it is important that you understand the despair that I see every day when a bankruptcy petition stops child support debt in its tracks. I see far too many custodial parents, 95 percent of whom are women, in very difficult circumstances with little or nothing to cushion their fall when child support suddenly ceases. I am the one who has to look these people in the face and say there's just nothing I can do to get you the support which the law says you are entitled to immediately, if at all. Much is needed to be done to protect this most vulnerable population, and I think this bill will do it.

My solution to the problem is to ask you to change the Bankruptcy Code in significant ways. Based upon my experience, I propose nine changes in the code to ensure that child support obligations would be paid during bankruptcy and that they would be

given significant preferential effect. These proposals were originally introduced as part of the—as part of the bankruptcy reform legislation in the 105th Congress by Congressman Gekas, and I can say that there is a huge amount of the child support community that's quite grateful to him, and those particular provisions have been polished and enhanced by child support attorneys and myself in consultation with the National Association of Attorneys General. The culmination of that work is the child support provisions in section—of H.R. 333, sections 211 through 217. Additional enhancements have been made in sections 218 and -19.

Just briefly what these provisions do, or rather the principles in drafting these provisions were sixfold. One is we wanted them to be self-executing. This reduces the cost of litigation. It is a better and more efficient use of court time and public resources and it protects custodial parents who would not otherwise be able to litigate this issue because it would be too expensive or it would attempt to litigate these issues and be lost in the morass of rule s and regulations that bankruptcy courts, you know, need to have.

Secondly, the provisions ensure that child support payments will not be interrupted by bankruptcy to the greatest extent possible. This in and of itself is worth passing the entire act—the entire bill as far as women and children are concerned, I believe. Stopping child support is one of the most hurtful things that can be done to a family, and it is one of the most difficult to deal with because of the current Bankruptcy Code.

As members of the child support enforcement community, we also wish to eliminate or at least minimize the statutory conflicts between the Bankruptcy Code and the Federal Child Support Program, and we wanted to establish the clear recognition of the primacy of child support and that all generally recognized child support debts should be entitled to special treatment in the code. The bankruptcy process should be structured so that the debtor would be able to liquidate his non-dischargeable debt to the greatest extent possible within the context of the bankruptcy and thus allow the debtor really to obtain as much as possible a true fresh start.

And also, the code would assume—would assure that support owing to a family would be paid before any payments would be made to the government. Under current law, when a bankruptcy petition is filed, support frequently ceases. Debtors can emerge from the bankruptcy process without paying—and get a discharge without paying any ongoing support, liens securing the payment of support can be lost and payments made during the preference period, which is 90 days prior to the filing of the bankruptcy, can be recovered by the trustee, and I am talking about child support payments made during that period, can be recovered by the trustee and distributed to general creditors and the debtor will still owe that child support obligation since it's non-dischargeable.

So with that in mind, I thank the committee for allowing me to speak. I'm here to answer any questions you have and I'd be glad to do so.

[The prepared statement of Mr. Strauss follows:]

PREPARED STATEMENT OF PHILIP L. STRAUSS, PRINCIPAL ATTORNEY, SAN FRANCISCO DEPARTMENT OF CHILD SUPPORT SERVICES, REPRESENTING THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION AND THE CALIFORNIA FAMILY SUPPORT COUNCIL AND THE NATIONAL CHILD SUPPORT ENFORCEMENT ASSOCIATION

I welcome the opportunity to discuss the effect the "Bankruptcy Abuse Prevention and Protection Act of 2001" will have on the collection of child support and alimony when a support debtor has filed a petition for relief under the Bankruptcy Code. For the past 28 years I have been employed as an attorney by the City and County of San Francisco, the last 25 of which have been spent establishing and enforcing support obligations in the Family Support Bureau of the Office of the District Attorney. At the end of last year the Bureau became the Department of Child Support Services, an independent county agency operated in compliance with the federal child support program under Title IV-D of the Social Security Act. For the last 13 years I have specialized in the collection of support during bankruptcy and have taught this subject to attorneys both in California and nationally. I have litigated bankruptcy support cases before the bankruptcy court, the district court, the Bankruptcy Appellate Panel, and the Ninth Circuit Court of Appeals.

Three years ago I drafted amendments to the Bankruptcy Code which were incorporated in bankruptcy reform legislation of the 105th and 106th Congresses. The language of those amendments was subsequently refined in a collaborative effort between myself and other child support attorneys in coordination with Karen Cordry of the National Association of Attorneys General. These amendments were adopted pretty must verbatim in the bankruptcy reform conference reports of the 105th and 106th Congresses and in the current bill, H.R. 333. It is my opinion, and the opinion of every professional support collector with whom I have discussed the issue, that the support amendments contained in Sections 211 through 219 of H.R. 333 will enhance substantially the enforcement of support obligations against debtors in bankruptcy. These enhancements will also result in a more efficient and economical use of attorney and court resources.

The support amendments have been endorsed by many individuals and organizations, including three national associations whose members consist of persons whose primary professional duty in the enforcement of support obligations in the federal child support enforcement program. These organizations include: the National Child Support Enforcement Association, the National Association of Attorneys General, and the National District Attorneys Association. In giving my testimony on this issue, I am authorized to speak on behalf of the California District Attorneys Association and the California Family Support Council. The membership of these organizations carries out the federal child support enforcement program in California.

During the past 13 years in which I have taught the subject of support enforcement during bankruptcy, I have appeared continuously in bankruptcy court, written a manual for support attorneys to use when dealing with bankruptcy cases filed by support debtors, counseled support attorneys in handling bankruptcy cases , and have reviewed virtually every court opinion written on this subject since the enactment of the Bankruptcy code in 1978. Based on this experience, I developed what essentially became a "wish list" of amendments to the Bankruptcy Code aimed at facilitating support collection from bankruptcy debtors. This wish list is reflected in sections 211–214 and 216–217 of H.R. 333. In this statement I will discuss not only how these amendment affect support debtors during bankruptcy, but what they mean in the larger context of support enforcement generally.

Before discussing specific sections, I would like to comment on the overall effect of these amendments. I believe they achieve the following: (1) a reduction in the need to appear in bankruptcy court and the consequential reduction in the cost of litigation; (2) a reduction in the current conflicts in law and policy between the Bankruptcy Code and the federal child support enforcement program [Social Security Act, Title IV-D]; (3) reasonable insurance that significant support enforcement mechanisms will not be interrupted by the bankruptcy process; and (4) a clear recognition of the policy that all generally recognized support debts are entitled to a preferential treatment in bankruptcy.

The most important amendment is found in section 214 which removes several significant collection remedies from the effect of the automatic stay. Of these, the most valuable by far, is a provision allowing the continued operation of an earnings withholding order as defined in the Social Security Act. [42 U.S.C. 666(b)]. Since state courts or administrative agencies have already determined the appropriate level of support and arrearage payment, the removal of withholding orders from the reach of the stay will require a support debtor to design his or her bankruptcy plan to accommodate support debts—the most serious and primary of all financial obligations. Under current bankruptcy law the reverse is true. The support creditor is

often forced to take a back seat to other ordinary creditors when a support arrearage is paid pursuant to a bankruptcy plan.

The importance of this amendment cannot be underestimated. Federal law requires all support to be paid by employees through wage withholding orders. Such orders account for the lion's share of support collection receipts.[1] Under current bankruptcy law, when a debtor files for protection under Chapters 12 or 13, the collection of even ongoing support is stayed. The economic detriment to a debtor's family, which is not receiving public assistance, can be devastating. Surely sound public policy must recognize that there are some obligations which must be met, even when a debtor should be relieved from obligations to general debtors. Of these, none can be greater than the payment of support needed for the health and welfare of the debtor's family.

All too often a domestic court may reduce the current support order to accommodate the payment of arrears. In such cases the total amount of payment through the assignment order may not only be helpful, but crucial, in providing for the daily needs of the debtor's spouse, former spouse, and children.

This amendment, therefore, not only insures that the payment of support by wage earners will not be interrupted by bankruptcy, it will also avoid the need to entangle the debtor's family in the bankruptcy process. Under current bankruptcy law the support creditors would have to seek relief from the automatic stay in bankruptcy court in order to re-institute the earnings withholding order *and* file a claim to collect arrearage payments from the bankruptcy trustee. And even if these procedures were preformed by an attorney in the child support program, delays in support enforcement would be inevitable and the outcome unsure.

In addition to the removal of the earnings withholding process from the automatic stay, other federally mandated collection processes would be exempt under section 214 of the bill. These include the interception of the debtor's income tax refunds to pay support arrears; the license revocation procedures for those debtors who are not paying support; the continued enforcement of medical support obligations; and the continued reporting of support delinquencies to credit reporting agencies.[2]

Perhaps the second most important and useful amendment to the Code is found in section 213 of the bill which prevents a debtor from obtaining confirmation of a bankruptcy plan and a subsequent discharge if that debtor has not made full payment of all support first becoming due after the petition date. This section is significant for two reasons. First it will prevent a support debtor from paying other debts at the expense of familial obligations. And second, this provision is self-executing. Neither the support creditor, an attorney for the creditor, nor a public attorney will have to seek enforcement of this provision in bankruptcy court.

In addition this section allows a support creditor to seek dismissal of an ongoing plan at any time the debtor fails to pay the on-going support payment. These provisions working together, provide crucial check points a three stages of the bankruptcy process. At the earlier confirmation stage, the support debtor will be reminded that payment of all important current support obligation is a critical step in getting approval of a bankruptcy plan as well as the lesson that payment of this obligation is essential to financial rehabilitation. It will set an example for the debtor early in the bankruptcy process. Further, since the goal of the debtor is to obtain a discharge of debt, this debtor will, at the outset of his case, understand that the failure to meet continuing support obligations will also doom the prospects of discharge at the end of the bankruptcy process. Finally, the creditor will have the option to seek a dismissal of the case during the process if the support debtor ceases to honor payment of on-going support obligations.

Section 211 of H.R. 333 provides a definition of support obligations. This definition is then incorporated in other areas of the Code. The purpose of this definitional addition is to streamline the provisions of the Code dealing with support debts and to give all debts generally recognized as deriving from support obligations similar treatment in the Code. This provision will not necessarily change current law, but it will resolve many conflicting bankruptcy decisions which turn upon very technical interpretations of what a support debt is and what it might not be. Most significantly, highly arcane decisions concerning the dischargeability of such debts will be made moot and litigation over these issues minimized. Finally, support debts of all

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[1] According to the Committee on Ways and Means, U.S. House of Representatives, 1998 Green Book, p. 572, 56% of support collected in the last reported year (1996) was collected through the wage withholding process.

[2] In addition to the exclusion of enforcement remedies from the reach of the automatic, other family law issues are excluded from the stay, specifically (1) litigation of child custody and visitation issues, and (2) issues relating to domestic violence.

kinds will be subject to the same dischargeability, lien avoidance, and preference recovery rules.

Under current law only a lien securing unassigned support is exempted from statutory lien avoidance procedures. With the new definition of support in section 211, all support obligations will be excepted from lien avoidance procedures. Not only will this change protect the tax payer when the debt is assigned to the government, it may also benefit the support creditor/parent who assigned the debt if the debt becomes unassigned under the new assignment rules established in the 1996 welfare reform legislation (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 or PRWORA). For example, under current bankruptcy law if a support debtor files a Chapter 7 case when his support obligation has been assigned to the government under the Social Security Act, the bankruptcy court may rule that a lien securing this debt impaired the debtor's homestead exemption and then void it. The debtor would then be free to sell the property. If this property were the only known asset of the debtor, the debt would become uncollectible. If the support creditor then ceased receiving public assistance, that debt, now unassigned would likewise be uncollectible. However, under section 216 of H.R. 333, the lien would not be removed and the support debt would remain secured and thus collectible.

Under current bankruptcy law if the debtor pays support during the 90 day period prior to filing a bankruptcy petition, the bankruptcy trustee cannot recover this payment for the benefit of the bankruptcy estate unless the debt is assigned. Under section 217 of H.R. 333 the trustee would not be able to recover any support paid by the support debtor during the preference period. This rule significantly benefits the debtor because this debt is not dischargeable and would otherwise remain owing if recovered for the estate.

No more significant statement of public policy has been made concerning the primacy of the payment of support debts than that found in section 212 of H.R. 333. Here the Code provides child support with the first priority for payment of unsecured claims. This section is divided into two sub-priorities so that distribution within the child support priority will go first to the family of the debtor, then to the government after the family has been paid, if the support has been assigned.

When these proposed amendments are considered, it is not difficult to see why support enforcement professionals so strongly endorse them and are so thankful to the sponsors of this legislation for their inclusion. Many of these amendments literally remove bankruptcy as an obstacle to support enforcement, and they do so in a self-executing manner. Consequently, no claims or stay litigation is required to continue the collection of a support debt when an earnings withholding order is feasible; no confirmation litigation is be needed when the debtor is not paying a postpetition preconfirmation support order; and no dismissal or stay relief litigation would be required to insure postpetition support was paid before a discharge could be granted.

Avoiding bankruptcy court is important to support creditors and their attorneys. Even when a support creditor is financially able to hire a bankruptcy attorney, litigation of support issues in bankruptcy is likely to eat up large chunks of recoverable support. Most support creditors would be totally lost if required to navigate through the complex set of rules and procedures to seek relief in bankruptcy court without counsel. And government support attorneys are generally ill equipped to litigate bankruptcy issues and do not have the luxury of referring the case to bankruptcy specialists. After all, it should be remembered that the law of bankruptcy is a speciality with its own bar, judges, code, rules, procedures and, indeed, its own language.

Some criticism has been raised that bankruptcy reform would be detrimental to women and children because it would pit them against banks and credit card companies for collection of nondischarged credit card debt. Although this argument has some surface logic, no support collection professional that I know believes this concern to be serious. Of course, if support and credit card creditors were playing on a level field, banks with superior resources might have an advantage. However, nonbankruptcy law has so tilted the field in favor of support creditors that competition with financial institutions for the collection of post-discharge debts presents no problems for support collectors.

In the first place the ubiquitous earnings withholding process for support collection absolutely trumps any financial institution's attempt to collect this debt from the debtor's wages or salary since withholding orders have priority, *no matter when issued or served*. In most cases if the support collection was 25% or more of the debtor's wages, the Consumer Credit Protection Act would lock out the financial institution from collection of its debt from the debtor's wages. Thus, with respect to creditors of wage earners, there is no conceivable way that the existence of postpetition

credit card debt, dischargeable under current law, would adversely affect the collection of support.

Even when the debtor is not a wage earner, support creditors have numerous and highly significant advantages over other creditors. While this list is certainly not exhaustive, support creditors have the following remedies not possessed by other creditors, and certainly not credit card or other financial creditors: (a) support debts are already reduced to judgments and have the advantages of court process to collect judgments; (b) *tax intercept* collection; (c) interception of *unemployment benefits*/worker compensation benefits; (d) *free* or low cost *collection services* by the government; (e) *license revocation* for nonpayment of support; (f) free or low cost *interstate collection*, including interstate wage withholding and interstate real property liens; (g) *criminal prosecution or contempt actions*; (h) no avoidance of liens securing the support debt; (i) *federal collection* and *prosecution* for support debts; (j) *denial of passports*; (k) collection from otherwise protected sources: ERISA plans, trusts, and federal remuneration.

To say that these advantageous remedies will necessarily result in the collection of support is not possible. Many support debtors are actually quite skillful evaders of support obligations. These same people will probably be just as adept at avoiding collectors from financial institutions. The point to be made, however, is not that support debts will necessarily be collected after bankruptcy, but that the collection of support debt is in no way hampered simply because credit card debt has survived bankruptcy and financial institutions are going to attempt to collect it.

Some have argued that after bankruptcy a support debtor will be inclined to pay credit card debt to retain a credit card and not pay support. Of course, this argument assumes that after bankruptcy the debtor will find an institution willing to extend credit. Even if one did, it seems unlikely that retention of a credit card would be more important than retention of a driver's license, staying out of jail, or keeping a passport.

The bottom line as I see it in analyzing H.R. 333 with respect to its effect on the collection of support is to note that the advantages explicit in the bill far outweigh any speculative concerns that some debtors might not pay support if they are left with credit card debt after bankruptcy. What concerns support collection professionals the most in carrying out their duties is not competition with financial institutions *outside* bankruptcy, but competition with other general creditors, including financial institutions, *during* bankruptcy. H.R. 333 readjusts the relative strength of support creditors during the bankruptcy process, giving them meaningful, even crucial, assistance. The support provisions of this bill certainly justify the praise given them by virtually all of the national public child support collection organizations in this country.

[NOTE: Additional material submitted by Mr. Strauss is not reprinted here but is on file with the House Judiciary Committee.]

Chairman SENSENBRENNER. Thank you very much, Mr. Strauss. Mr. Wallace.

TESTIMONY OF GEORGE WALLACE, ECKERT, SEAMANS, CHERIN & MELLOT, REPRESENTING THE COALITION FOR RESPONSIBLE BANKRUPTCY LAWS

Mr. WALLACE. Thank you, Chairman Sensenbrenner. Chairman Sensenbrenner, Congressman Conyers, members of the committee. My name is George Wallace. I represent the Coalition for Responsible Bankruptcy Laws. This is a broad coalition of consumer creditors, including banks, credit unions, savings institutions, retailers, mortgage companies, sales finance companies and diversified financial services companies.

Basically, there are two points I want to make today. First of all, the need for this legislation is great. This is balanced legislation, but there is a substantial problem in the bankruptcy system that needs to be addressed. This legislation addresses it.

Second of all, this is compromise legislation. This legislation has been before the Congress for now it's going on its fifth year. It has been pull and tugged, twisted and changed over a long period of

time. It's at the end of the process. The bill really has been perfected at this particular point.

First of all, with regard to the first point, the need for the legislation. I think the remarks prior to mine have pointed out to you the basic problems there are with the bankruptcy system. Basically, first of all, we are seeing bankruptcy filings going up. They have recently gone down a little bit, but over time they have gone up. They have increased enormously since 1978. Since 1994 they have doubled. We're having a major increase in the number of bankruptcy filings. What that does is that puts tremendous pressure on the bankruptcy system and it increases the inefficiencies and abuse that are inherent in the system.

Those inefficiencies and abuse result in bill paying Americans paying more for consumer credit than they need to and it's a substantial amount of money. It ranges from on one estimate, the lowest estimate is 1.2 billion a year, to our highest estimate so far is 5 billion a year. Of course as the filings continue to go up in number, that number will get larger. The need for reform, therefore, is great and it is necessary that this legislation be looked at closely and evaluated from the point of view of whether or not it will accomplish effective reform.

Moving to the second point, I want to stress that this is compromise legislation. It was originally introduced in the 105th Congress. Congressman Gekas, Congressman Boucher were sponsors. There were many other cosponsors. It passed the House overwhelmingly. It did not get through the Senate that year, ran out of time. It was reintroduced again in the 106th Congress. It passed the House again after a substantial change. It was amended in subcommittee, committee and on the floor. It went over to the Senate where it had the same sort of experience. It has been changed. It then went into a long negotiation during the year 2000. It ran from February until July in which the bill was changed yet again. Substantial changes were made here. Compromises were made.

Let me point out that the appendix to my testimony, my written testimony, goes over the changes that occurred in H.R. 833 between the time it first passed the House and the second time it passed the House when it came back after the negotiations with the Senate. Significantly, the changes include some, what I will call, softening or weakening of the means test, significant softening and weakening of the means test, as well as an addition of two very important consumer protections, reaffirmation disclosures and regulation, were put in that are very significant, as well as a very burdensome and significant series of regulations of credit card solicitations and payment statements, amendments to truth in lending.

So this bill has gone through a substantial refinement and change over a period—a long period of time, and it is at the point now where it is reaching the end of the process. At least that is hoped for.

To be frank, this compromise process has produced at least one flaw which seriously concerns us and impacts the hoped for effect of these reforms. As part of last minute negotiations with the White House, a provision was added which clearly encourages abuse of use of Chapter 7. This is the provision which changes

present law so that no one with respect to the means test, no one, not even the United States trustee, who is a government official, he's an employee of the United States Justice Department, not even that official can ask a court to dismiss a debtor's Chapter 7 case based upon the means test. This changes present law. This changes present law, as my written materials point out. The First Circuit, for example, not considered a conservative circuit by any means, has held that a debtor who is below median income deserved to have his case dismissed under certain circumstances because he had ability to pay. That would be changed by this—by the legislation in its present form.

Of course, we're also aware of the other disclosure provisions that were added in the most recent negotiations between the House and the Senate; that is, the reaffirmation and truth in lending changes, but even so, balancing all those changes——

Chairman SENSENBRENNER. Mr. Wallace, your time has expired, and we have—that thing is not working, and we're going to get it fixed in a couple of minutes.

[The prepared statement of Mr. Wallace follows:]

PREPARED STATEMENT OF GEORGE WALLACE, ECKERT, SEAMANS, CHERIN & MELLOT, REPRESENTING THE COALITION FOR RESPONSIBLE BANKRUPTCY LAWS

Chairman Sensenbrenner, Congressman Conyers and Members of the Committee, thank you for this opportunity to express my views on consumer bankruptcy and H.R. 333, The Bankruptcy Abuse Prevention and Consumer Protection Act of 2001.

My name is George Wallace. I am a member of the law firm of Eckert Seamans Cherin & Mellott LLC and am resident in the Washington, D.C. office.

I represent the The Coalition for Responsible Bankruptcy Laws, a broad coalition of consumer creditors, including banks, credit unions, savings institutions, retailers, mortgage companies, sales finance companies and diversified financial services providers.

The Coalition strongly supports H.R. 333 because it will take significant steps toward reforming today's consumer bankruptcy laws. Those laws are fundamentally flawed and the need for reform is urgent. Today, over 1.2 million consumer debtors file for bankruptcy relief. That rate of filing has almost doubled over the last decade, and gone up almost five times since the last sweeping revision to our bankruptcy laws occurred in 1978. Informed experts predict that by the end of this year, consumer bankruptcy filings will increase 10% to 20% from levels seen in 2000, and by 2003 will be as high as 1.7 million.

There are too many additional Americans each year filing for bankruptcy to permit continuation of the present system. Bill paying American consumers are paying for others of their number who run up large debts, and then use bankruptcy irresponsibly and without regard for its original purpose. As now administered, bankruptcy allows these debtors to walk away from their debts when they have the ability to pay at least a significant portion of them. The amounts involved are large. We estimate that each year over $44 billion of debt is discharged in consumer bankruptcy cases. These losses are recovered in the price American consumers pay for credit, an average of $400 for each American household. We also estimate that upwards of $4 through 5 billion of these losses could be saved with the reforms underlying H.R. 333.[1] Yet without legislative intervention this year, the situation can only worsen. As more Americans recognize that their neighbors are using bankruptcy, they too are tempted to file bankruptcy and take the easy way out.

At the same time, it is important to remember that this legislation is clearly the result of extensive bipartisan compromise over more than four years. Reform legislation was originally introduced in the 105th Congress. After extensive compromise and revision, the bill sponsored by Congressmen Gekas, Boucher and many others

[1] Estimates on the number of debtors who use the system and the amount they could have paid ranges from a low of 30,000 debtors a year and approximately $1.2 billion per year based on a study by the debtor oriented American Bankruptcy Institute to approximately 100,000 per year and nearly $4–5 billion based on studies by Ernst & Young.

cleared Conference Committee and passed the House with over 300 votes, but it ran out of time in the Senate.

At the beginning of the 106th Congress, Congressman Gekas reintroduced as H.R. 833 the Conference Report from the 105th Congress. H.R. 833 was extensively amended in Committee and on the floor. It eventually passed the House with a large bipartisan majority. On the Senate side, Senator Grassley introduced a version of the Conference Report as S. 625. Likewise after extensive amendment, the Senate passed its bill with extremely strong bipartisan support. H.R. 833 and S. 625, however, had significant differences. After extensive compromises between House and Senate negotiated from February until the end of July, 2000, a compromise bill was worked out which became H.R. 2415 in the last days of the 106th Congress. It passed the House by voice vote and the Senate with a veto-proof majority. However, President Clinton pocket vetoed the legislation and the 106th Congress ended without enactment.

The bill before you today is the compromise legislation that passed the House as H.R. 2415 at the very end of last session. We summarize the most important changes that were made to H.R. 833 as it originally passed the House in the attached Appendix.

To be frank, the compromise process introduced at least one flaw which seriously dilutes the intended reforms. As part of last minute negotiations with the White House, a provision was added which clearly *encourages* abusive use of chapter 7 by those who have the ability to repay a part of their debts. This is the provision which changes present law so that no one, not even *the United States Trustee, an employee of the United States Justice Department*, can ask a court to dismiss a debtor with clear ability to pay from chapter 7 unless the debtor's income is over State median income. For example, this provision would change the result in a recent case decided by the First Circuit Court of Appeals. In that case, a young, single individual earning a steady income and living at home with no dependents or living expenses, was barred from using chapter 7 to discharge extensive consumer unsecured debts he had run up.[2] His income was under the State's median income.

Other provisions impose extensive new disclosures and regulation on the consumer credit industry. The bill creates extensive, new regulation for reaffirmation agreements. While we want our customers who reaffirm to be fully informed and to take into account the impact the reaffirmation will have on their budget, we also are concerned that the compliance cost will be significant—cost we pass on to our customers in higher credit prices. We have similar concerns about the new Truth in Lending disclosures for credit card solicitations and monthly statements imposed by the legislation.

Balancing this significant additional regulation of the credit industry, H.R. 333 contains several badly needed improvements to consumer bankruptcy law, and we support this legislation because of these provisions. Most importantly, it takes steps to require responsible use of bankruptcy's broad sweeping remedies. The legislation requires borrowers whose incomes are over State median income to repay some part of their debts if they have the ability to do so, imposes new forms of consumer protection on both the bankruptcy process and on consumer credit, recognizes the importance of secured credit to Americans, and significantly improves the position of women and children who are dependent upon child support, alimony, and marital property settlements. In a change we believe will better help debtors having debt difficulty to understand their options, the bill requires every individual debtor to go to a brief consumer credit counseling session either before filing or shortly after filing bankruptcy, and gives debtors who do file for bankruptcy new, informative disclosures about the bankruptcy process, what they can expect from it, and how much and when they are going to have to pay for it.

Of course, there are those who oppose this legislation. As someone has said, a true compromise satisfies no one, and this legislation is clearly the product of hard fought compromise. Many continue to think this legislation does not go far enough. Others claim it goes too far.

The complaints of the critics should not obscure what is happening here. The critics are those with a vested interest in the system staying exactly as it is. They do not want reform. The American people, on the other hand, recognize all too clearly that bankruptcy is being used by some people to evade their responsibilities. In repeated polls of the public, they respond that bankruptcy reform is needed and necessary to limit bankruptcy to those who need it.

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[2] *United States of America v. Lamana*, 153 F.3d 1 (1st Cir. 1998). Some Circuit Courts have ruled that a court may not dismiss solely based on ability to pay, but must consider the "totality of circumstances." *See, e.g., In re Green*, 934 F.2d. 568 (4th Cir. 1991).

Make no mistake about the point I am making. We support the availability of consumer bankruptcy relief. H.R. 333 would continue to make available to every American, on demand, the ability to go into bankruptcy, obtain the benefit of the automatic stay and a discharge for unsecured debts, and emerge with a "fresh start". Nothing in this bill will prevent a person from getting prompt, effective and compassionate bankruptcy relief. Those who claim the contrary are simply uninformed.

But reform is urgently needed. Today's present bankruptcy system is really two systems.

- There is the system for those who are overburdened with debt and are responsibly using the bankruptcy system. This is the vast majority of bankruptcy users. By our estimates, it is 80% to 90%.
- There is another group which uses the bankruptcy system irresponsibly. These people usually have a great deal of debt. But they also have significant income and use the bankruptcy system to evade their personal responsibilities. We estimate this group to be no larger than 10% to 20% of the bankruptcy users.

In other words, bankruptcy is a good social program which provides benefits to Americans, but which is sometimes used inappropriately. We do not tolerate abuse of other social programs such as Medicare and welfare, nor should we tolerate abuse of bankruptcy.

How can you misuse the bankruptcy system? Let me give you a few examples.

- Do you owe $40,000 of unsecured debt but have a comfortably steady income so that you could repay it over a few years, perhaps with the help of credit counseling? File chapter 7 and discharge that $40,000. Enjoy your comfortably steady income.

H.R. 333 addresses this misuse with the "ability to pay" provisions of section 102 as long as the debtor's income is in excess of the State median income level.

- Owe a $40,000 property settlement payment to an ex-wife? Or perhaps as part of that property settlement you are supposed to pay the mortgage every month on the house she occupies with the children. File chapter 7. If she doesn't hire a lawyer and file an action to declare the obligation you owe her nondischargeable, it will be discharged. If she does, dismiss the chapter 7 and file a chapter 13. You can discharge property settlement obligations in a chapter 13 proceeding.

H.R. 333 addresses this misuse by making property settlement agreement obligations nondischargeable. No longer will the bankruptcy court be able to undo the results of domestic relations court.

- Have you defrauded your creditors? Use chapter 13 to discharge the debts you incurred by fraud.

H.R. 333 stops this abuse. If you incurred debt by fraud, it is not discharged.

- Do you owe significant nondischargeable debts (e.g., fraud or tax debts) and have you recently purchased a new car on credit? Use chapter 13 and its cramdown provisions to take money from your secured creditors and use it to pay your nondischargeable debts.

H.R. 333 stops this misuse. If you purchased a car on credit and go into chapter 13, you have to pay for the car the same way your neighbor has to. No longer can you take money from your secured creditor and use it to pay other bills, or in some instances, to cover your own living expenses—while you keep the car.

Each of the examples I have given of what you can do are all perfectly legal strategies under today's Bankruptcy Code, and they all illustrate what is wrong. We have created a form of debt relief that rightly takes care of those who need it, but fails to identify and treat differently those who do not, or who are using it irresponsibly. How could this have happened? Briefly, in a well meaning attempt to help those in debt trouble, a statutory scheme was enacted in 1978 which generously provides relief to those who need it—but also to those who do not deserve it. Unfortunately, bill paying Americans pay for that unnecessary largess in higher credit prices and reduced credit availability.

Critics of bankruptcy reform efforts have claimed that the provisions in H.R. 333 aimed at those with ability to pay are excessively harsh on debtors who need and deserve bankruptcy relief. For example, they claim it is an unacceptable burden on those seeking relief to require them to attend a brief credit counseling session in which they will learn how credit counseling might help them. They similarly claim that requiring that debtors receive some brief additional disclosures to explain the

bankruptcy process and their relationship with their attorney also imposes an unacceptable burden on obtaining relief. Nothing could be farther from the truth. Exposure to credit counseling before filing bankruptcy can save some debtors from the damage bankruptcy does to their credit rating. It introduces them to budgeting, which experts tell is often the problem. In other words, when you look closely at the facts rather than the rhetoric, the claims of the critics on this point and on many others simply do not stand up.

Balanced reform is needed to put our consumer bankruptcy laws back on track. After years of negotiation and compromise, H.R. 333 has found a middle ground. We urge you to support it.

Let me add one more point. H.R. 333 has enormously strong provisions to make sure that child support, alimony and property settlement obligations are not evaded in bankruptcy. I have heard no one who says that these provisions are not strong enough. And they are needed to make sure that these important social responsibilities are not evaded in bankruptcy court. Bankruptcy court should not be a court of second resort after domestic relations court where you can undo your obligations to your children and society.

Thank you for the opportunity to address the Committee.

Chairman SENSENBRENNER. We do have a vote on the floor, which is a bill which names a post office building in Hawaii. So we're going to have to break to allow members to vote.

Let me say that I have noted who has appeared in what order on each side of the aisle, and your position will be preserved if you are back when you are called on. Otherwise your name will drop to the bottom of the list. So with that little encouragement to come back as soon as possible after the vote, the committee is recessed subject to the call of the chair. Please be back promptly after the vote.

[Recess.]

Chairman SENSENBRENNER. The committee will be in order. The Chair will waive his 5 minutes, and when the gentleman from Michigan catches his breath, he will be recognized for questions.

Mr. CONYERS. If someone else can go——

Chairman SENSENBRENNER. Would the gentleman from Massachusetts care to go?

Mr. DELAHUNT. To accommodate the Chair, naturally I'd be willing to, you know, to go first but I also see——

Chairman SENSENBRENNER. Gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I just wanted to be clear in my mind, let me just direct a few questions to Mr. Josten. You referred to the bankruptcy claims as skyrocketing; is that your term? You're aware, of course, in 1999 I think there was a significant decline, some 9 percent?

Mr. JOSTEN. Uh-huh.

Mr. DELAHUNT. And in the year 2000, there was also a decline?

Mr. JOSTEN. Uh-huh.

Mr. DELAHUNT. So when we talk about the—the claims skyrocketing, I would respectfully suggest that that is a bit hyperbole when you take a look at what has occurred over the course of the past 2 years. Do you have a problem with my characterization?

Mr. JOSTEN. Well, I would only say that you are accurate, that there was a decline.

Mr. DELAHUNT. Thank you. I will take that. That's all—and we really don't know what's happening now, do we, Mr. Josten?

Mr. JOSTEN. We won't know until it happens, but as I'm sure you know, the predictions——

Mr. DELAHUNT. Right.

Mr. JOSTEN [continuing]. Are for a significant increase.

Mr. DELAHUNT. We see a lot of predictions. I can remember in my first term here with the—I think when I was sworn in 1979 we had a deficit projected of 226 billion, and by the time my term was concluded, I think we had a surplus. So I guess we should just deal with what we know, and what we do know is that there has been a substantial decline over the course of the past 2 years.

Mr. JOSTEN. I think that's accurate.

Mr. DELAHUNT. Thank you. Thank you.

Mr. JOSTEN. I would say it's not quite as significant an increase.

Mr. DELAHUNT. Let me ask you, you also, and I haven't had a chance to read your testimony, but you indicated that people are just walking away, that they're making the decision to file bankruptcy because it's almost a financial planning tool. I don't know if you're aware but back, oh, back in 1998, I requested a—along with the ranking member Mr. Conyers and Mr. Nadler and Mr. Meehan, we requested of the CBO a—an examination of these issues in terms of the motivation, the rationale for those who are filing for bankruptcy. And I'm just going to read—we finally got the report. That was in September of last year, well after any opportunity to present it to the conference committee. Of course, I wouldn't—I probably couldn't have found the venue of where the conference committee was meeting. Maybe Mr. Conyers could have, Mr. Gekas. Could you have found it?

Mr. CONYERS. It was secret.

Mr. DELAHUNT. It was secret. Well, in any event, I would like to read to you what they—what they concluded. I'm just going to read the letter, and it's expanded on in the report, but I think it's important to really, you know, be careful of the rhetoric and look to the empirical data in terms of what we really have available before us because we're making some significant decisions here. I think many of us believe that the decision is preordained, but I think it is important for historical purposes to really understand that what we're doing is not based on empirical data but on gut instinct, but if we do it in bankruptcy, we've done it elsewhere too. So it's really not that unusual.

But in the letter from Mr. Crippen to—to myself he states, "The paper finds that the available research casts a dim light on the causes of personal bankruptcy and its consequences for the costs and availability of credit.Analysts generally believe that economic, legal and social factors motivate personal filings, but empirical research has made little progress in determining the relative importance of those factors." .

You know, I think we can ascribe motives, and tomorrow I'm sure we'll hear from, you know, witnesses who present a contrasting view. I think the reality is, and I think we should acknowledge that, is that we don't know. We just don't know, Mr. Josten.

So let me direct a question or two to—to Mr. Beine. I think you gave an example of someone who left you with a debt of some 3,000 some odd dollars.

Mr. BEINE. Not a significant sum, granted. Granted, 3,000 is a not a large sum but——

Mr. DELAHUNT. It is a lot of money to me.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair. The opening remarks that the gentleman from Michigan rendered set the stage I think for the four witnesses who I believe in part or in whole answer some of the assertions made by the gentleman. First of all, he kept referring or at least once very strongly referred to this as a Republican agenda driven reform measure, or words to that effect. I'm quick to point out, as Mr. Josten's opening remarks indicated, that Congressman Boucher, an extraordinarily workmanlike member of this committee, a Democrat, was in the forefront from the very beginning, as was Mr. Moran of Virginia, in the drafting and cosponsorship of the original measures that went into the final product which we're discussing today, and the votes on the floor of the House and the votes on the floor of the Senate indicate strong bipartisan support for these measures. So, so much for that. That was answered by just a thank you by Mr. Josten of the sponsorship of Mr. Boucher.

He went on to say that, Mr. Conyers did, that the question of special circumstances that would not be taken into account by the, as he put it, the strict measures in this bankruptcy, like an illness that comes out of nowhere or the loss of a job. We never once eliminated those special circumstances from being considered and having discretion applied. Isn't that correct, Mr. Wallace?

Mr. WALLACE. Yes, it is, sir.

Mr. GEKAS. And how does that work when someone loses a job or something happens that, under our bill, that was not contemplated or doesn't come within the grid test of our means test?

Mr. WALLACE. The debtor simply explains the circumstances in their petition to the court; that is, their filing of their bankruptcy petition, which is how you start bankruptcy, and those circumstances, unless they are obviously erroneous, will control thereafter the determination of their income, and they won't have sufficient income either because their income—either because their gross income isn't there or is fluctuating or because they have extraordinary or unusual expenses.

Mr. GEKAS. And when he made reference to either implied or expressed overtly that these were credit company types of the driven provisions that we put into this, how does that account for a credit union being in the mix? Isn't it true, sir, you're representing the credit unions, that this is a rank and file, how shall I say, constituent driven request by the credit unions to bring some reform to bankruptcy? Isn't that correct?

Mr. BEINE. It is. We are concerned about those individuals who abuse the system. I would be the first to say that if we have members who come in who are in a bad situation, believe it or not, we have actually recommended in some cases that somebody do seek legal counsel. Bankruptcy law is there for those people who need it. Under no circumstances would we look to do—look to use this as a way to usurp prior laws and—and—with respect to child support and other sorts of issues. Those items have preference and always will have preference.

Mr. GEKAS. And Chairman Sensenbrenner alluded in his opening statements to the wide array of witnesses that appeared before our

committees the last years. When questions were raised rhetorically by people against bankruptcy reform about the lack of primacy that we intend to give or intended back then to give to women support matters, et cetera, we in one of the panels that we put together asked Mr. Strauss to come and explain. Then as a result of his recommendations, his firsthand experience with all these questions, embedded into these bills, did we not, Mr. Strauss, your recommendations? We didn't adhere to what the credit companies were saying or what business groups were entailing. We were responding to your concerns on behalf of custodial parents, were we not?

Mr. STRAUSS. Absolutely. Nobody had any involvement in drafting those but myself and a few other attorneys who deal in these matters all the time.

Mr. GEKAS. And you don't represent any big bank, do you?

Mr. STRAUSS. Not that I know of.

Mr. GEKAS. So these four individuals, in my judgment, have outlined the basic rationale that attends our efforts at bankruptcy reform.

I must repeat in closing that the two themes that started us off on this road to bankruptcy reform still are with us today, an overwhelming desire and completion of a duty to make sure that everyone who is overwhelmed by debt, through no fault of his own, should have a fresh start. And secondly, the second theme, those who indeed have demonstrated to have, through good evidence, the ability to repay part of that debt over a period of time shall be compelled to do so.

I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I have three responses to Subcommittee Chairman Gekas which I will include in the record.

Chairman SENSENBRENNER. Without objection.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR. A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

There are few economic issues facing this Congress that are more far reaching than bankruptcy reform. More of our citizens come into contact with the Bankruptcy Courts than all other Federal Courts combined. At a time of record high consumer debt and with our economy dramatically slowing, there is no doubt that any changes we make to the Bankruptcy Code will have a significant impact on our financial well being.

Now, I may surprise some when I say that I am willing to acknowledge that we need to amend the Code to prevent individuals who can afford to repay their debts from seeking refuge in bankruptcy. But if I can recognize that reality, I would hope that my Republican colleagues would agree that in our head long rush to protect creditors, we must also make sure that the honest debtor who has truly fallen on hard times can obtain viable bankruptcy relief.

Unfortunately, as the bill is currently drafted, the legislation fails this fundamental test. Let me describe just a few of my concerns from the 419 page bill before us:

First, in terms of the means test, we need to ask why we cannot allow judges discretion to exempt persons whose financial difficulties—such as illness, death of a spouse, or loss of a job—are clearly distinguishable from the reckless spending the bill's sponsors complain about? By subjecting all debtors to the bill's expensive and burdensome disclosure requirements, and by failing to allow any appreciable flexi-

bility in the IRS expense standards, the bill throws the "baby" out with the "bath water" and could harm truly deserving debtors. For example, had this bill been law, Charles and Linda Trapp, who faced medical bills exceeding $100,000 because their daughter contracted muscular dystrophy and was forced to live on a respirator, could have been foreclosed from obtaining meaningful bankruptcy relief. I doubt any Member serving on this Committee would want to support such a result.

Second, with regard to the bill's impact on women and children, I applaud the sponsors for trying to enhance the status of alimony and child support payments in bankruptcy. But I must ask, if the goal is to truly help insure that these payments are made, why does the legislation also elevate the claims of ordinary creditors, and place them in direct competition with alimony and child support payments? There is only so much money to go around, and every dollar that goes to a credit card company means that much less money for child support. Surely we can figure out a way to guarantee that before a credit card company receives a penny in extra benefits under this bill, alimony and child support are paid in full.

Third, in terms of business bankruptcy, I also agree with the bill's sponsors that we need to streamline and expedite small business cases. But in our haste to act, we need to make sure that the new requirements are rationale. Thus, if the reason a deadline cannot be met is because a regulatory process—such as a hearing on an environmental claim—must take place before a plan can be developed, we should give the court discretion to waive the deadline. The last thing we want to do is worsen our current economic situation by forcing businesses to liquidate and lay off their workers to comply with some arbitrary deadline.

I know that some will say the bill before us is a done deal—after all, the conference report passed the House and Senate last year, the threat of a presidential veto appears to be gone, and the Democrats can simply be ignored. But I would remind the Members we never had a real conference, and scores of provisions out of this 419 page bill were added at the last minute without the benefit of public scrutiny.

Mr. Chairman, you have chosen to make this measure the very first bill taken up by our committee under your tenure. I will be frank with you—it is not the choice I would have made. As important as bankruptcy is, I believe there are far more urgent measures, such as election reform, which cry out for our immediate attention. Nonetheless, I respect your choice. However, I hope that you would join me in looking at this bill anew and consider our concerns before we rush to judgment. If you are willing to offer us a modicum of compromise and common sense, we will be willing to meet you more than half way and our nation's debtors and creditors will benefit.

Mr. CONYERS. Mr. Wallace, Mr. Strauss and Mr. Josten, first to Mr. Wallace. Are you aware that the means test prefers debtors with secured debts over those with unsecured debts, meaning that the act discriminates against renters, and of course, African Americans make up a higher percentage of renters? Doesn't this effectively discriminate against African Americans or other low income individuals?

For Mr. Strauss, to the Director of the San Francisco Child Support Program. Sir, you consider yourself an advocate for children and families, but a 1998 study by the National Center for Youth Law and other advocacy groups reported deficiencies in your program's work on behalf of these families and the fact that your collection rate is substantially below the national average. I have got a letter to document that. Given your record defending the rights of parents and children and the many criticisms leveled against this bill by advocates for children, shouldn't we be a bit skeptical of your claim that the bill actually enhances the standing of alimony and child support payments in bankruptcy, going back to what I said in my opening statement?

And Mr. Josten, sir, what possible justification is there for imposing an arbitrary 180-day deadline on reorganization plans when events outside the debtor's control such as regulatory hearings and other things may not be completed? How can you be so sure that

arbitrary deadlines such as this will not lead to premature liquidations and job loss?

Mr. Wallace first.

Mr. WALLACE. Yes, sir. I would say certainly this is not intended and nor does it in fact have an impact that is negative upon African Americans or other low income individuals.

Mr. CONYERS. Well, it's not deliberate, but the effect.

Mr. WALLACE. If I can, if I can finish, sir, yeah, I think that you're referring to the fact that rent payments are capped under the means test, under the IRS guidelines. Insofar as that produces a hardship in a case, it would be appropriate for the debtor to raise that as a special circumstance, and I think that in those kind of hardship cases—if, for example, if somebody is living in—in the Washington, D.C. area, and they have an excessively high rental situation because of the high market here, those circumstances can be taken account of. So I don't think that your concern is justified. Certainly we've tried to do everything we can in order to——

Mr. CONYERS. Okay. Thank you very much. You have to go to court to litigate that. That would be additional costs but we have had the discussion.

Mr. Strauss, sir.

Mr. STRAUSS. If I understand your question, what I think you said is after 25 years of experience in dealing with child support issues and representing people who need it, I should not be believed because of the——

Mr. CONYERS. You're absolutely right.

Mr. STRAUSS [continuing]. Because of the failures of the child support——

Mr. CONYERS. No. Because of the record the San Francisco Child Support Program has produced, and I have got a letter to demonstrate. It was 8 percent and the national average was 10 percent.

Mr. STRAUSS. The Child Support Program in San Francisco County alone is one of the best in the State, and I might add, you know, that we have a new governor, Gray Davis, who's taken over responsibility for the program and it's headed you know now in a new direction. So we anticipate that what's going to happen is going to be a vast improvement, but we're talking about how it affects children in bankruptcy. It has almost nothing to do with how the State of California has performed.

Mr. CONYERS. I didn't raise the State of California or Governor Gray Davis, you did, but I have got a letter from Marshall Wolf that I'll ask to be put in the record.

Chairman SENSENBRENNER. Without objection.

Mr. CONYERS. Mr. Josten. Thank you.

Mr. JOSTEN. Congressman Conyers, I am not sure any of us can predict much of certainty in the future on anything, as I earlier went through with Mr. Delahunt in agreeing to that fact of life. I think we have a piece of legislation that reminds me of the saying, "Torture the facts until they confess." this one certainly has been tortured for about 5-plus years. I don't think it satisfies you completely. It certainly doesn't satisfy our membership completely. I think it is fair to say that we have had a significant rise far beyond the limited decrease we've seen. I think all Americans believe people that have an ability to repay debts should repay them.

My membership is most particularly interested in what we consider to be the top 10 percent of this pyramid of people that we believe are people of means who are walking away from debt and leaving others stuck with the tab to pay for it. We have an economic system that's predicated upon credit and faith with an expectation to pay.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman. As a freshman, I want to, first, thank you for quickly bringing this bill to the Committee. I realize that in the last two Congresses this bill was debated, and the compromises that were put in were well worked out and well thought out. So I appreciate the opportunity to deal with this matter early.

I would like to just say that as an immediately retired CEO of a company in California, the need for this reform is very long overdue, and I want to very much urge that we deal with it as quickly as possible, today if possible.

Additionally, I think that for those who have concerns on both sides, those like myself who feel that there is more work to be done and that we will be back here doing additional reforms and those who feel we go too far, I would simply say that for lack of doing this we will continue to see an epidemic of new bankruptcies. I want to thank the panelists for coming.

I have no further questions today. Thank you.

Chairman SENSENBRENNER. The gentlewoman from Wisconsin Ms. Baldwin.

Ms. BALDWIN. Thank you, Mr. Chairman. Comment before question. Just, one of the provisions of this bill that has not been much discussed perhaps because there's very little controversy surrounding it is Chapter 12 bankruptcy, which is a particular protection for family farmers, an issue that affects part of the State that I represent too frequently, and with the good efforts of the Chairman, I understand that we will probably have prompt consideration of——

Chairman SENSENBRENNER. Will the gentlewoman yield?

Ms. BALDWIN. I certainly will, Mr. Chairman.

Chairman SENSENBRENNER. It is—I thank the gentlewoman for yielding. It is my intention to have a markup on H.R. 333 next week, and hopefully we can finish that markup before we break for the Presidents Day recess. I also intend to schedule the Smith-Baldwin bill, which provides a temporary extension for Chapter 12 through July 1st of this year following conclusion of the markup on H.R. 333.

Ms. BALDWIN. Thank you, Mr. Chairman. I wanted to ask, Mr. Wallace, you've drawn to our attention some of the contrasts between the bills H.R. 833 and the one that we have before us today, but much of the original work was from a congressionally mandated group, the National Bankruptcy Review Commission, which met for a couple of years prior to concluding its work in October 1997, and as I studied their work product it is my impression that they were endeavoring to balance very carefully the counter concerns that come to the question of bankruptcy reform.

And frankly, while you've described in your testimony that the product we have before us today is the result of balance and compromise, their work product back in 1997, the October product, was viewed I think by many as a very balanced document.

I am wondering if you have the expertise today to tell us or draw to our attention the major changes that are reflected in 833 from the final product of the Bankruptcy Review Commission in October 1997.

Mr. WALLACE. Well, first of all, in terms of the balanced nature or the lack of balanced nature of the commission's work, this is the National Bankruptcy Review Commission, that commission which was originally appointed in 1994 resulted in a series of five to four votes on—on each point on—on the consumer issues. Although they had more agreement with respect to the commercial issues, it was very clear that the panel was essentially split and was pretty much split along party lines in terms of who had appointed whom. So I think that probably some of the tensions which you see here today are simply carried over in that document.

In terms of the degree to which the—the bill that you have before you faces the same—faces the same issues, yes, it faces the same issues as the commission struggled with. Insofar as it takes different directions, and on the whole it does take a number of different directions, I think it's because as time has gone on different points of view have been expressed in the legislative process. After all, those people were mainly bankruptcy professionals. This group is obviously a group of elected representatives of the people, and it is somewhat different in terms of its focus and approach.

Ms. BALDWIN. As a follow-up, I'd be interested in knowing on the specific provisions that had the five to four votes versus the more unanimous discussions.

The—I wanted to ask Mr. Beine about reaffirmation. I have been very much convinced of the importance of reaffirmation, especially in the credit union situation. But I'm always concerned about the possibility for an abuse to engage in harassment or—well, basically in order to try to get a reaffirmation I know that people's relationship to their credit union is often different than their relationship to other creditors.

Aside from the mandatory disclosures that are written into the bill before us, do you think there's any other action or steps that we ought to consider to make sure that reaffirmations occur in a voluntary and willing way?

Mr. BEINE. It is personally, and on behalf of credit unions we are very comfortable with language that is in the bill on reaffirmation as it is. And I guess what I would say is I would agree with the gentleman who spoke here earlier, I would ask for a speedy movement of this bill through the legislature and approval and signature to put it into law. We've been waiting for this for a number of years. You've all worked very hard. There have been multiple commissions, as I understand it, and I think it's time to complete the process.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Texas, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. Mr. Chairman, I have a couple of questions I think I'd like to direct to Mr. Beine to begin

with, although Mr. Wallace and Mr. Josten may want to comment as well, and my questions really go to my wanting to try to quantify the problem that you all have discussed in your testimony today. As I understand it, there is significant abuse on the part of debtors in perhaps trying not to pay the debts that they should pay and could pay, and to that extent many individuals file in Chapter 7, and the intent of the bill, as I understand it, is to either get them to file under Chapter 13 or to move them from Chapter 7 to Chapter 13. And my question therefore is to what extent in your opinion do the abuses exist today? We heard about individual cases, but I am just talking about what percentage, for example, what proportion of the individuals who file under Chapter 7 do you feel should be really Chapter 13 debtors?

Mr. BEINE. Boy, that's a good question. I will only speak for Shoreline, and I'm afraid I'm going to have to—while my instincts, as Mr. Delahunt said, sometimes is dangerous, our bank—our Chapter 7 losses have doubled every year the last 3 years. The dollar amount is still not that material, but if it continues I will have to do something on the cost or revenue side to cover it. In my opinion, perhaps anywheres from 10 to 20 percent are abusive. I don't expect Chapter 7s to stop. I don't expect our losses to stop. It's part of doing business, but as this gentleman said, Mr. Josten, it's the top 10 percent or so that are abusive, and that is what we're looking to have some ability to have an impact on. Bankruptcy law is a good law. It is going to stay there, and it is a necessary law in this country. This country doesn't have debtor prisons and none of us want those.

Mr. SMITH. Your projection was 10 or 20 percent.

What—how much is this bill going to alleviate the problem? Are we going to be able to probably address that 10 to 20 percent or at least the top 10 percent that Mr. Josten mentioned?

Mr. BEINE. I cannot say for sure. This is—we didn't get in this situation in a week—a couple of years, and the people are more comfortable declaring bankruptcy. The stigma is gone as it was in the past. I think it will take a decade to work our way back through this so that we have a society again where people honor their contract and their—and their handshake where their word is their bond. The couple that had the reaffirmation, they did that. They have stellar credit, in my opinion, in our organization because they honored their contract, and over time maybe we will have that start to come back again in our country. At the present time we have too many people who are looking for ways to get to—to walk away from obligations.

Mr. SMITH. Mr. Beine, thank you for your answers. Mr. Chairman, I don't have any other questions.

Chairman SENSENBRENNER. The gentleman's time has expired. Gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman. I think I have for quite some time accepted one of the underlying assumptions of the bankruptcy reform bill, this bill, and the ones that preceded it, which is that a number of people gamed the system for it to be in Chapter 13 as opposed to Chapter 7. What I am having a little trouble with is that my own experience differs substantially from the one that I have heard here today, especially from you, Mr. Beine——

Mr. BEINE. Beine.

Mr. WATT. Beine. And that's—that is just the people at the top 10 percent who are gaming the system. I think the gaming is taking place throughout the system, and so I'm—and even if it is at the top 10 percent, this bill covers at least the top 50 percent by definition because it's everybody that's above the median goes—gets treated a different way, but let me deal with the people who are below the median who get exempted.

I understand that there was the necessity of a political compromise to get this bill through to put that means test in the bill, but are you all contending first that you believe sincerely that it's only the people at the top who are gaming the system and that it does not occur among people who would meet the means test?

And number two, Mr. Beine—I still got it wrong—my perception of credit unions has always been that the bulk of credit unions, the whole reason for having credit unions historically was to meet that need of people who really were below that 50 percent level, and I am wondering whether you have done any demographic study on your membership, credit union membership in general that would suggest to us what percentage of your borrowers would fall under this means test and really this bill wouldn't have any—any application to.

Mr. BEINE. The answer is you are correct, that I do believe that people in all economic strata are abusing the system, but I understand the need to protect people in lower income areas, and it's simply a cost of doing business and those individuals, when those situations occur, we will follow the law and we will absorb it. I haven't done such a study in our credit union.

Mr. WATT. But is that a justification for having a completely different policy? I mean, if the objective is to get rid of abuse, why not come up with a set of rules that addresses the abuse rather than presumes two categories of people in the country? We're after the people who are abusing the system, I thought.

Mr. BEINE. You are correct but there is a compromise bill in front of us, and all the parties and all the people that are involved have to be accommodated, and that is the bill that is before us. I would prefer that there was—in some respects I would prefer that there be a few more teeth for those people who are abusing, regardless of their situation, but a lot of our members are lower income strata. We're a small city. The census shows that Two Rivers' average income is below the national average.

Mr. WATT. What does a lot mean? I asked if you had done a study that divides it out.

Mr. BEINE. I don't have exact numbers, but I know that from the last census that the average income level in Two Rivers, Wisconsin, is below the national average for that size city.

Mr. WATT. But you're here speaking for the credit union association. What percentage nationally, have you all done a study that would suggest what percentage of your members would be even impacted by this bill at all and could you provide that information outside the context of this hearing because my red light's getting ready to go off?

Mr. BEINE. I was about to offer that. I could not do that myself but we will get back to you on that.

Mr. WATT. Okay. Now, that same question applies to child support. If there's this dichotomy among credit union members, then that same dichotomy exists for child support, and what is the rationale for basically exempting lower income people and applying a different set of rules to them than you would to those above the median? And if you could respond to that outside the context of this hearing. I think the Chairman is going to cut me off and cut you off to probably.

Chairman SENSENBRENNER. Mr. Strauss, would you like to answer that question in 25 words or less?

Mr. STRAUSS. I'm not sure I can because really the child support provisions apply across the board to everybody who files for bankruptcy.

Mr. WATT. Are you saying that the——

Chairman SENSENBRENNER. The gentleman's time has now expired. I let him answer your question when the red light went on.

Mr. WATT. Well, can I ask the Chairman a question. Is it the Chairman's understanding that this bill, insofar as child support is concerned, the child support provisions are not subject to the means test?

Chairman SENSENBRENNER. Well, I'd ask one of the witnesses to answer that question.

Mr. WATT. I think the witness is just absolutely wrong——

Chairman SENSENBRENNER. There's markup next week——

Mr. STRAUSS. I mean, there's just really no relationship. They're not means tested at all.

Chairman SENSENBRENNER. The gentleman's time has once again expired. The Chair recognizes the gentleman from Ohio, Mr. Chabot.

Mr. CHABOT. Thank you, Mr. Chairman.

Mr. Wallace, could you talk a bit about the changes to the means test of section 102 which were made during the conference committee that weakened the House language? What's your view about what the practical implications of that might be?

Mr. WALLACE. There were several changes made. The means test was significantly shifted. The threshold, for example, was—was raised, that is, who—how much money do you have to have to be able to pay. That was increased to $10,000 as a flat floor. There was also a—the House bill had a $6,000 floor, you may recall, and it was moved up to a 10,000 floor. There's also another provision which applies. If your income or if your debts are less than $24,000, that also applies. But on the whole the floor was raised, the threshold was raised.

There are some other important changes. The most important one I mentioned in my testimony is the safe harbor, which cuts off use of the means test across the board if you are below the State median income. The House had previously used national median income. That was changed to State median income, which changes the effect quite significantly and also, of course, absolutely protects people—as Mr. Watt was raising a question about earlier—absolutely protects people who are below the State median income even though they are abusing the system.

Previously there had been a safe harbor in the bill, and that safe harbor had—had allowed the United States trustee to bring those

cases if you were below the median income. Other people could bring them if you were above the median income, and that seems to me to be a much fairer compromise and better get at the problem we're trying to get at here rather than having this absolute screen, which was something that was put in.

So we have shifted from a national test to a State test. We've put in a median and an absolute median income bar. And we have taken the House's language with regard to when does the court have the power to make discretionary changes in income and expenses, and we've changed the standard there in this adjustment. We've changed it from extraordinary circumstances. The debtor now only has to show special circumstances. So, in those three ways there have been significant changes, if you will, in favor of the debtor's side of the equation that have been made.

Mr. CHABOT. Okay. Thank you very much.

Mr. GEKAS. Gentleman yield for just a moment?

Mr. CHABOT. I'm happy to yield.

Mr. GEKAS. Yes. Just to follow up on that and partially in answer to the gentleman's—Mr. Watt's question, the fact that we have the safe harbor seems to imply that people under the median income then are automatically dischargeable in Chapter 7. Going to the question about who and who are not gaming the system, isn't it possible that even a person under the median income, within the safe harbor, can still be gaming the system and that we still have the good faith attribute that is required before that person can be discharged in bankruptcy? Is that correct?

Mr. WALLACE. Yes. I would argue that that would be—that if you were gaming the system and you were below the median income the court could still in its discretion kick you out because of being in bad faith, and we did put a good faith-bad faith test in.

Mr. WATT. Would the gentleman yield?

Mr. CHABOT. Yes, I'll yield.

Mr. WATT. The point I'm making, and I think the point Mr. Strauss missed, though, is that his problem is continuity of child support, as I understood it, and right now he says the law doesn't provide that continuity. You're setting up a system where—for people who are below the median income and not gaming the system, let's—let's say, still you've got the same problem.

So I mean, you know, if the objective here is to—is to address inequities and abuses, then it would seem to me you would be trying to—to correct those abuses rather than just piling on to a bill that for political reasons you want but really sets up a two-tier bankruptcy system in this country, one for poor people and one for higher income people. That's the point I was making. I don't—I don't suggest that they get away, but the problems that Mr. Strauss was talking about, about interrupting child support, that exists under the current law, will continue to exist under this law for people who fall under that median income.

Mr. CHABOT. Reclaiming my time, would Mr. Strauss like to respond to that, Mr. Chairman?

Mr. STRAUSS. I don't know—I—actually I think it's an excellent point, and the reason I say that is because we would much prefer having people, obligated fathers in Chapter 13 cases which take care of their responsibilities to pay all of those obligations, but if

that's a weakness of the bill, it's probably a fairly minor one because these people are most least likely to be paying the support anyway and the most difficult to catch.

Mr. WATT. I think what you're saying is——

Chairman SENSENBRENNER. The time of the gentleman from Ohio has expired. At the request of Mr. Conyers, I ask unanimous consent that a letter dated February 6, 2001, to Senator Kennedy from Attorney Marshall J. Wolf of Cleveland Ohio be inserted in the record. Is there objection? Hearing none, so ordered.

[The information referred to follows:]

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PRACTICE LIMITED TO
DOMESTIC RELATIONS LAW

February 6, 2001

Senator Edward M. Kennedy
315 Russell Senate Office Building
United States Senate
Washington, DC 20510

Re: S.220 (H.R.333) "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001"

Dear Senator Kennedy:

I write concerning the latest version of a cruel hoax that has been written, bought and paid for by the credit card industry, the monstrously labeled "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001." This bill, S.220, and its identical twin, H.R.333, does not prevent abuses of the bankruptcy laws, nor does it afford "protection" to any "consumer." The "protection" that members of Congress will be providing with passage of this bill will be to the credit card industry whose millions of dollars have swamped the coffers of campaign committees during the last three election cycles. This is the type of "protection" that is conjured up in B-grade gangster movies. Contrary to the rights of working class consumers, protection of the wealthy and of the credit card industry is the only result of this bill.

I am not a bankruptcy lawyer. As a past Chair of the Family Law Section of the American Bar Association, Chief United States Delegate and Keynoter at the 1993 First World Congress on Family Law and Rights of Children in Sydney, Australia, a Fellow of the American Academy of Matrimonial Lawyers (and past President of its Ohio Chapter), I practice Family Law in Cleveland, Ohio. While I cannot speak officially on behalf of the American Bar Association, I write with the express approval of the American Academy of Matrimonial Lawyers and on behalf of my colleagues in the family law community who deal on a daily basis with the struggles of men and women whose economic woes, during and after divorce, will be compounded by passage of S.220.

Unlike the bankers, I have no direct economic interest in this bill. Further, unlike the bankers' cheerleading government lawyers from California from whom you have heard and from whom

you will hear in the future, my comments are only as an observer of that which is for the benefit of working men and women and their children.

HISTORY OF S.220 AND H.R.333

In the 105th Congress, a bill similar to the present shamefully mislabeled bill was referred to as the Bankruptcy Relief Act. The bills in the respective houses were S.1301 and H.R.3151. Though passed by both chambers, the 105th Congress adjourned without ever convening a conference committee to resolve differences in the two versions of the bill.

The bills introduced in the 106th Congress were S. 625 and H.R.833, collectively referred to as "Bankruptcy Reform." These bills, too, were passed in substantially different versions. However, under intense pressure from their campaign committee contributors in the credit card industry, the Republican leadership desperately ramrodded a bill through both chambers during the lame duck session this year, without even convening any conference committee wherein dissenting views could be voiced. Passage occurred only after a cloture motion was defeated in late 2000. However, after adjournment *sine die* of the 106th Congress, the President vetoed the Bankruptcy Reform Act.

The current bills (S.220 and H.R.333) were immediately reintroduced upon the convening of the 107th Congress. These bills are identical to that which was vetoed in January. Thus, references to earlier bills and comments related thereto are as applicable today as when submitted.

OBJECTIONS TO S.220 AND H.R.333 ON BEHALF OF DIVORCING AND DIVORCED MEN AND WOMEN

Make no mistake about it, the bill now before you, though numbered and titled differently, is the same drivel with the same shortcomings of its predecessors. Particularly, as relates to men and women following divorce, some of the more obvious problems are as follows:

1. The so-called "priority" for collection of alimony and child support is illusory as it will affect less than four percent of the bankruptcies. It only applies during bankruptcy, not afterwards, thus putting support recipients in competition with the credit card industry who seek to eliminate certain credit card debt from dischargeability.

2. The priority also gives the government coextensive rights with women who have been forced by the welfare laws to assign receipts for support as a condition for welfare entitlements.

3. In Chapter 13 plans, credit card creditors will receive pro rata payments along with support recipients, as opposed to current law that requires one hundred percent of the support obligations to be paid first. Thus, instead of waiting until support obligations are first fully paid, the credit card companies will receive a part of every dollar from the 1st dollar on.

Addressing these concerns, my comments refer to the following issues:

1. The orchestrated public relations campaign to sell S.220 as being **good** for women;

2. The misguided efforts of the California District Attorney's Family Support Bureau who support S.220 and its predecessors, but who are merely apologists for the failures of government support collection bureaucracies, especially their own;

3. The wisdom of the collective opinions of the overwhelming majority of bankruptcy law professors who have studied S.220 and its predecessors;

4. The effect of the bill on bankrupt women, as opposed to women whose support-paying ex-husbands seek bankruptcy protection; and

5. The influence of the credit card industry upon the increase in bankruptcy filings.

A. THE CAMPAIGN TO SELL (AND BUY) S.220 AND H.R.333

In 1999, in response to the defeat on cloture, those who had the most the gain, the credit card industry, embarked upon an advertising campaign trumpeting S.625 as being "good for women." Accompanying their ads, those in the industry circulated a letter to all senators, dated September 14, 1999, trumpeting the fact that the bill places support recipients in a "first priority" position. Anything that sounds too good to be true usually is too good to be true! So it is with the claims of the letter of September 14, 1999, signed by 302 organizations, of which over two-thirds have the word "Banker," "Credit," "Financial," "Retail," or "Merchants" (or their derivatives) in their titles.

One asks why, if 302 organizations can be listed, **not one organization advocating consumer rights, women's rights, children's rights, or individual rights could be found to be included in the list of signators**. The answers are evident. First, the narrow interest of the credit industry, as opposed to consumers, is being presented to the exclusion of all else. Second, as the professors of bankruptcy point out in their letter to senators dated September 7, 1999, the issue of "first priority" is a red herring. The law professors state, "Giving 'first priority' to domestic

support obligations does not address the problem." The number of bankruptcy cases with assets is negligible. Most bankruptcy cases are "no asset" cases. Thus, first priority to creditors in a bankruptcy case provides virtually no benefit whatsoever. Further, "first priority" is meaningless after bankruptcy, when credit card companies, whose debts have been excepted from discharge under the pending bankruptcy bill, will be free to again go after the support payor, thus competing with the support payee.

I don't know which women S.220 or H.R.333 benefits, as the bankers claim. Certainly, this bill is not of any benefit to my clients or those of my colleagues. Only women bankers will benefit.

The buying and selling of S.220 and H.R.333 under the guise of bankruptcy relief (1998), bankruptcy reform (1999), bankruptcy abuse prevention (2001), or whatever else the credit card industry and its congressional apologists wish to call this fraud upon the American people, is shockingly grotesque. I enclose and incorporate within these remarks a Congressional Quarterly article dated August 18, 2000 and an exhaustive article from the May 15, 2000 Time Magazine entitled "Soaked By Congress - Lavished With Campaign Cash, Lawmakers Are 'Reforming' Bankruptcy - Punishing the Downtrodden To Catch a Few Cheats." The articles document the extraordinary amount of money in the form of lobbying and direct campaign contributions being expended by the banking and credit card proponents of S.220 and H.R.333 since this attack on the bankruptcy system was first mounted.

For example, as reported by Congressional Quarterly, citing a common cause study, the consumer credit industry gave $72.6 million in soft money and PAC contributions between 1989 and 1999, a sum more than double that of the tobacco industry during the same period. Over $23 million of these contributions occurred since the 1997 introduction of S.1301 and H.R.3150, the grandparents of the present bill.

The Time article reveals two inescapable features: (1) the effect of campaign contributions as a driving influence of this legislation; and (2) the falsity of the facts and assumptions of the proponents of these bills.

B. THE CHEERLEADING OF THE CALIFORNIA DISTRICT ATTORNEYS

In 1998, during the debate in the 105th Congress on H.R.3150, the California Family Support Council, an organization comprised of district attorneys and other governmental agencies, weighed in on the side of the bankers, rather than with the private practitioners of family law. Unlike the private practitioners of family law, the government lawyers collect support for the State Treasury, not for women and children. What was immediately striking about the content of the June 14, 1998 letter of the California Family Support Council is that the tone, syntax, and

language are virtually identical to earlier statements written by credit card industry proponents of the bill. Simply put, the industry not only wrote the bill, it also ghost wrote the letters of others who support the bill.

Men and women of goodwill, who sometimes unfortunately go through a divorce and also find themselves before the Bankruptcy Courts of this nation, need the protection of the bankruptcy laws to permit them to collect and pay past due alimony and child support obligations following a bankruptcy. The letter from the California Family Support Council ignores this principle and is simply more of the same irrelevancies and inaccuracies that previously have been submitted as testimonials for these big business bills.

The correspondence from the California Family Support Council limited its laudatory comments to that which will occur during a bankruptcy proceeding, thereby completely ignoring the disastrous consequences that the bills' provisions would have after a discharge in bankruptcy or the approval of a payment plan under Chapter 13. Similarly, the fact that "plans could not be confirmed or discharges granted unless all post-petition support payments were made . . ." is highly illusory since most Chapter 13 payment plans eventually fail, anyway. The evil is not that alimony and child support arrearages will not be paid at all, the evil is that women and children who need the money for their basic sustenance today, will have less funds available to them immediately. They will be left to fight for scraps left behind by the professional collectors - credit card companies - thereby receiving the past-due alimony and child support needed for daily current expenses over a long period of time into the future (and without the benefit of the back-breaking interest rates charged by the professional creditors on unpaid balances).

It is true that Congress provides many tools to give the collection of alimony and child support an impetus. However, those tools outlined by the California Family Support Council have absolutely nothing to do with the current debate over bankruptcy laws. To include them in a discussion of pending bankruptcy bills is to muddy the water of the debate with irrelevancies. Moreover, if S.220 or H.R.333 is passed in their present form, these other tools previously provided by Congress will be diluted.

The California Family Support Council is far more limited in its scope and interest than others who deal with collection of alimony and child support. The Council is primarily interested in the State's recoupment of welfare funds from deadbeat dads whose families are being supporting by state funds. Their statement to Representative Gekas in 1998 that his " . . . proposed amendments would make the effect of bankruptcy on a child support creditor negligible" would be humorous if it weren't so incredibly and patently mean-spirited and wrong! Those who deal with the individual's interests as opposed to the state's interest in recovering welfare funds do

not share the views of the group of district attorneys referred to as the California Family Support Council.

The California District Attorneys acknowledged in 1998 that there was opposition to this bill because of the effect that nondischargeability of credit card debt would have on alimony and child support collection. However, the district attorneys naively excused the effects of this bill by stating that child support collection is in competition with credit card companies now. What the Council either ignores or intentionally refuses to consider is that the "competition" that they see now occurring will be exaggerated and prolonged if S.220 or H.R.333 is adopted. Currently, the "competition" referred to by the California group between the alimony and child support creditors and credit card companies ends if the payor can discharge his credit card debt in bankruptcy. Without discharged creditors to compete with, more disposable funds are attachable by the alimony and child support creditor because the "competition" for these dollars has ended. By eliminating the dischargeability of some credit card debt, S.220 or H.R.333 prolongs the "competition." This fact is lost on the California district attorneys' group.

Again in 1999, in response to the defeat on cloture in the 105th Congress, the bankers and their congressional clients returned to the California government lawyers for help. On September 14, 1999, the same day as the letter from the 302 banking organizations was written, members of the Senate Judiciary Committee received a letter from Philip L. Strauss, an Assistant District Attorney in the San Francisco Family Support Bureau. At least in his letter, unlike the earlier letter in support of bankruptcy relief from the California Family Support Council, the comments were not taken verbatim from earlier bankruptcy industry lobbying documents. Nevertheless, factually, Mr. Strauss and his colleagues are still wrong. If S.220 passes, support ordering state courts, faced with a support payor who cannot discharge certain debts in bankruptcy and thus pay his (or her) support, will grant relief to such payors by way of post-divorce modifications reducing support. Such modifications will obviate the various collection methods otherwise provided by law, since a lower amount will be court ordered. Government lawyers do not deal with this problem, but I do. The argument of the California government lawyers is, therefore, faulty.

Now, yet again, the bankers are trotting out the California government lawyers to support the present bill. However, before one considers the statements of the district attorneys of San Francisco for accuracy, let us consider their credibility. Unlike the remarkable record of collection of the credit card industry, which record was stated to be 96% by an MBNA witness, San Francisco County collected no more than 8% of support that was due in 1996-1997. The groups of California government lawyers identified in Mr. Strauss's September 14, 1999 letter supporting S.625 are participants in a state system that resulted in a 1998 study by the National Center for Youth Law, the Child Support Reform Initiative, and Children Now, entitled

"California's Child Support Program: The Cost of Failure." This report utilized data reported by the district attorneys of California that, if anything, overreported their "success." Relying on the opinions of this group, whose failures were documented in the report, can only be an exercise in foolishness.

As public policy, the comments of the California Family Support Council or of the San Francisco County Family Support Bureau, as well as the bill that they support, is bad policy, injurious to people and beneficial only to big banking. As a legal argument, the comments of the California government lawyers are unpersuasive and badly reasoned. The District Attorneys in California and the support recipients they serve would be better served if the Council would address California's woeful lack of compliance with federally mandated collection standards.

C. THE OPINIONS OF PROFESSORS OF BANKRUPTCY LAW

On September 7, 1999, the comments of eighty-two professors of bankruptcy law concerning S.625 were circulated to members of the Senate. Their comments are as germane today regarding S.220 as they were when written. One of the principle concerns was the adverse effect of these bills upon women. Their comments were sound and should be heeded. Their studied analysis, rather than the greedy self interest of the bankers, should be the foundation upon which reasoned consideration should rest.

D. THE EFFECT OF S.625 UPON WOMEN FILING FOR BANKRUPTCY

Lost in the current debate over whether support recipients (usually women) who seek support from a payor who attempts to obtain bankruptcy protection is the support recipient, who, herself, seeks bankruptcy protection. Such person, described by several studies by Harvard law professor Elizabeth Warren and others, is one of the fastest growing segments of the population in bankruptcy court. It is this woman and her children who will suffer the greatest harm from S.220 and H.R.333. Post divorce support recipients almost uniformly suffer a reduction in economic health. They desperately need every dollar of support they receive to meet their day-to-day needs. If S.220 or H.R.333 passes, these women and children, in ever-increasing numbers, will suffer grievously. The means testing, credit card nondischargeability, reaffirmation provisions, and limits on dischargeability features of S.220 and H.R.333 will attack these women and children by placing disposable funds available to them at further risk. The credit card industry, whose debt may be protected from discharge by S.220 or H.R.333, will not hesitate to attach the bank account of a woman whose monetary lifeblood, her child support check, is deposited into such an account! How, then, is S.220, H.R.333, or any of their predecessors, "good" for these women and children? I submit that it obviously is not!

E. THE CREDIT CARD INDUSTRY IMPACT ON THE INCREASE IN BANKRUPTCY FILINGS

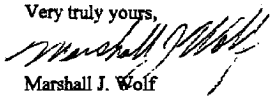
The basic premise of S.220 and H.R.333 is that people want to go bankrupt and that it is the fault of debtors, not the credit card companies who make credit so easily available, that are causing the increase in bankruptcy filings. The empirical evidence is that nothing could be farther from the truth. The true bankruptcy court abusers are the very wealthy who can protect their fortunes with favorable homestead laws in certain states, most notably Florida and Texas. The present bills do nothing to attack the true abusers of the bankruptcy laws.

Stripped of all rhetoric, what is really occurring here is that credit card companies have made credit excessively easy to obtain and now want the bankruptcy laws to be amended so that these companies can get protection from themselves! Included and incorporated in these remarks is a highly researched article by the National Consumer Law Center, based upon research conducted by Harvard law professor Elizabeth Warren. The article is entitled "Facts About Consumer Credit Card Debt and Bankruptcy." What is clear from this article is that the aggressive marketing and loosening of underwriting standards by the credit card companies have caused a rise in consumer bankruptcy. As the economy softens, working men and women will need more protection from creditors, not less, as this bill provides. The banks and credit card companies are the object of their own eternal mortification. It is not the role of government to bail out this industry from its own avarice and abject stupidity.

This bill is bad public policy, bad for working class people and good only for the credit card industry and mansion owners in Texas and Florida. The only women it benefits are women bankers.

I urge you and your colleagues to remain steadfast, as you have for the past three years, in opposition to this horrendous bill.

Very truly yours,



Marshall J. Wolf

MJW/kjk
Enclosures

Chairman SENSENBRENNER. Gentleman from California, Mr. Schiff.

Mr. SCHIFF. Mr. Chairman, I'd like to yield my time to the gentleman from Massachusetts.

Mr. WATT. Could I ask for 20 seconds just to make a point?

Mr. DELAHUNT. I'll yield the time that was yielded to me to my friend.

Mr. WATT. I don't want the whole 5 minutes, but I'm somewhat insulted by the last comment because the presumption of Mr. Strauss is that poor people's children don't deserve to get the child support like higher income people, and I'm offended by that notion.

Mr. STRAUSS. That's certainly not what I said.

Mr. WATT. That's what you said. That may not be what you intended, but that's the effect of what you said.

Mr. STRAUSS. No. Actually what I did say is I would prefer all people—all debtors be in Chapter 13 where they would be required to pay.

Mr. WATT. But then you said that's less important.

Mr. STRAUSS. Well, I have no control over the bill. I'm just saying I prefer——

Mr. WATT. I want you to know that lower income people who are getting child support don't think that's less important. In fact, you can make a very valid and aggressive argument that it is more important to lower income people to get their child support and not have it interrupted.

I yield back.

Mr. DELAHUNT. Yeah, I want to follow up with Mr. Beine again. The example that you used, I think you reference the fact that the people were in their mid-twenties. Part of the concern that I have when we talk about the system is looking at it in a holistic fashion, and there are debtors who are deadbeats, who game the system, whom, in my judgment, when they game the system, some of them ought to be prosecuted and put in jail because they're stealing, and that doesn't happen often enough unfortunately.

At the same time, there are creditors that—well, let me just give you an example. I used it during the course of the debate on the floor—issued a so-called live check to my daughter for two thousand, eight hundred and some odd dollars. She didn't negotiate it, but this is clearly a practice that is concerning many Members of Congress. In fact, there's a Dear Colleague letter now that's being circulated by a—a Member from the Democratic side and the Republican side with—with substantial seniority who have filed legislation, and the name of it is the College Student Credit Card Protection Act.

What kind of underwriting—what kind of standards do you use when you issue credit? Because, as they indicate in this Dear Colleague letter, the Consumer Federation of America found out that one-fifth of the Nation's college students are carrying credit card debt of more than $10,000, more than $10,000. A recent story by 60 Minutes reported that in 1999 a record 100,000 people under the age of 25 have filed for bankruptcy. I mean, is there any responsibility on the part of the credit, the credit community, the lending institutions here?

Mr. BEINE. Congressman, thank you for that question. In the credit union side there is. I took it upon myself after hearing a few comments from different people that the credit card issue might come up to call a few of my fellow credit unions. University of Wisconsin, Wisconsin, is 400 million, their alumni, et cetera, and the State system, and I also called the president of the UW Credit Union of Oshkosh. Their answer is as follows; they just say no. They flat out refuse to offer credit cards to the students on campus other than a $500 with a parent signature. They're adamant about that. We do not solicit.

Mr. DELAHUNT. Let me reclaim my time. That's very encouraging to hear, and I would hope that the—those in this particular industry would take the lead of credit unions because it is becoming a major significant problem in terms of our society. Those figures are absolutely, totally outrageous. Twenty percent of college students in this country are carrying credit card debt of $20,000. That's wrong, and shame on those that extend that kind of credit.

Let me ask another question to Mr. Josten. You indicated earlier that there would be savings in terms of interest and costs. Do you have any estimates?

Mr. JOSTEN. No, I don't.

Mr. DELAHUNT. None at all. Okay. I yield back my time to the gentleman from California.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman. First, Mr. Beine, being from northeastern Wisconsin, of course your credibility is unquestioned from my perspective.

A brief question for you. In your written testimony, which is also in line with testimony of previous hearings on this subject before the Judiciary Committee, there was reference to the phenomenon of stealth bankruptcies, where customers may be current on their store accounts, yet for a variety of reasons seek bankruptcy relief. Could you—in fact, in your statement you actually recount an example of a stealth bankruptcy. Could you explain this phenomenon a little bit and why it presents a problem to credit unions such as yours?

Mr. BEINE. Sure. Thank you. It's not a very pervasive problem for us but we have noticed it happening once in a while, and if I understand your question correctly and what you mean by stealth, the accounts will be current, including the credit card accounts, they'll pay the minimum balance, et cetera, they'll be current, and all of the sudden 1 day you receive a notice in the mail and there's Chapter 7, and at that point of course, as you know, in Wisconsin we have very strong consumer laws. We stop, no phone calls, no discussion, nothing, and 1 day we have a clean set of accounts. The next day we find ourselves with a loss. We've done good underwriting in the past. We have clean loans and now we have a potential loss on our credit card or any unsecured debt.

Mr. GREEN. And you indicated that it's not a very pervasive problem for your credit union. What about in communications you've had with other credit unions? Is it a significant problem?

Mr. BEINE. I suspect the best thing for me to say is that we could get back to you. I think in the credit unions, again, as you know,

we're member driven, we're cooperatives. There is still a bit of—more of an affinity in some respects. Maybe that's protecting us a little bit at the moment. I suspect that some of the other larger credit unions in the areas where there are not as much as history and tradition as we have in our city—we're extremely well entrenched, long history with the local, the largest manufacturing company, just goes back to the '40's—I suspect in other areas they do have more of a problem, but I can't answer to that.

Mr. GREEN. Thank you. No more questions, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. Gentlewoman from California, Ms. Waters.

Ms. WATERS. Thank you very much, Mr. Chairman. I think that some of us are very much focused on what really happens to women and children as results of this so-called agreed-upon bankruptcy legislation, and it appears that the protections that have been lauded are in fact not true, but before I—and maybe there's no need to go into that. I think my colleagues have done a pretty good job of that.

I am very concerned and—about easy credit and easy credit for people, students and others, who are extended far beyond their ability to pay, and that's a real question, and many of us are concerned to the point where we want to hear from the credit card industry how they're going to reform what they have been doing. The stories are now legendary about people receiving credit cards in the mail who didn't request them, about students carrying the kind of debt that was identified by my colleague, and I have not yet heard from anybody how the credit card industry plans on curbing its aggressiveness in extending the kind of credit that cannot be repaid and hopefully try to come back and collect it in this manner.

A lot has been said about that but I'm really worried about the image of this Congress and this legislation. It is identified in the Wolf and Akers letter that was just placed into the record. The relationship between the industry, the credit card industry, the PACs and the tremendous amounts of dollars that have been cited as contributions between 1989 and 1999, and I'm quoting from the letter: "For example, as reported by Congressional Quarterly, citing a common cause study, the consumer credit industry gave $72.6 million in soft money and PAC contributions between 1989 and 1999, a sum more than double that of the tobacco industry during the same period. Over 23 million of these contributions occurred since the 1997 introduction of S. 1301 and H.R. 3150, the grandparents of the present bill.

"The Time article", that they're referring to, "reveals two inescapable features: (1) the effect of campaign contributions as a driving influence of this legislation; and (2) the falsity of the facts and assumptions of the proponents of these bills." .

Does anyone care to comment about what appears to be legislation that has been so aggressively supported by campaign contributions that the public should really be concerned about this legislation?

Does anyone care to comment on that, anyone sitting at the table party to the large contributions that have been given to members of this Judiciary Committee or Members of Congress while this legislation has been before us?

Does anyone think that's a problem?

Does anyone think it's okay to make those kinds of campaign contributions while legislation is being negotiated, discussed, worked on in the Congress of the United States?

Does anyone believe that they have been able to gain access or influence because of the amount of contributions they have made in support of the legislation?

The silence is deafening, Mr. Chairman, and I think that speak s for itself. Thank you. I will yield back the balance of my time.

Chairman SENSENBRENNER. Gentlewoman from Pennsylvania, Ms. Hart.

Ms. HART. Thank you, Mr. Chairman. I have no questions at this time. I yield back my time.

Chairman SENSENBRENNER. Gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Thank you, Mr. Chairman. Mr. Beine, you used a number earlier, a range earlier of individuals that in your rough estimation are affected—are abusers of the bankruptcy process that you have been—you've had experience with, 10 to 20 percent I think is the number used, and you were not saying an income level, you weren't saying the top 10 to 20 percent. You were saying throughout the income spectrum, is that not——

Mr. BEINE. Correct.

Mr. HOSTETTLER. Is that not true? Your assessment of this legislation after this legislation passes, will there not continue to be significant numbers of Chapter 7 bankruptcy files?

Mr. BEINE. Absolutely.

Mr. HOSTETTLER. And doesn't that speak more to the fundamental problem that you commented on earlier of individuals in society that do not maintain their commitment to repay, not to say that there are situations where hard times fall and through no fault of the individuals they find themselves in a situation where they must have the ability to discharge their debts, which is what Chapter 7 is about, but there is also the concern there fundamentally that—a more fundamental issue with the—our society that does not—where individuals do not intend to maintain that commitment, and if they don't say at the outset they're not going to do that commitment, they at some point in the process decide that that commitment is not something that they're willing to maintain?

Mr. BEINE. I'm reminded of a phrase I heard a while back, "You can never legislate morality.".

Mr. HOSTETTLER. That's right.

Mr. BEINE. And in the end, those individuals who intend to defraud us, despite the best of underwriting procedures, will do so. The idea behind this, in the opinion of a lot of people, myself included, the pendulum on bankruptcy has swung a little bit too much to one side and we are just looking for some assistance to begin the process. It will take time, but there will always be bankruptcies. The majority of them I think will be legitimate, they will be lower income strata people, et cetera, who need that help, and this law will help but it is not a perfect solution, and it's—it will be a process.

Mr. HOSTETTLER. And this law is not going to put the pendulum right back in the middle?

Mr. BEINE. I don't believe so. I think the Bankruptcy Code is still leaning on the side of the consumer, and I do not think that's a bad thing. Our members are consumers and I want them to be protected.

Mr. NADLER. Will the gentleman yield for a question?

Mr. HOSTETTLER. Yes.

Mr. NADLER. Thank you. In light of what you were saying a moment ago, are you aware of two facts, that bankruptcy filings peaked 2 years ago, fell by almost 10 percent last year, for example, and that whereas in 1983, the average debt to income ratio of a Chapter 7 filer was 70 percent, by 2 years ago the average debt to income ratio of a Chapter 7 filer was 124 percent, meaning people were much more reluctant to file for bankruptcy, 50 percent more reluctant, than 15 years ago, which would tend to put everything Mr. Beine was saying in the nonsense bin where it belongs?

Mr. HOSTETTLER. Reclaiming my time, 10 percent of 1.4 million filings would be about 140,000 filings, which would make it still significantly higher than it was a few years ago. I return the balance of my time, Mr. Chairman.

Chairman SENSENBRENNER. Gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I have two questions, first to Mr. Josten. Mr. Josten, the business provisions of this bill, which have not been discussed very much, apply every exception to discharge contained in section 523(a) of the code for individual bankruptcies, for the first time they applied them to business Chapter 11 bankruptcies by incorporating them into section 1141(d). Applying non-dischargeability to business reorganizations is unprecedented.

How, how can the Chamber support this when obviously the impact of making a lot of debts non-dischargeable in Chapter 11 situations is going—this major reversal in national bankruptcy policy in fact is going to make a lot of businesses liquidate instead of survive in a Chapter 11 situation?

Mr. JOSTEN. You're right, Congressman Nadler. This, as you well know, is a very contentious issue in the business community.

Mr. NADLER. It ought to be.

Mr. JOSTEN. The business community, however, I think believes, as every proponent on this panel has suggested, that we have a problem. I don't think any of us believe that this bill is perfect. I'm not sure there is a perfect solution to any of this. But I think we believe after several years of work and progress on this bill from both sides that we have a piece of legislation that begins to make some improvements——

Mr. NADLER. You're not addressing the specific provision. Since we may be going into recession now lots of small businesses in particular are going to be going into Chapter 11. This is going to mean that all those small businesses or many more of them that are under the current law will be liquidated instead of reorganized and survive to pay their debts and keep—and not lay off their employees, and you think this is a good thing on balance because the banks will make more money and on balance it balances out?

Mr. JOSTEN. I think there's a negotiated process in part of this to try and figure out where the liquidation is, the end result for that company or reorganization with some opportunity——

Mr. NADLER. Well, don't you agree by making a lot more—that by first—for the first time making things non-dischargeable in bankruptcy for businesses you're going to get a lot more liquidations? Wouldn't you agree with that elementary and obvious proposition? Would you admit that elementary and obviously true proposition?

Mr. JOSTEN. I'm trying to withhold——

Mr. NADLER. Yes or no.

Mr. JOSTEN [continuing]. My predictive capacity to the future as I went through earlier, but I think there's some tendency that what you say may be a result.

Mr. NADLER. Okay. Thank you.

Mr. Wallace, former Chairman Hyde last year proposed that if a debtor did not qualify for a Chapter 7 because of the means test and lacked sufficient resources to be able to confirm a plan in Chapter 13, he proposed that in that situation the debtor be allowed back into Chapter 7 so that he could get some form of bankruptcy relief. This was not included in the final text of the bill which emerged from the secret conference. Do you think it is acceptable for a debtor who is not committing fraud to be found under the law to be too rich for Chapter 7 and too poor for Chapter 13 and, therefore, ineligible for any bankruptcy relief at all?

Mr. WALLACE. Sir, I believe that the way the bill works when you look at the provisions closely and read it together with what the present code says—the Bankruptcy Code says, you don't get that result. The result if you go——

Mr. NADLER. Tell me where, please. What provision, because we've looked at the bill very carefully, and every major bankruptcy attorney we've talked to in the last year says that's exactly how the bill works. So Chairman Hyde thought that's how the bill works, every bankruptcy association—attorney—we've consulted the National Bankruptcy Institute, most of the bankruptcy judges. Everybody knowledgeable on the subject except you, sir, says that that's how the bill works. Could you show me which section makes us all wrong?

Mr. WALLACE. Sir, if you would like, I would be glad to give that to you in writing. Although I know most of the Bankruptcy Code sections by number, I don't have the number section right now.

Mr. NADLER. Because it doesn't exist.

Mr. WALLACE. I—I respectfully——

Mr. NADLER. Mr. Chairman, I understand we're marking it up next week. Could you get it to us by say three o'clock today?

Mr. WALLACE. I think I can probably find it. I'll be glad to call Mr. Lachmann.

[The information referred to follows:]

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February 7, 2001

BY FACSIMILE

Honorable Jerrold Nadler
U.S. House of Representatives
2334 Rayburn House Office Building
Washington, D.C. 20515-3208

Dear Congressman Nadler:

At the hearing on H.R. 333 on Wednesday, February 7, 2001, you inquired whether a debtor who was dismissed from chapter 7 under the "means test" in section 102 of the bill could then be unable to confirm a chapter 13 plan or otherwise be unable to obtain bankruptcy relief. You mentioned specifically the concern that a debtor could be "too rich for chapter 7, and too poor" for chapter 11 or chapter 13 relief. As I indicated in my response then, that will not occur. This letter provides the explanation behind that conclusion.

I apologize for the delay in responding to your inquiry. As I wrote you Wednesday afternoon, when I returned to the office after my testimony at the hearing, I was faced with several matters requiring my immediate attention, and I was in court for much of Thursday. Unfortunately, Friday also was very full with unavoidable commitments. Knowing of your deep concerns on this matter, I thought my response deserved the care you would want me to give it.

The short answer to your question is that the "means test" standard for dismissal from chapter 7 applies only to debtors who are earning more than the median income in the State in which they reside. The people affected will not be "poor" as that term is usually used, since they will by definition earn more than one half of all the other people living in their State.

Even more importantly, if someone with income over the State median is subject to dismissal from chapter 7, they will have enough income, by definition, to confirm a chapter 11 or 13 plan, whichever is applicable. Your concern is that the debtor will have too much "net income" to stay in chapter 7, but not enough "disposable income" to confirm a plan in chapter 11 or 13. Both chapters 11[1] and 13[2] now require or will require under the bill that the debtor commit all of the debtor's "disposable income" to plan payments.

[1] H.R. 333 §321(c). The provisions apply only to cases in which the debtor is an individual.
[2] 11 U.S. C. §1325(b)(1)(B).

George J. Wallace
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Hon. Jerrold Nadler
February 12, 2001
Page 2

Because H.R. 333 defines "disposable income" so that it will be determined in essentially the same manner as for the application of the means test,[3] the debtor who is dismissed from chapter 7 under the means test will always have sufficient disposable income to confirm a chapter 11 or 13 plan. The only exception is if the debtor suffers an adverse change in circumstances between the time of dismissal and the time of confirmation. However, if by the time of confirmation, changed circumstances occur such that the debtor's net income falls below the threshold amount, *the debtor has a right to convert to chapter 7 and could not be dismissed from that chapter.*[4]

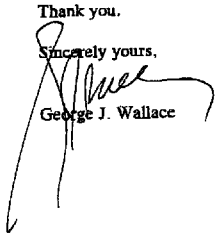
In conclusion, there is no basis for concern that debtors excluded from chapter 7 will have insufficient income to satisfy the disposable income test for confirmation of a plan under chapters 11 or 13. If debtors are subject to dismissal from chapter 7 because they have too much income, they will have enough to satisfy the disposable income standards for confirming an appropriate plan. If the debtor's circumstances worsen between the time the case is dismissed from chapter 7 and the plan confirmation comes up, the debtor has a right to convert to chapter 7 under existing provisions of the Code which will not be affected by H.R. 333.

I hope that this is responsive to your question.

Very truly yours,

Thank you.

Sincerely yours,



George J. Wallace

[3] H.R. 333 §102(h).
[4] 11 U.S.C. §§ 1112, 1307.

ECKERT SEAMANS
ATTORNEYS AT LAW

Mr. NADLER. Thank you. I would simply say to the members of the committee that I don't believe Mr. Wallace is correct. I know of no bankruptcy attorney who believes Mr. Wallace is correct, and the fact of the matter is that if you look at Chapter 13 provisions in this bill, you must meet certain mandatory requirements and have certain—be able to repay certain debts in order to confirm a Chapter 13 plan, and if you cannot, if the means test says you don't have enough money to do that, you can't confirm a plan. The judge has no discretion in the matter under this bill, and there will be people, many of them, who will fail the means test because they are too, quote, rich for Chapter 7, who will fail the means test in

Chapter 13 because they're too poor to confirm a plan and will not be able to have any relief, and I would issue one other challenge.

Chairman SENSENBRENNER. The gentleman's time.

Mr. NADLER. Can I ask the Chair for 30 additional seconds?

Chairman SENSENBRENNER. The Chair has been very uniform in banging the gavel down on both sides of the aisle. If you'd like 30 additional seconds, you will be asking for something that no one else has asked for. Without objection, we will make a special occasion for Mr. Nadler.

Mr. NADLER. Thank you. I just want to put on the record because I think this bill is going to pass, but I will challenge Mr. Wallace to come back here next year after the bill will pass and we will have individuals here who have been denied relief under Chapter 7 and 13 and then he'll tell us that you were wrong. Thank you. I yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Georgia, Mr. Barr.

Mr. BARR. Thank you, Mr. Chairman, and I'd like to state for the record the tremendous work that the former chairman of the Commercial and Administrative Law Subcommittee, Mr. Gekas, provided to the people of this country and to this committee for his leadership on this issue over the past several years and in particular his stellar leadership last year in securing passage of this much needed legislation.

Unfortunately, as we all know, it was pocket vetoed by the President late in the year, but we are here again. And even though we have been working on this bill for 6 years, the ranking member said that this was a headlong rush. If 6 years of very due deliberation is a headlong rush, I'd hate to see something that is done with all due deliberation in the view of the minority member.

I think the time not only is long overdue for this legislation but in light of the current economic and anticipated economic situation I think it is even more crucial this year than last year.

I'd like to ask unanimous consent, Mr. Chairman, which we already have as I understand it for our own remarks, but to insert into the record some remarks of one of our colleagues who does not serve on this committee but who has a keen interest in it, and that is Representative Nick Smith of Michigan. I'd like unanimous consent to insert some remarks.

Chairman SENSENBRENNER. Without objection, Congressman Smith's remarks will be inserted in the record.

[The prepared statement of Mr. Smith follows:]

PREPARED STATEMENT OF THE HONORABLE NICK SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Chairman Sensenbrenner and members of the Committee:

First, allow me to suggest that the committee should be congratulated for taking up bankruptcy reform so expeditiously.

I would like to testify about two aspects of bankruptcy reform that I believe are critical and which have been the subjects of several bills that I've introduced.

First is the permanent enactment of Chapter 12. Chapter 12 of the bankruptcy code expired on June 30, 2000.

Chapter 12 contains special provisions, available only to family farmers, that allows them to use bankruptcy laws in a manner available to others similarly situated. It was enacted in 1986 in response to spiraling interest rates, which, combined with low commodity prices, high production costs and decreasing land value were

pushing many farmers to the brink. Originally enacted for a seven year period, it has been reenacted regularly since.

Chapter 12 removed many barriers that family farmers face when filing for bankruptcy. It is more streamlined, less complex and expensive than Chapter 11, which is more suitable for large corporations. Chapter 13 is more available to wage earners, but the larger debt levels typically faced by farmers exceed limits set in Chapter 13.

Chapter 12 has, according to testimony cited by the National Bankruptcy Review Commission, reduced family farm failures. The Commission concluded: "The test of time has revealed that Chapter 12 generally provides financially distressed family farmers with an effective framework within which to reorganize their operations and restructure their debts."

Although this provision was originally created as a temporary one, the Commission recommended that Chapter 12 be enacted permanently. I've introduced two bills, H.R. 188, which would permanently enact Chapter 12, and H.R. 256 to extend Chapter 12 to the end of May, 2001. Farmers are suffering by having to file under other, inapprorpriate chapters of the bankrptucy code and I hope that the committee supports brining up a temporary extension of Chapter 12 under suspension.

Next, under Michigan law, juvenile courts have the power to assess parents for costs that the court incurs in dealing with their delinquent children. This can run from simply counseling children still living with their parents to (about $10–$20 per month) to taking physical custody of the juvenile(which can cost around $400 month).

In the case of *In Re Erfourth*, a couple whose child had committed multiple crimes as a juvenile was assessed $17,753 for the services that the court had provided the child prior to his turning 18. Initially, these services included only counseling, but eventually turned into full scale custody. Although the parents paid off some of the debt, they eventually filed for protection under Chapter 7 of the federal bankruptcy code, which normally places a stay upon all court actions and ends up discharging most of the debtor's obligations. The juvenile court filed suit to determine whether the debt owed it for the services provided the debtor's child was dischargeable. The Federal bankruptcy court held that the debt was dischargeable.

As a result, other parents in the State of Michigan have been able to get out of their debts to juvenile courts such as the one in *In Re Erfourth* by filing for Chapter 7 protection. This has cost local courts hundreds of thousands of dollars per year.

Section 523 (a) (5) of the bankruptcy code makes payments owed for support or maintenance of a child pursuant to a court order non-dischargeable, but not to the state unless there is a valid claim against the child which is assigned to the state entity.

The juvenile court made two arguments. First, they were owed the debt because the parents, under Michigan law, had a legal duty to provide for the maintenance of their child which is now owed to the Court. Second, they argued that the debt was assigned to them. The debtors argued that the plain language of 523 (a) (5) only applies to those support payments owed to a spouse, former spouse or child. Therefore, it excludes debts owed to a court. Although they might have owed the debt had it been assigned to the court, there was never any assignment contended the debtors.

The bankruptcy court ruled that the parents had a clear legal obligation to support their child and that the child could have filed suit in court and enforced that obligation. The Court also found that the juvenile court had incurred costs pursuant to state law and that the debt was legally recoverable under state law from either the parents or the child. The juvenile court, however, ordered only the parents to be liable. At no time did the juvenile court order that the child be solely or jointly responsible for any of the obligation. Therefore, it cannot be argued that there is a debt owed by the parents to the child with payment to the court as alleged by the juvenile court.

Since *Erfourth*, Congress has amended the bankruptcy code to include section 523 (a) (18) which makes non-dischargeable child support obligation owed to states and municipalities under state law. The debt must also be enforceable under Part D of title IV of the Social Security Act. It is not clear that debts owed to Michigan courts for child support meet this latter criteria.

H.R. 3150, which was reported out of the Judiciary Committee in the 106th Congress, would eliminate the requirement in 523 (a) (18) that support payments owed to states and municipalities and also be enforceable under Part D of title IV of the Social Security Act to be non-dischargeable, thus, in all likelihood, making payments of the sort in *Erfourth* non-dischargeable.

I hope that this committee ensure that similar language exists in legislation it passes in the 107th Congress as well.

Thank you, Mr. Chairman.

Mr. BARR. Thank you. Mr. Chairman, and I'd like to give Mr. Beine an opportunity to respond to what I thought was a very impolite characterization of his remarks by Mr. Nadler. We can all disagree about substance but calling a witness who has taken the time to come up here and give his professional experience and expertise on behalf of many, many members of his association nonsense I think is not appropriate, but we've learned to deal with that. But I would like, Mr. Beine, to give you an opportunity if you could, if you have anything else to state for the record in defense of your testimony and your expertise, which I think is very appropriate and very sound on behalf of many, many Americans, in particular those involved with credit unions.

I visit on a regular basis credit unions in my district, and every single time I ask the leaders of those credit unions in Georgia in the Seventh District to tell me what are the major problems that they face and some of the top priorities on which they would like us to be working in the Congress. Bankruptcy reform is at the top of the list, and there's a reason for that, because they see problems in their communities and their institutions that they believe ought to be rectified in terms of fundamental fairness, and I think that's what you were trying to say. But in light particularly of the very unfortunate characterization after you did not have a chance to respond, I'd like to give you that now.

Mr. BEINE. Thank you for the opportunity. I could not have said it better myself. Thank you for your remarks. It is an issue that we are concerned about, and it is not by any means that we're anti-consumer or we are looking for a way to add dollars to our bottom line.

And as to the Congressman, he's passionate about his constituents and his job, and I'm passionate about protecting my members and my credit union, and I have no problem sitting here and taking an occasional characterization.

Mr. BARR. You're a real gentleman. We appreciate that. Mr. Chairman, I appreciate the remarks and responses of all of the members of this panel, and I do hope that it will provide the basis that we need to move forward very, very quickly on this legislation. It is not by coincidence that this is the first major piece of legislation taken up by the Judiciary Committee. I think you made a very wise decision, Mr. Chairman, which will help not only consumers but businesses as well and financial services institutions across this country if we can move this legislation through to what I firmly believe will be a more favorable and realistic response from this administration. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Thank you. The gentleman's time has expired. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman, and appreciate your yielding. Let me thank my colleagues and certainly thank the witnesses for participating in a process that is necessary for our deliberations.

Having said that, let me note for the record that this legislation is on a downward ski slope never to be stopped, and though the ultimate result may be passage, I consider it a crashing and an imploding of the Bankruptcy Code of this country. My viewpoint is

that this is an unnecessary piece of legislation backed by special interests that have not even the slightest concern about the needs of the American people.

Most people you will find, having come from the southern district of Texas, representing the 18th Congressional District, I think our district had one of the highest amounts of bankruptcy filings in the late 1980's, or eighties, pursuant to the energy crisis. People who went into the bankruptcy court were not going in for celebration and acknowledgment as local community heroes. They were going in because of family crisis. It is well-noted that in 1998 the bankruptcy filings peaked, but in FY 2000 the bankruptcies of Chapter 7 in particular declined 9 percent.

It is also well-known that the Bankruptcy Review Commission refused to take up the median testing element of this legislation, and in fact, since the Bankruptcy Code was passed in 1898 no one has ever viewed that as a valid and reasonable testing standard. The people you have going into bankruptcy courts are elderly people with catastrophic illnesses, people who have unfortunately divorced and remain the custodial parent of children, and, yes, you have people who in the normal course of business have accepted the onslaught of credit card companies that without any concern for balance and interest and educating consumers send credit card applications to people of both limited means, people who are suffering from various ailments, college students like my daughter where there is a roundup when they go to college and they have T-shirts and see how many children, which I call them, can sign up without their parents knowing that they're signing up for credit cards until you finally get the $15,000 bill.

This legislation has no consumer protection whatsoever, no burdens and responsibilities on the credit card companies who have spent millions of dollars to secure the votes and interests of this Congress.

What I find the most indicting part of this legislation, and I will pose a question, is the misrepresentation, albeit I'm sure with good intentions, of the California Family Support Services. In particular, I think it should be noted that my understanding of their approach is that they collect the dollars for the State government, unlike individual family lawyers who support or claim the dollar s for the individual that necessarily needs those dollars.

It is a misnomer to suggest that this bill is good for support and alimony payments. In fact, the bill prioritizes during the bankruptcy proceedings when in many cases there are little or no assets to many of those who file bankruptcy. The prioritization does not continue during the time of payment, and so what you will have is women and others who have custody of their children still fighting against big credit card companies who have more resources.

With that in mind, I'd like to ask Mr. Strauss how in the world can you come forward and claim that you can in any way speak for women and children when post the bankruptcy filing they will still be in a contest of who can get whatever meager funds, as opposed to being first priority throughout the entire payout process?

Mr. STRAUSS. First, let me say your original premise is wrong. The Child Support Division does not just collect money for the gov-

ernment. It is responsible for collecting money to be paid directly to families and more than half of our——

Ms. JACKSON LEE. Excuse me, would you yield, please? You collect the money and they stand in line to get the money. You are the first recipient of the dollars, and by being the first recipient of the dollars you're part of the problem, as in many States, because the women and children do not get the money. That's why they have to retain private lawyers. You can continue.

Mr. STRAUSS. That's wrong. I mean, if you'd let me finish, what I'd like to say is that half of the money we collect is paid directly to families because the support has not been assigned. That's just part of the Federal Child Support Program, and as a result, no money passes to the government, and we're collecting it under those circumstances.

But the second point you raised is that somehow or other—and we are the ones who do the representation in these issues. Somehow or other when this debt is not discharged, we're going to be in competition for collecting these dollars against credit card companies who presumably have more money. That is just simply not true and there is no professional child support collector who will agree with that.

Ms. JACKSON LEE. Well, this is a—the red light is on. Let me just conclude by saying.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. If I might finish the sentence on——

Chairman SENSENBRENNER. What the Chair has been doing, and I think it's the fair way, is to allow someone who's asking a question to finish the question or if the red light goes on to allow the witness who is answering the question to answer the question and then go on to the next member who has been patiently waiting for his or her turn. So the gentlewoman's time has expired.

Ms. JACKSON LEE. Mr. Chairman, just for information purposes, does the time end at the time the red light is on or when it goes off? And I thought that was the understanding, that the light had to be off and it is still on as being red, and I would ask an additional 30 seconds——

Chairman SENSENBRENNER. I will answer that question. You know, these machines are all over the Capitol.

Ms. JACKSON LEE. Right.

Chairman SENSENBRENNER. When the red light goes on, it is at zero minutes. So that means that the 5 minutes are up, and what this Chair has done in the Science Committee, which the gentlewoman from Texas has served on, is to allow the completion of the question and/or the answer when the red light goes on and then move on to the next member who has been waiting, and that's what the Chair did in this instance, and the Chair would now like to recognize the gentleman from Virginia, Mr. Goodlatte.

Ms. JACKSON LEE. Well, thank you, Mr. Chairman, and I won't ask for an additional 10 seconds.

Mr. GOODLATTE. Thank you, Mr. Chairman. I want to commend you for holding a hearing on this very important legislation, which I am optimistic we can finally get through the Congress this year. I would like to ask these folks about one area that I'm not real

clear on from the changes in this, and that is, can any of you comment on the changes in the cram down provisions in the law? Mr. Wallace?

Mr. WALLACE. Yes, I'd be glad to. Between—the House version provided, as the conference report in the 105th Congress had, a 5-year cram down period. In other words, if you had obtained the piece of property, personal property within 5 years of filing, you could not cram it down. That was changed in the compromise that was done so that automobiles are still subject to that 5-year period. However, all personal property is subject to a 1-year period. So the anti-cram down provision was cut back substantially.

Mr. GOODLATTE. And what is it under current law?

Mr. WALLACE. Right now cram down is available, if you bought the car 2 months before you file bankruptcy, you'd be able to cram it down, and that's considered to be an abuse

by—I think by nearly everybody.

Mr. GOODLATTE. Is there a reason for a distinction between automobiles and other forms of personal property? When we do this—we make that distinction—it's to the disadvantage not only of the debtor but of all other creditors of that debtor because we have created an artificial preference for that particular creditor because they're getting effectively a secured position on something that they don't have a full security in if it's not worth that full amount? Am I not correct in that?

Mr. WALLACE. Well, actually the rationale behind the anti-cram down provision is that we're trying to keep the price of secured credit, which people, which lower income people use in order to acquire hard goods like cars, refrigerators, and so on and so forth, we're trying to keep that as low as possible. So to keep that price as low as possible——

Mr. GOODLATTE. Well, on a refrigerator it would be 1 year but on an automobile it would be 5 years?

Mr. WALLACE. That's correct. That is the compromise, sir.

Mr. GOODLATTE. And is there a reason why automobiles get such a huge differential?

Mr. WALLACE. Well, the 5-year period is—the concern is that the automobile is a more attractive abuse item, I guess would be the rationale that would apply there. You're less likely to do this with a refrigerator than you are with a car.

Mr. GOODLATTE. Anyone else want to comment—how does this affect credit unions, Mr. Beine?

Mr. BEINE. We have not been subject to a lot of cram downs. We've had it happen, and one or two situations come to mind, and believe it or not they were related to a car. That's speaking for Shoreline. I wouldn't be able to speak beyond that on that particular question.

Mr. GOODLATTE. Mr. Josten, Mr. Strauss, do you have anything to add?

Mr. JOSTEN. I'm not sure I have the expertise to begin to address that question beyond the expertise surrounding me at this table, Congressman Goodlatte.

Mr. GOODLATTE. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. Okay. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. Thank you, Mr. Chairman. Gentlemen, good to have you all with us today. Mr. Beine, I don't think this has been asked. Last year a witness for a Federal credit union testified that more than half of all credit union losses in 1998 were bankruptcy related and the credit union losses as a result of bankruptcy were estimated to be 684 million. On the other hand, it is generally believed here, and I think you may have indicated that in your statement, that credit unions are very careful lenders. I don't mean this to be an adversarial question because I'm a friend of the credit unions, but this appears to be an anomaly. On the one hand, you're a prudent, careful lender. On the other hand, the losses are not insignificant. Can you illuminate that problem for me?

Mr. BEINE. That's why I'm here. We do the best we can. We're very careful. We're very quick on our credit card area. For example, if we have a situation where we see somebody starting to build up, and we'll run another report, we'll just cut them off. We're not about to issue unsecured credit to people and put them under water. We try very hard on our loans to be as careful as possible, and yet we suddenly find ourselves having losses we do not have control over and it's Chapter 7 and the dollars are gone. It is a very frustrating situation. It's a cost of doing business. I am at the point that within a year or two if they keep doubling I will be forced to do something proactive on the cost of the revenue side to cover it, and I do not want to pass that along to all my other members, particularly the low income members, as the lady over here mentioned. They do not deserve to have to pay for that.

Mr. COBLE. Tell me, Mr. Beine, and others if you want to weigh in on this—well, strike that.

Is it in the best interest of a credit union member to reaffirm a debt rather than having the debt discharged in bankruptcy? And that may be depending on each case perhaps, but generally how would you respond to that?

Mr. BEINE. I would say that if it's—definitely if it's secured loan related to a house or a car, it's in their best interest, one, they maintain their relationship with us. They're able to obtain other services. Our credit union, like all credit unions, I'm pretty sure all of them follow this precept, upon generating a loss to the credit union you lose your right to services other than a core savings account. If we have a situation where a member is in dire straits, divorce, medical problems, and so on, the example that I had, I assure you that even if that person had not paid back that unsecured credit, they would have services from us beyond savings, but nevertheless—but the point is that, yes, reaffirmation is good.

People who go through bankruptcy, it's a devastating situation for most people. It's tough. I don't care what your income level is. I had an attorney who says that a divorce is a financial disaster. It's tough. These people need a way to feel good about the situation if you can and rebuild their financial life, and if they can come in and reaffirm a loan and maintain their relationship and direct deposit and those sorts of services, it's the start of the process to rebuild their credit and to feel good about themselves, and we want to be part of that. The mantra of the credit union movement is to help the members better their financial situation.

Thank you.

Mr. COBLE. Thank you, Mr. Beine. Anyone else want to weigh in on that question?

Thank you, gentlemen. I yield back, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. Gentleman from Florida, Mr. Scarborough, is the last questioner.

Mr. SCARBOROUGH. Thank you, Mr. Chairman. I appreciate you holding this very important hearing, and I thank all of you for coming and testifying today. I unfortunately have to say that I have been a little bit upset and a little concerned about the shrillness of some of the comments and accusations. Some of them, one exact quote is that those people supporting this bill do not, quote, even have the slightest interest in the best interest of the American people, close quote. That's a little shrill. And I think somebody's comments were called nonsense.

And Mr. Strauss, despite the fact that you have worked, I understand, in San Francisco, a very conservative government I understand, enforcing support obligations for over a quarter of a century, we learned today that you don't like poor people. Now, after we learned that you didn't like poor people, you were immediately cut off and not allowed to defend yourself and explain how somebody that has been working, trying to enforce child support laws to get money to those disadvantaged, is not allowed to explain why you don't like poor people. And so with the 4 minutes I have before the red light goes off or starts blinking, if you could go ahead and take that time, any time you care to actually defend yourself from these accusations that were made against you and then you were rudely not given the opportunity to defend yourself.

Mr. STRAUSS. When I drafted these amendments, first of all, obviously, when you're working in a public child support agency, the people who need your help the most are the ones that can't afford an attorney. These are the poor people. There are some people who, middle class people, who use our services, but the vast majority are people who are either on aid or very close to it, and the people who are very close to it are the ones that child support makes a difference. It's going to mean the difference between going—for the kids being able to go to the movies or having a new pair of shoes or even eating.

And what happens that I have seen so often is people are also budgeted right to the end of their existence, and the failure to have child support at the end of the month when rent's due or when Christmas comes is a real tragedy, and you know, I see it every day. You know, I'm sorry the people—some members of the committee might question that, but the purpose behind these amendments was to correct those abuses. My feeling was that if we had a system, a bankruptcy system that would mean that child support was uninterrupted when it was being paid and that people who were forced into it—decided to file or were forced into a Chapter 13 would have to pass through a series of check marks in order to get a discharge, which would require that all child support be paid, the people who are going to be the most direct beneficiaries of this are the people who are most economically disadvantaged, and I think that's what the purpose of these amendments are.

Mr. SCARBOROUGH. Thank you for your testimony and for your 25 years of service, and again, I apologize for people making false

characterizations about you and then cutting you off and not even letting you defend yourself, and with that, Mr. Chairman, I thank you again for holding this hearing.

Chairman SENSENBRENNER. I thank the witnesses for their excellent testimony and their answers to questions. I also would like to thank all of the members who participated in this hearing. I think we are off to a good start.

Tomorrow at 10 o'clock we will have four witnesses who have a considerably different view of the bill that is before us, and I look forward to an equally lively debate tomorrow. The committee stands adjourned.

[Whereupon, at 12:17 p.m., the committee was adjourned.]

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

THURSDAY, FEBRUARY 8, 2001

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to call, at 10 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner (Chairman of the committee) presiding.

OPENING STATEMENT OF CHAIRMAN SENSENBRENNER

Chairman SENSENBRENNER. The committee will be in order. Today we begin our second day of hearings on H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001. Based upon our experience yesterday, I expect today's hearing will also provide an excellent opportunity to continue our considered yet vigorous debate on bankruptcy reform legislation.

I thank the witnesses for appearing today and for their contribution to this debate. As I announced during the hearing yesterday, I have scheduled H.R. 333 to be marked up by the full committee beginning at 10 a.m. on Wednesday, February 14, and if necessary continued to Thursday, February 15.

The markup will then be followed by a markup of H.R. 256, a bill that would reenact and extend Chapter 12 of the Bankruptcy Code which is a specialized form of bankruptcy relief for family farmers for 11 months.

[The bill, H.R. 256, follows:]

I

107TH CONGRESS
1ST SESSION

H. R. 256

To extend for 11 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 30, 2001

Mr. SMITH of Michigan introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To extend for 11 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENTS.

Section 149 of title I of division C of Public Law 105–277, as amended by Public Law 106–5 and Public Law 106–70, is amended—

(1) by striking "July 1, 2000" each place it appears and inserting "June 1, 2001"; and

(2) in subsection (a)—

(A) by striking "September 30, 1999" and inserting "June 30, 2000"; and

(B) by striking "October 1, 1999" and inserting "July 1, 2000".

SEC. 2. EFFECTIVE DATE.

The amendments made by section 1 shall take effect on July 1, 2000.

○

Chairman SENSENBRENNER. I now turn to my colleague Mr. Conyers, the distinguished Ranking Member of this committee and ask him if he has any opening remarks.

Mr. CONYERS. Thank you, Mr. Chairman, and good morning to the witnesses. I am delighted to see everyone here. I just wanted to point out that yesterday I raised questions about the means tests with the IRS expense standards, which is pretty inflexible, and would appreciate any comments on the bill's impact on women and children. I know Professor Gross wants to talk about why should we elevate the claims of ordinary creditors and place them in direct competition with the alimony and child support payments, which seems to me pretty odd; and then the difficulties that small businesses face under the bankruptcy measure.

This is the main thrust of the kind of concerns that I think are very important and that we ought to consider. The 180 day deadline, of course, in Chapter 11 is going to result in small businesses going under before they can get started.

So those are some of the considerations, the same ones from yesterday, Mr. Chairman, that I have and I thank you very much.

Chairman SENSENBRENNER. Without objection the gentleman's entire statement will be placed in the record and also, without objection, all members may place opening statements in the record at this point.

Chairman SENSENBRENNER. Is there any objection? Hearing none, so ordered.

Chairman SENSENBRENNER. Without objection, the Chair will be authorized to declare recesses of the committee today at any point. Hearing none, so ordered.

I am now pleased to introduce the witnesses for today's hearing. We will begin our hearing with the testimony of Mr. Charles Trapp of Plantation, Florida. Mr. Trapp will relay his personal experiences as a Chapter 7 debtor and share with us his views of H.R. 333's needs-based reforms based upon those experiences.

Joining Mr. Trapp is former bankruptcy judge, Ralph Mabey, who is now a partner in the law firm of LeBoef, Lamb, Green & MacRae. Mr. Mabey appears on behalf of the National Bankruptcy Conference, an organization comprised of bankruptcy judges, law professors and practitioners. His testimony will consist of the Conference's analysis of H.R. 333.

The next witness is Professor Karen Gross of the New York Law School. Professor Gross has published extensively on the topic of

bankruptcy. She will highlight for us today her views with respect to H.R. 333's impact on the interest of women and children.

The final witness is Damon Silvers. Mr. Silvers is an associate general counsel for the AFL-CIO. His responsibilities chiefly include issues concerning corporate securities and bankruptcy law, benefit funds' investment policy, and mergers and acquisitions. Mr. Silvers is expected to address H.R. 333's business bankruptcy provisions, particularly those concerning small business and single-asset real estate debtors, nonresidential leases and asset-backed securitizations. In addition, he will also discuss the bill's need-based reform.

It is the practice of this committee to swear in witnesses. Will each of you please stand and raise your right hand.

[Witnesses sworn.]

Chairman SENSENBRENNER. Let the record reflect that all of the witnesses answered in the affirmative. Without objection, the complete statements that all of you have submitted will appear in the record at the beginning of your testimony. I would like to ask that your testimony be confined to approximately 5 minutes in order to give members of the committee a chance to ask questions of the panel vigorously. So, Mr. Trapp, you are first.

TESTIMONY OF CHARLES TRAPP, PLANTATION, FL

Mr. TRAPP. Thank you very much. Good morning.

Chairman SENSENBRENNER. Just for your own information, we do have a timer here and with a minute to go, the yellow light will go on, and when the 5 minutes is up, the red light will go off. Thank you.

Mr. TRAPP. Thank you. My name is Charles Trapp. I am from Plantation, Florida. I appreciate the opportunity to share our family's story with you. Although filing for Chapter 7 bankruptcy was an intensely personal and difficult choice, I am here to talk about it so that you and the American public can understand more about how the bankruptcy system protects average hard-working families. My wife and daughter wanted to be here, but Lisa had to stay home and take care of our other two children and Annelise must go to school whether she wants to or not.

We want to let you know how much we object to the proposed changes in the bankruptcy laws, changes under which we and many families like us would be considered bankruptcy abusers. Lisa and I worked hard and played by the rules. We both worked as letter carriers for 12 years. We have three wonderful kids, as I mentioned: Annelise is 9, Alec is 6, and Lilia is just about to turn 4. Back in 1992, when our daughter Annelise was 4½ months old, she became inexplicably very sick. We spent the next 3 months in Miami Children's Hospital. And we came to find out that she had a nonspecific myopathy not unlike a very rare form of muscular dystrophy, only they really couldn't tell us what the cause was. Annelise's muscles are very weakend and she needs a respirator to assist her in breathing much of the time.

She pretty much lives in her wheelchair and her bed. We have had a couple of major surgeries: One, to place a G-tube or feeding tube in the stomach, and also one for her scoliosis that developed in her back. That was a very extensive one that we had a year ago

last November. She requires around-the-clock nursing care. I did bring a videotape to show you a little bit of her situation at home, but I really didn't get a chance to set it up, so—unfortunately.

But my wife and I, we have what's considered to be very good health insurance. But when you have a chronically ill child such as Annelise, even the relatively small portion of her medical expenses that we are responsible for adds up to a considerable amount of debt. During the worst part of Annelise's illnesses, we have been forced to use our credit cards for a lot of everyday expenses, such as car repairs, groceries, over-the-counter drugs, et cetera. Paying off our medical bills was out of the question if we were to stay current with our mortgage and our car payments.

This has been very hard for all of us. Two months before we filed bankruptcy, my wife Lisa resigned from the Postal Service in order to stay home full time and care for our children and oversee Annelise's care. Despite what you may have heard from lobbyists, this bill would have negatively affected my family if it had been law at the time that we filed. We would have been presumed to be abusers, people who could afford to repay their creditors. Lisa's income for 6 months prior would have been considered against us, even though she was no longer working. We wouldn't have qualified for Chapter 7 bankruptcy under the bill's means test. We would have had to file more papers, more certificates. We would have been told that—what we should have been spending on our household expenses, even though some of our expenses, like the purchase of a van to get Annelise and her wheelchair around, would probably have exceeded the one-size-fits-all expenses that families are allowed. Creditors would have had the right to object to the fact that we were filing bankruptcy, to insist that we be dismissed from Chapter 7, or that we be forced to file Chapter 13 and make payments over 5 years.

If the bill had been law, we would have had to hire lawyers, go to bankruptcy court to defend ourselves. If just one or two creditors objected, we have might have felt compelled to agree to pay their bills as a reaffirmation instead of hiring a lawyer to defend ourselves.

Now, another thing that scares us about this legislation is that if this bill passes, we could not file for Chapter 13 for at least 5 years if this bill was law. It means that we can lose our van or our house or Annelise's wheelchair under this bill. That's just too bad for us.

Our situation with Annelise is by no means an isolated case. Everyone here in this hearing room today and everyone watching this at home has families like ours in their communities. Every major metropolitan area has a children's hospital. These facilities, unfortunately, are filled with kids with conditions like Annelise, kids with MD, kids with leukemia or who have suffered traumatic injuries. There are thousands of families in situations similar to ours all across the United States.

In my opinion, the lending institutions that are pushing legislation through Congress are a victim of their own mass marketing. I am no economics expert or a marketing genius. I am a letter carrier. I see first-hand the incredible number of credit card solicitations that are mailed out to every one of my customers on my

route. I know how many dozens of mailings Lisa and I have personally received over the years, even after declared bankruptcy.

I got this out of my mailbox just yesterday before coming here. Preapproved $10,000 limit; security deposit, none; right on the front. Zero percent APR interest rate. It sure looks attractive. Is it right for these lending companies to offer revolving credit to college students or families, and this may be—may have included my own family at a certain point who can ill afford to take on additional debt. I deeply resent that some creditors and politicians——

Chairman SENSENBRENNER. Mr. Trapp, do you think you could wrap up? You are kind of a minute over already.

Mr. TRAPP. Just one more, just a couple more paragraphs.

I deeply resent that some creditors and politicians have misrepresented my family's situation to the American public by claiming that this bill wouldn't adversely affect families like ours. One reason so many Americans are turned off by what happens in Washington is that they think that wealthy special interests have too much power and tell Members of Congress too many lies. I am not a bankruptcy lawyer, but I have been through bankruptcy and I understand the ways that this bill will hurt hard-working families that play by the rules.

Thank you for listening to my family's story. I hope you will keep us in mind and many of the other families like us when you consider this bill.

Chairman SENSENBRENNER. Thank you, Mr. Trapp.

[The prepared statement of Mr. Trapp follows:]

PREPARED STATEMENT OF CHARLES TRAPP, PLANTATION, FL

Good morning. My name is Charles Trapp and I am from Plantation, Florida. I appreciate the opportunity to share our family's story with you. Although filing for Chapter 7 bankruptcy was an intensely personal and difficult choice, I am here to talk about it so that you and the American public can understand more about how the bankruptcy system protects average, hard-working families. My wife and daughter wanted to be here, but Lisa had to stay to take care of our children and Annelise must go to school, whether she wants to or not.

We want to let you know how much we object to proposed changes in the bankruptcy laws. Changes under which we—and many, many families like us—would be considered to be bankruptcy "abusers."

Lisa and I worked hard and played by the rules. We both worked as letter carriers for twelve years. Lisa worked both before and after the children were born. We have three wonderful kids: Annelise is nine, Alec is six and Lilia is just about to turn four. We have two dogs, three cats, four birds and various fish, mice and other creatures. So we obviously have a very busy household.

In 1992, when Annelise was four and one-half years old, she contracted a couple of what we thought were just bad respiratory infections. Well, she stopped breathing at home one night. We were lucky enough to be able to resuscitate her, but in the next three months that we spent in the hospital with her we came to find out that she had undiagnosed myopathy, a muscle disease that is like a very rare form of Muscular Dystrophy. Annelise's muscles are so weakened that she needs a respirator to assist her in breathing much of the time.

She pretty much lives in her wheelchair or her bed. Although she can eat by mouth, we've had to have a feeding tube placed into her stomach to control the calories she gets in order to strengthen her as much as possible. She requires around-the-clock nursing care. The videotape I've brought allows me to do more than just talk about my family. It gives you the opportunity to meet them.

We have what is considered to be very good health insurance through my position as a letter carrier with the United State Postal Service. But when you have a chronically ill child such as Annelise, even the relatively small portion of her medical expenses that we are responsible for adds up to a considerable amount of debt. Our insurance has payed out literally millions of dollars for Annelise's care. During the

worst part of Annelise's illness, we have been forced to use our credit cards for a lot of everyday expenses, such as car repairs, groceries and over-the-counter drugs.

When we filed for bankruptcy, we owed $124,000 in medical bills and about $60,000 in credit card bills. Our mortgage is about $109,000 and we owe $26,000 on our van. We couldn't pay the interest on our bills much less pay them off over time. Paying off our medical bills was out of the questions if we were to stay current with our mortgage and car service payments. This has been very hard for all of us. Two months before we filed for bankruptcy, Lisa resigned from the USPS in order to stay home full-time with our children and to supervise Annelise's care. Despite what you may have heard from lobbyists, this bill would have negatively affected my family if it had been law at the time we filed. We would have been presumed to be "abusers"; people who could afford to repay their creditors. Lisa's income for six months prior would have been considered against us, even though she was no longer working. This means that we wouldn't have qualified for Chapter 7 bankruptcy under the bill's "means test."

We would have had to file more papers, more certificates. We would have had to go to credit counseling to learn how to manage our money. But I don't think they could have taught us how not to run up medical bills for a sick child. We would have been told what we should have been spending on our household expenses, even though some of our expenses—like the purchase of a van to get Annelise and her wheelchair around—would probably have exceeded the one-size-fits-all expenses that families are allowed. Creditors would have had the right to object to the fact that we were filing for bankruptcy, to insist that we be dismissed from Chapter 7 or that we be forced to file for Chapter 13 and make payments for five years.

If the bill had been law, we would have had to hire lawyers and go to bankruptcy court to defend ourselves. If just one or two creditors objected, we might have felt compelled to agree to pay their bills as a "reaffirmation", instead of hiring a lawyer to defend ourselves. If we couldn't afford our lawyer for the additional work, or pay off these creditors, our bankruptcy would have been dismissed.

Another thing that scares us about this legislation: presently, we know that no matter how bad things get we can't declare bankruptcy for another six years. But we know that if we get too deep into debt we could file for Chapter 13 and at least could save our house. If this bill passes, we could not do that. No matter what our reason is, under this bill, we could not file a Chapter 13 for at least five years. No excuses. No exceptions. If it means we lose our van or our house or Annelise's wheelchair, under this bill, that's just too bad for us.

Our situation with Annelise is by no means an isolated case. We are not an anecdote that can be discarded. Everyone here in this hearing room today, everyone watching this at home has families just like ours in their communities. Every major metropolitan area of this great country has one or two or three children's hospitals. These facilities are unfortunately filled with kids with conditions like Annelise's. Kids with M.D. Kids with leukemia or who have suffered traumatic injuries. If anyone of you were to volunteer one or two days a year at a children's hospital you would get the opportunity to sit with these children for a while, to give their ever-so-worried parents a break to take a shower or get a meal together. You would realize that money woes were just one small part of the pressures and stress that these parents face in such tragic times. There are thousands of families in situations similar to ours all across the United States.

In my opinion, the lending institutions that are pushing this legislation through Congress are a victim of their own mass marketing. I'm no economics expert or marketing genius but it seems to me that when access to revolving credit gets to such an extreme saturation point, there is going to be some very predictable results.

I'm a letter carrier. I see first-hand the incredible number of credit card solicitations mailed out to every one of my customers on my mail route. I know how many dozens of mailings Lisa and I personally received over the years. Is it right for these lending companies to offer revolving credit to college students or families—and this may have included my own family at a certain point—who can ill-afford to take on additional debt? I'm not saying that access to credit wasn't important to my family when we were struggling to get by—it was. We paid our bills on time until we had to declare bankruptcy. Or that we couldn't have been more careful about some of our spending. When you have a kid in the hospital, it is hard to spend every last dollar in the most cost-efficient way. I just think that the creditors behind this bill want you to ignore the fact that their lending practices are a big part of the problem.

Lisa and I are a lot like every other family in America. We work hard, play hard and love our kids. We carried insurance and tried to save a little money. Lisa and I did not want to file for bankruptcy. We tried everything we could to avoid it. But when the time came, we were glad we faced a system that is fair and that recog-

nizes that sometimes people have terrible problems. We are glad that the bankruptcy system gave us a chance to get back on our feet.

I took time off from work and traveled all the way up here today to ask you not to pass this bill. It is the wrong way to get rid of any abuses that might occur and it will hurt families like mine. I deeply resent that some creditors and politicians have misrepresented my family's situation to the American public by claiming otherwise.

One of the reasons that so many Americans are turned-off about what happens in Washington is that they think that wealthy special interests have too much power and tell Members of Congress too many lies. I'm not a bankruptcy lawyer, but I've been through bankruptcy and I understand the ways that this bill will harm families like mine. It will mean that many hard-working middle class families won't qualify for chapter 7 bankruptcy—just like we wouldn't have. It will make bankruptcy more difficult, bureaucratic and expensive. It will set up rigid, one-size-fits-all expense standards and assume that families like mine are bankruptcy abusers. And it will give creditors the ability to challenge the qualifications of families and scare them out of filing for bankruptcy.

Thank you for listening to my family's story. I hope you will keep us in mind—and many other families like us—when you consider this bill.

Chairman SENSENBRENNER. Judge Mabey.

TESTIMONY OF RALPH MABEY, ESQ., LeBOEF, LAMB, GREENE & MacRAE, REPRESENTING THE NATIONAL BANKRUPTCY CONFERENCE, SALT LAKE CITY, UT

Mr. MABEY. Thank you, Mr. Chair, and members.

The National Bankruptcy Conference doesn't have an ax to grind. We are bankruptcy judges, law professors, and practitioners of divergent politics and backgrounds whose voluntary nonpartisan organization, the National Bankruptcy Conference, is dedicated to promoting sound bankruptcy law and policy.

In recent weeks we have contributed hundreds of hours to the study and analysis of the provisions of H.R. 333. The result of our work is a painstaking section-by-section report which elucidates each provision of the bill and which I have attached as an appendix to my testimony. Naturally the bill itself provides amendments to many statutes and cannot be understood read alone, because it doesn't reprint the statutes which are amended.

Our report explains succinctly and objectively what each provision of the bill does. Separately we state our views with respect to each section of the bill. We believe some sections make good sense, some sections make poor sense, and others are of smaller consequence. Irrespective of your views on a particular section of the bill, we offer our expertise to assist you where drafting or redrafting will better accomplish your results.

Now I focus on some of your concerns. Particularly if the economy is turning down, it is important not to gum up the works of Chapter 11. Section 708 of the bill threatens to do so. Innocent creditors of a troubled company should expect equal treatment if their rights are equal, but section 708 allows a creditor to sue, claiming the corporation defrauded it and therefore that the creditor should receive 100 cents on the dollar, leaving the other innocent creditors with less or nothing.

This invitation to destructive warfare will be costly and time-consuming, resulting in failed reorganizations, lost jobs and reduced return to creditors as a whole. Obviously if management has defrauded a creditor, management should be ousted or sued or otherwise dealt with. But section 708 would instead extract the pound

of flesh from the other innocent creditors. Those creditors will fight back, as well they should. A brawl in a leaky boat sends everyone to the bottom.

In the same vein, section 409, section 417, would take from some creditors to give to other creditors. And section 411, 437, and 1201(5) impose Chapter 11 deadlines without regard to what is in the best interest of employees and the creditors. We ask you to protect Chapter 11 at this time when economic need is growing.

Now as to the—it's also appropriate to reevaluate the consumer provisions of this bill at a time when, for instance, older Americans are the fastest growing segment of bankruptcy. One in five individuals who files bankruptcy is an older American. We stand for the proposition that the honest but unfortunate debtor may be forgiven and receive a fresh start. A century of U.S. law and the U.S. Supreme Court have endorsed this provision.

Section 102 of the bill submits all consumers to means testing irrespective of the circumstances which led to financial distress. First, we believe that a bankruptcy judge should have discretion to exempt from meanings testing persons based upon how they got in their financial fix. For instance, an elderly person burdened with job loss or medical bills, an abandoned mother with children, ought to be treated differently from the MBA or lawyer who overspent on vacations and the like. The bankruptcy judge should have this discretion.

Second, in a similar vein, we believe the bankruptcy judge should have discretion, as the Internal Revenue Service itself has, to bend the IRS's expense standards to the circumstances of an honestly disadvantaged debtor.

Just a brief example in closing. The IRS standards presume incorrectly that a family with two children can get by on the same amount of rent and utilities as a family of five children like mine. And where I live in Utah, that seems about like an average family. A bankruptcy judge should have the elbow room to adjust the housing allocation for Utah's and the Nation's large families. The bill gives the judge no discretion, unless there are special circumstances, and no reasonable alternative. This is a very high standard which would require a number of honest but unfortunate families to move.

In sum, the court should have discretion to release from the means test honest but unfortunate debtors whose financial circumstances were not of their making, and debtors for whom the IRS expense standard is unfair. Thank you.

Chairman SENSENBRENNER. Thank you very much, Judge Mabey.

[The prepared statement of Mr. Mabey follows:]

PREPARED STATEMENT OF RALPH R. MABEY, ESQ., LEBOEF, LAMB, GREENE & MACRAE, REPRESENTING THE NATIONAL BANKRUPTCY CONFERENCE, SALT LAKE CITY, UT

SUMMARY OF TESTIMONY

The membership of the National Bankruptcy Conference, comprised of bankruptcy judges, law professors and practitioners, have donated hundreds of hours to the preparation of a comprehensive report on H.R. 333 (the report is entitled "Report on H.R. 2415" since it was completed before introduction in this Congress of the essentially identical H.R. 333). This report contains an objective description of the operation of each section of the bill and also contains the Conference's recommenda-

tions with respect to each section. Irrespective of the Conference's recommendations on any particular section of the bill, the Conference offers its expertise to assist the Committee as may be desired.

The Conference's full report is an appendix to this testimony. The Conference's Executive Summary of the report is part of this testimony.

Some provisions of H.R. 333 will impair the operation of Chapter 11 which is designed to reorganize the Nation's troubled businesses, save jobs, and protect creditors. These include most notably section 708, and sections 409, 411, 417, 437, and 1201(5). Their enactment will jeopardize jobs and risk creditor hardship.

Many of the bill's provisions burden the honest, but unfortunate consumer debtor. The bankruptcy judge should have discretion to exempt from the means testing imposed by Section 102 of the bill worthy debtors, such as the elderly who have suffered extraordinary medical bills or job loss. The bankruptcy judge should also have some discretion to adjust the Internal Revenue Service's expense standards, made applicable by Section 102, where equity requires. The Internal Revenue Service exercises discretion when it applies the standards.

Without judicial elbow room, some honest but unfortunate debtors will be unable to obtain relief under Chapter 7 and unable to obtain relief under Chapter 13. The prospect of their having the future incentive and wherewithal to make a productive contribution to our economy will be lost.

TESTIMONY

The National Bankruptcy Conference does not have an ax to grind. We are 60 bankruptcy judges, law professors, and practitioners of divergent politics and backgrounds whose voluntary, non-partisan organization, the National Bankruptcy Conference, is dedicated to promoting sound bankruptcy law and policy.

The National Bankruptcy Conference Report

In recent weeks, we have contributed hundreds of hours to the study and analysis of H.R. 2415 which, virtually in its entirety, is before this Committee as H.R. 333. The result of our work is a painstaking, section by section report which elucidates each provision of the bill and which I have attached as an appendix to my testimony.

Because H.R. 333 is a compilation of amendments, primarily to the Bankruptcy Code, it cannot be read and understood standing alone—the bill adds and deletes words from the existing statute without, of course, reprinting the entire statute so that the context is before the reader. Our report explains succinctly and objectively what each provision of the bill does. Separately, our report states the National Bankruptcy Conference's views with respect to each section of the bill. We believe some sections make good sense, some sections make poor sense and others are of smaller consequence. Irrespective of your agreement or disagreement with our views on a particular section of the bill, we offer our expertise to assist you where drafting or redrafting will better accomplish your intended results. For now, I will focus on some of our concerns.

H.R. 333's Chapter 11 Amendments Threaten Jobs and Risk Creditor Hardship

For a number of years I have served as legal counsel for creditors or employees of companies in Chapter 11 or for the troubled companies themselves. In most cases in which I have participated, the creditors and employees have substantially benefitted from the Chapter 11 reorganization. I think for instance of the Columbia Gas System, Federated Departments Stores and Geneva Steel reorganizations—and I hope for success and the preservation of jobs in the current TWA Chapter 11. Reorganization of businesses under Chapter 11 saves jobs, preserves going concern values, and protects creditors.

Particularly if the economy is fragile or turning down, it is important not to gum up the works of Chapter 11. Section 708 of the bill threatens to do so.

Under current law, innocent creditors of a troubled company can expect equal treatment if their legal rights are equal. For instance, each might be entitled to 50 cents on the dollar plus stock in the reorganized corporation. But section 708 would allow a creditor to sue claiming the corporation defrauded it and therefore that creditor should receive 100 cents on the dollar—leaving the other innocent creditors in my example with less than 50 cents on the dollar. This invitation to internecine warfare between creditors will be costly and time-consuming thus resulting at times in failed reorganizations, lost jobs and reduced return to creditors as a whole. Obviously, if management of a corporation has defrauded a creditor, management should be ousted or sued or otherwise dealt with. But Section 708 would instead extract the pound of flesh from the other innocent creditors. Those creditors will fight back, as well they should. A brawl in a leaky boat sends everyone to the bottom.

In the same vein, Section 409 makes it easier for some creditors to retain preferential payments at the expense of others, Section 417 would allow utilities to turn the lights off at the troubled company in a number or circumstances even when the company has the money to pay the utility bills as they became due during the Chapter 11 case. Sections 411, 437, and 1201(5) impose Chapter 11 deadlines ultimately without regard to what is in the best interests of the employees and the creditors.

Please protect the viability of Chapter 11 at this time when its economic need is growing.

H.R. 333 Should Give More Discretion to Judges Dealing With Honest, But Unfortunate Debtors

Now is also the time to reevaluate some of the consumer provisions of this bill—now that we know that the number of Americans age 55 and older who file for bankruptcy has grown more than 120% since 1991, making older Americans the fastest growing age group in bankruptcy. One out of every five bankruptcy cases involves one or both petitioners who are 50 or older. 72% of all Americans age 50 and older who file for bankruptcy trace their financial difficulties to a job loss or job reduction. Of those age 60 and over who file bankruptcy, 62.8%, have completely unmanageable credit card debt, presumably having staved off bankruptcy by borrowing at the ATM.[1]

The National Bankruptcy Conference supports certain provisions of the bill which limit the homestead exemption and proscribe the repeated filing of bankruptcies by the same person.

We stand for the proposition that the honest but unfortunate debtor may be forgiven and receive a fresh start. A century of U.S. law, and the U.S. Supreme Court[2] have endorsed this position.

But Section 102 of the bill submits all consumers to means testing irrespective of the circumstances which led to financial distress. We believe that a bankruptcy judge should have the discretion to exempt from means testing, for instance, an elderly debtor burdened with job loss or medical bills, or the abandoned mother and children (who are 4 times more likely to have to file bankruptcy than the general population[3]). They ought not be treated the same as the MBA or the lawyer who overspent on vacations and fancy restaurants. In a similar vein, we believe the bankruptcy judge should have discretion, as the Internal Revenue Service itself has discretion, to bend the IRS's expense standards to the circumstances of an honestly disadvantaged debtor.

For example, the IRS standards presume incorrectly that a family with two children can get by on the same amount for rent and utilities as a family of five children like mine. And where I live in Utah, my family seems about average. A bankruptcy judge should have the elbow room, for instance, to adjust the housing allocation for Utah's and the Nation's large families. The bill gives the judge no discretion unless there are "special circumstances" and "no reasonable alternative." This is a very high standard which I believe would require a number of honest but unfortunate families to move.

There is a compelling reason for affording the judge discretion in the means testing formula. Without it, some honest, but unfortunate debtors, will be ineligible for bankruptcy relief under Chapter 7 and unable to obtain bankruptcy relief under Chapter 13. Twenty years worth of data show that 2 out of 3 debtors who voluntarily undertake the repayments of Chapter 13 fail. The failure rate will of necessity grow when Chapter 13 is imposed involuntarily on debtors—particularly since the bill now imposes substantially more stringent repayment requirements for those in Chapter 13.

The Court should have discretion to release from the means test honest but unfortunate debtors whose financial circumstances were not of their making and debtors for whom the IRS expense standard is unfair.

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[1] These data were summarized on February 1, 2001, by Professor Elizabeth Warren and derived by her from the Consumer Bankruptcy Project II (1991) and Consumer Bankruptcy Project III (1999). The data are reported in greater detail in Melissa Jacoby. Teresa A. Sullivan and Elizabeth Warren, *Rethinking the Debates Over Health Care Financing. Evidence from the Bankruptcy Courts*, 176 NYU L.Rev.xx (2001); Teresa Sullivan, Elizabeth Warren, and Jay Lawrence Westbrook, THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT (Yale University Press 2000); Sullivan and Warren, *From Golden Years to Bankruptcy Years*. Norton's Bankruptcy Law Advisor (Summer 1998); Warren, *The Bankruptcy Crisis*, 73 *Ind.* L.J. 1079 (1998); Teresa A. Sullivan, Elizabeth Warren, and Jay Lawrence Westrbook. *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981–91.* 68 *Am. Bankr.* L.J. 121 (1994) [hereinafter *Consumer Bankruptcy*].

[2] *Local Loan v. Hunt*, 292 U.S. 234 (1934).

[3] Consumer Bankruptcy, *supra* note 3, at 4.

The United States of America pioneered in the modern world the concept of a fresh start for the honest but unfortunate debtor.[4] Our entrepreneurial economy prospers when honest but unfortunate debtors are given a fresh opportunity to swim back into the productive mainstream rather than being forced down to drown. Moreover, our sense of self dictates humanity for the honest but unfortunate underdog.[5] At least in the respects I have mentioned, H.R. 333 should be adjusted to this concept.

I am pleased now to provide the National Bankruptcy Conference's Executive Summary of its report on H.R. 2415 which, as I earlier noted, is in almost all respects identical to H.R. 333. Thank you.

[NOTE: Additional material submitted by Mr. Mabey is not reprinted here but is on file with the House Judiciary Committee.]

Chairman SENSENBRENNER. Professor Gross.

TESTIMONY OF PROFESSOR KAREN GROSS, NEW YORK LAW SCHOOL, NEW YORK, NY

Ms. GROSS. Thank you, Mr. Chair, ladies and gentlemen. I too welcome this opportunity to share my thoughts on H.R. 333 with you particularly as it concerns the impact it would have on women and children. I would like to ask before I begin one procedural issue, if I could, and save my time at the end. I would ask that my full written statement be submitted by Monday and included as part of this record.

Chairman SENSENBRENNER. That is fine.

Ms. GROSS. Thank you. May I start again with the full time? Thank you.

Let me start by saying that I commend Mr. Trapp for speaking about his personal experience. It's not easy to do and it's important for us to hear. My views are informed by my academic research and writing over a 16 year period as well as my analyses of the work of others and my work with actual financially distressed women both at the New York Legal Aid Society and at Vermont Adult Learning.

Let me begin by saying that if this bill is so good for women and children, why are there so many well known and well regarded women's groups that are opposed to it? They must be seeing something. They are, after all, concerned about women and protecting the rights of women and children. What they are seeing is that this bill has to be taken as a whole. And as a whole it does not—let me repeat—as a whole it does not protect the interests of women and children. You cannot cherrypick provisions and say that the bill protects women and children.So what I would like to do is provide you with a look at the whole and suggest the ways in which, at least some examples of ways in which, the bill fails to protect women and children.

Let me start by identifying who are the women and children who appear in or are touched by the bankruptcy system. One group is women as creditors. That does include women who are entitled to back alimony maintenance and child support, but it also includes other women who are creditors for reasons other than alimony maintenance and child support. There are women who are debtors, and indeed among the growing populations of people accessing the

[4] (Appendix 2) Testimony of Ralph R. Mabey before the Subcommittee on Commercial and Administrative Law of the Committee on the Judiciary, U.S. House of Representatives Respecting Proposed Bankruptcy Reform, March 16, 1999.

[5] *E.g.*, Deuteronomy 15.

bankruptcy system, women are in that group. Then there are women who are the recipients of future alimony, maintenance and child support. In other words, they are currently getting what they are owed but they want to make sure they can get money prospectively. And there are also the current spouses of filing debtors; in other words, women who are not entitled to alimony, maintenance and child support from this debtor. While they may not be official parties, they are most assuredly affected by the bankruptcy system.

So not all women in the bankruptcy system are owed alimony, maintenance and child support. The universe of women affected is much larger than that. And so we cannot just focus on the child support provisions, because while they provide some benefits, they do not do all that they are cracked up to do and moreover they represent only a very small piece of the pie involving women.The focus of the child support amendments is retrospective. Women care about prospective fresh start, the ability to move forward in the future.

Let me give you several concrete examples of how women are adversely affected. Let's start with the woman as creditor. The legislation makes past due alimony, maintenance and child support a first priority. That sounds terrifically good, women and children first. But leapfrogging from seventh place to first place is not that great of a leap. Indeed, many of the intervening leaps are irrelevant to consumer bankruptcy cases. And in a Chapter 7 case, a liquidation case being a priority only affects you and benefits you if there are assets from which to be repaid. In other words, increased opportunity to collect is only beneficial if there is property from which to collect. Moreover in a Chapter 13 case if you make things a priority and they are not paid, you increase the likelihood that a Chapter 13 will not succeed. We want to encourage Chapter 13's, not discourage them. And if you discourage them, that does not help women and children. That does not help current spouses.

Now, in terms of women as custodial parents who are debtors, they too are hurt by the system. There are more reaffirmations, there is less cram-down, there is more nondischargeable debts, there are increased hurdles to access. All of this diminishes the fresh start. And what this means is that the future income that this woman receives will go more to pay past creditors than under current law. That's not right. That means that her current income is not giving her a fresh start. She is still tied to her past.

Next, the bill does not help women and children from the enormous risk of dissemination of their names on line. And before my time expires, let me just point out that with all the online access to bankruptcy files, women will be hurt, because whether they are a creditor and their name and address are disclosed so that others are stalking them or abusing them can easily find them, or whether they are debtors and their names, addresses, names, ages of their children are all online, that is not good. That hurts women and children and it can hurt them both psychologically and physically, and section 107 of the bankruptcy code does not solve that.

So where does that leave me? I wish this bill helped women and children. With regret, it does not.

Chairman SENSENBRENNER. Thank you very much, Professor Gross. We may have you back when we're dealing with privacy issues later on.

[The prepared statement of Ms. Gross follows:]

PREPARED STATEMENT OF PROFESSOR KAREN GROSS, NEW YORK LAW SCHOOL, NEW YORK, NY

Good Morning. My name is Karen Gross, and I am a tenured law professor at New York Law School. I welcome this opportunity to share my thoughts with you on H.R. 333 (titled "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001"). In particular, I will focus my remarks on the impact this legislation would have, if enacted, on women and children.[1] My views are informed by my academic research and writing over a sixteen-year period as well as my analyses of the scholarship of other legal and nonlegal academics and my work with financially distressed women at the New York Legal Aid Society and Vermont Adult Learning. A copy of my resume and disclosure statement were submitted under separate cover.

Let me begin with the following observation. Many well known and well respected women's groups have objected to the proposed bankruptcy legislation in the form of H.R. 333 or its predecessors. If this legislation is so good for women and children, why are these groups—the very groups charged with protecting women and children—so opposed to it? One possibility, which seems extremely remote, is that this legislative body is in a better position than are these groups to ascertain and prescribe what is best for women and children. Alternatively, and considerably more likely it seems to me, is fact that, in truth, this proposed legislation *does not* help women and children. These women's groups are seeing something; what they are seeing is that, *taken as a whole,* this legislation is harmful to the interests of women and children; women and children will be worse, not better, off because of it. Of course, looked at in isolation, there are women and children protective provisions that improve current law in the proposed legislation. There are some provisions within H.R. 333 that are beneficial to the bankruptcy system. But, H.R. 333 (and its predecessor legislation) cannot be cherry-picked; legislation must be evaluated as an organic whole, evaluated based on what will happen in real life. When viewed holistically, H.R. 333 simply does not protect the interests of women and children.

My remarks concentrate on specific, concrete examples of how H.R. 333, taken as a whole, is harmful to the very groups that the legislation's proponents suggest it benefits. In this context, I will demonstrate why the domestic support provisions, touted as such a panacea for women and children (especially by those in government agencies charged with the collection of these obligations),[2] are not as beneficial as they might appear to be. Then, I will suggest some protections that legislation could have provided to assist women and children but are absent from H.R. 333; these missed opportunities are clearly worthy of the attention by those genuinely concerned about women and children.

WOMEN AS DEBTORS, CREDITORS AND THIRD PARTIES

Women appear in or are touched by bankruptcy in a variety of ways: as creditors, as debtors, as recipients of prospective domestic support and as innocent non-filing, non-creditor third parties married to a financially troubled individual. Let me elaborate. As creditors, women may be owed past due support for themselves and their children. They may also be owed monies unrelated to support; suppose they lent money to a former spouse or significant other. Suppose the woman is owed money from a debtor doctor or hospital based on an unintended overpayment. Or, suppose a woman is in business and someone to whom she extended credit owes her money and seeks bankruptcy relief. All of these women appear in the bankruptcy system as creditors.

As debtors, women may and do seek bankruptcy relief. Indeed, women are one of the largest populations of debtors now accessing the bankruptcy system. Many

[1] I testified before the Subcommittee on Commercial and Administrative Law on March 18, 1999 on this same topic. The vast majority of my observations at that time remain equally true today in respect of H.R. 333 as the predecessor bills were remarkably similar. My remarks today try to provide some additional insights. As might be anticipated, my observations about H.R. 333 are broader than those developed herein, and I would welcome the opportunity to share these additional thoughts with the Committee if that would prove useful.

[2] The term "domestic support obligations" is defined to include the government and is contained in Subtitle II of Title II of H.R. 333.

of these women are divorced, suggesting that whatever support they were receiving or hoping to receive was inadequate to pay their expenses.[3] The data also show that women debtors are more economically marginal, have greater child and parent care responsibilities, and owe more money for medical debts than their male counterparts; they are also less likely to have been regularly employed for a long period. Women debtors also have more "sexually transmitted debt" than their male counterparts, namely debts they acquired through a man (such as credit card debt, business related debt, tax liability).

Women are also affected by the bankruptcy of their former or current spouses, even if they are not currently creditors. In the context of the former spouse, women want to receive prospectively the monies to which they may be entitled, and if bankruptcy encumbers a debtor with many new obligations post-discharge, this will curtail the availability of assets prospectively. For the current spouse of a filing male debtor, the ability of that debtor to emerge from bankruptcy with a clean slate affects the spouse's ability to survive in the future. Stated differently, if bankruptcy does not provide adequate relief for the debtor, he will have trouble paying support to his former spouse while simultaneously supporting his current family.

These different roles must be recognized; it is critical to realize that no all women appearing in or affected by the bankruptcy system are owed *past due* domestic support. Thus, protecting women who are entitled to past due support (assuming that is accomplished) addresses only one aspect of women's participation in the bankruptcy system. Many women dealing with financial distress are very concerned about the *future*, the ability to move forward. These women have survived (although not necessarily well) without the support to which they were entitled; so, they have a prospective, rather than retrospective, focus. This accounts for why, despite the efforts of governmental debt collectors to laud the benefits of H.R. 333, the interests of the government are not necessarily consonant with the interests of women recipients of support; one group (the government) is focused retrospectively while the other (women) is focused prospectively.

In adopting a holistic approach, I am reminded, by way of analogy, of a doctor who prescribes a medicine for one ailment without taking into account other ailments and medications of the patient in question—only to discover that the newly prescribed wonder drug exacerbates a pre-existing condition, is incompatible with the other drugs taken by the patient, and creates new symptoms and unintended sequella. Obviously, use of a drug must be both contextualized and personalized before it can be employed successfully. And, so it is with provisions amending the bankruptcy law; the Bankruptcy Code is an organic whole, and one must look at its overall operation to determine the success of proposed amendments to it.

THE ILLUSORINESS OF BENEFITS FOR WOMEN AS CREDITORS:

Although there are many examples of seemingly beneficial provisions that do not deliver as asserted, one example is particularly salient: the elevation of domestic support payments as a first priority (Section 212). This change has enabled the proponents of H.R. 333 to state that the legislation makes women and children first. That is an appealing sound-bite and it is true on the surface. Unfortunately, the reality is that the elevation of the priority does little to help women, and it may actually hurt them based on current drafting. Here's why.

Presently, support obligations are a 7th priority in the statute although they are, in reality akin to a 2nd priority since priorities numbers 3–6 are not generally applicable to consumer bankruptcy cases. In a Chapter 7 case and contrary to popular belief, being a priority claimant is not tantamount to recovery in full of what is owed. A priority, designed to enable greater recovery for past due amounts, is only useful if there are assets from which to collect. In a no-asset Chapter 7 case (which describes the majority of consumer cases), priority status is a benefit without teeth. Further, if a woman's claim is a first priority in an asset case, she will need to try to collect the asset—which is expensive and time-consuming and requires the assistance of counsel. Moreover, as a 2nd (rather than 1st as under existing law) priority, the trustee (normally the person charged with collecting assets) has no incentive to assist the priority woman support creditor unless the asset is worth more than the

[3] This becomes relevant in the context of assessing the support provisions within H.R. 333. According to government collection personnel, the supported spouse will not have to compete with the government or creditors for monies owed her post-petition since the available collection remedies (external to bankruptcy) are so pro-spouse. If that argument is accurate, why are so many women experiencing such difficulties collecting what is owed them and why are government agencies charged with collection only collecting (in part or whole) approximately 38% of the outstanding accounts? Clearly, the reality of collecting support is not necessarily consonant with what appears in the statute books.

debt; otherwise, there is no reason to expend the time and money of the estate. In other words, being first is not all it is cracked up to be.

In addition, in the context of a Chapter 13 case, being a first priority creditor means that a repayment plan may not be confirmed or proceed to completion if priority expenses are unpaid. There is a built-in limited exception under H.R. 333 for the government as bill collector; the plan can still be confirmed if past due support payments are made from disposable income over a five-year period. If all support payments must be paid in full through (as opposed to outside) the plan, more Chapter 13 cases will fail. And, in the case of the government as priority creditor for domestic support, extending the plan to five years increases the likelihood of plan failure. (As it is, Chapter 13's are not abundantly "successful," if success is defined as payment in accordance with plan terms.) If a Chapter 13 case of a non-custodial former spouse fails, women creditors are not better off. Their obligations fall into the general pool of unpaid debts outside of bankruptcy, and they are back where they were—struggling to force the debtor to repay them. Moreover, if a Chapter 13 case fails, a woman's ability to collect prospectively diminishes since more of the available dollars will need to go to unpaid past due obligations. Further, in limited situations, the women seeking current or prospective support will be in competition with the government seeking past due support. In addition, since the "super-discharge" in Chapter 13 is narrowed under H.R. 333, the debtor will remain saddled with more obligations post-petition, even if the plan is completed. Stated as a more general principle, if one cares about women and their futures, one would want successful Chapter 13 cases and fewer non-dischargeable debts in both Chapters 7 and 13 so that, at the end of the day, women would be the sole group seeking to collect.

THE ILLUSORINESS OF BENEFITS FOR WOMEN AS DEBTORS:

Turning now to the effects of H.R. 333 on women as debtors, we see another example of how the proposed legislation does not benefit its articulated and intended beneficiaries. Consider a female divorced custodial parent who seeks bankruptcy relief. She will encounter greater entry hurdles to the system (encompassed in the so-called means test detailed in Title I of H.R. 333), costing both time and money and potentially curtailing her ability to access Chapter 7 in the first instance. During her case, secured creditors are more likely to obtain repayment of their obligations (given the diminution of cramdown) (Section 309 of H.R. 333); unsecured creditors are more likely to obtain reaffirmations since the strictures for obtaining same are actually decreased rather than increased under Section 203 of H.R. 333; since women tend to reaffirm debts more than their male counterparts, more debts will survive bankruptcy. Further, given the broader definition of "household goods" in Section 313, fewer liens will be voided under Section 522, again increasing the post-petition obligations of debtors. Perhaps even more significantly, there are new categories of debt that are non-dischargeable. Consider cash advances which will now be presumed non-dischargeable if they aggregate more than $750 over a 70 day period (Section 310). This means that if a woman debtor (who may not want to carry cash for safety reasons) obtains cash advances of $10–11 per day over a two ⅓ month period to purchase items she needs for her day-to-day existence (say for diapers, public transportation, food and reading material), that debt can be presumed non-dischargeable, placing on the burden of proof on the woman debtor to demonstrate otherwise. That is a time-consuming and expensive burden. (Notice that the luxury good exception with respect to credit card purchases *was* not carried into the definition of cash advances.) What this means as a practical matter is that if more debts survive discharge and must be paid, the woman may need to use future support to pay *past* as opposed to current obligations, hardly a beneficial result. Stated differently, future dollars may go to credit card companies rather than to the woman and her children.

UNDERSTANDING THE CONSEQUENCES TO WOMEN:

H.R. 333 fails to recognize that bankruptcy law provisions that hurt male debtors in terms of their gaining access to and relief in bankruptcy may redound to the detriment of women. Several examples suffice. Suppose a male divorced non-custodial parent seeks bankruptcy relief. We need to be worried, from a human and societal perspective, about his ability to support his prior and his current family. If creditors other than these families see more repayment, then two families are at risk. Moreover, if the government is seeking to collect past due amounts for support to refill the government coffers (rather than the money filtering through to the woman recipient as is sometimes the case), then the interests of the government are in conflict with the needs of the current family. Assuming the former spouse is not herself owed past due support, then the government is helping itself while the former

spouse will be struggling to collect current and prospective support and the new family will be struggling to survive. Why is it so beneficial for the government to place itself ahead of these women and families?

Suppose that a male divorced non-custodial parent has used his credit card and borrowed cash advances in the time period before bankruptcy. One could posit lots of reasons for this; consider the possibility that his paycheck was going to pay alimony obligations so he needed to use his credit cards to manage. If these credit card sums and cash advances survive bankruptcy, his ability to continue to pay alimony and support is not improved. Indeed, bankruptcy will not help him. What justifies the inability to obtain a fresh start if one of the primary beneficiaries of the filing is the custodial parent?

THE OMITTED PROVISIONS: PRIVACY, ABORTION CLINIC VIOLENCE AND BEYOND

While I am terribly concerned about what H.R. 333 will accomplish (despite the rhetoric surrounding it), I am equally concerned about what the proposed legislation *fails* to do. Sometimes the sin of omission is as great, if not greater, than the sin of commission.

The present bill has very vague precatory language in respect of privacy, primarily geared to data collection and reports filed. I am concerned with more than that. As an academic, I fervently support increased bankruptcy data collection so we can make policy choices in an informed way. But, data access has to be balanced against personal privacy needs. The desire for transparency and accountability does not eliminate personal privacy. H.R. 333 calls for greater information from the debtor. On a separate but related front, our bankruptcy courts are increasingly moving to electronic filing. Under this system, anyone will be able to easily access data from bankruptcy cases. Currently, in certain regions of the country, users can now obtain a password (apparently an easy task with no background check) and then, for a fee, download case information.[4] At present, all (rather than selected) data in those jurisdictions with online bankruptcy filing are accessible, including addresses, account numbers, social security numbers, children's names and ages. There are two studies in respect of privacy and electronic filing (one by the Administrative Office (directed at federal courts generally) and the other jointly by OMB, Treasury and DOJ (directed at bankruptcy courts in particular), the latter of which just released its findings which are available online through www.abiworld.org).[5] Until recommendations from these or other studies change current law, the online data are presently available without restrictions or protections.

Let me tell you about an exercise I do with my law students. I give them the name of a debtor who sought relief somewhere in the U.S. Sometimes I pick a well-known "famous" debtor; other times, I select a "regular" debtor. I then ask the students to find out where the debtor lives, his/her social security number, the names and ages of his/her children, his/her employer's name and a list of medical debts, if any. Students are rightly stunned by the request—and by their ability to find this information with relative ease. We then note how the chosen debtors would feel if 50 law students knew this information about them. Clearly, even debtors who knew their bankruptcy would be "public," did not anticipate this level of access. Stated differently, with paper records, debtors were protected by the "practical obscurity" of those records; today, there is no such "protection." Indeed, many debtors are not warned by their lawyers prior to filing about the huge online access to their personal information that will occur as soon as their case is filed.

Here is what concerns me most. Suppose a woman is a debtor who has a former spouse who has stalked her. Suppose there have been issues about custody and concerns about kidnaping or prolonged "borrowing" of children. If this woman seeks bankruptcy relief, her life becomes an open book. Known and unknown predators will be able to learn a great deal about this debtor. She will not know this is occurring until it is too late. Suppose there is a woman who is the creditor of either a business or an individual seeking bankruptcy relief. Suppose this woman creditor has also been harassed or stalked or abused in a prior relationship. As soon as this debtor seeks relief and lists its/his creditors, the woman creditor's name and address

[4] In some regions, there is currently no password and no fee.

[5] I have been involved in both studies. I was asked by the relevant subcommittee to testify before the AO group studying this issue, which I did. I also delivered written comments to the OMB/DOJ/Treasury study which are reflected in its appendix. These comments are available if members of Congress care to see them. I have also conducted several panels on this issue, including at the National Conference of Bankruptcy Judges and the Annual Meeting of the Association of American Law Schools. In that context, we have prepared a detailed privacy bibliography which is also available upon request.

become public and accessible online, *and she has no way of knowing about or stopping this ahead of time*.

The Bankruptcy Code section addressing these issues, an extremely underutilized and largely obscure provision, is inadequate. First, it makes all bankruptcy records "public." (Query as to whether documents in the hands of a trustee are similarly public.) Next, it creates exceptions under which a party may seek court protection so that identified data can be protected. These exceptions are very narrowly drawn, leaving open the possibility that protection in other instances cannot be achieved. The identified circumstances for protection—trade secrets, confidential research/development or commercial information and scandalous or defamatory material—do not cover the women described in my hypotheticals. Even if the statute were broad enough to address their issues or a court (as some have) is willing to expand the narrow scope of Section 107, the onus is still on the concerned individual to seek protection. That can be expensive and time-consuming. Moreover, for the woman as creditor, there is no way to prevent online release at the inception of a case and by the time she has learned of the publicness of her name and address, it may be too late; the damage has been done.[6] Proceeding to demand greater information from debtors without an adequate privacy policy in place is unfair and inappropriate; we can already anticipate the possible hardship to women and children, and H.R. 333 does not address these issues in any meaningful way.

Another provision omitted from H.R. 333 is the proposed amendment to Section 523 making violence at an abortion clinic non-dischargeable. It is noteworthy that Congress had no problem making other types of debts non-dischargeable (such as sums owed the credit industry) but was unwilling to provide that harassment or intimidation of women at an abortion clinic is non-dischargeable. The proposed anti-violence amendment is additive not duplicative of current law. Neither Section 523(a)(6) nor Section 523(a)(7) is adequate for these purposes. Indeed, Section 523(a)(6) requires both an injury and maliciousness; section 523(a)(7) does not cover settlements, pre-trial diversion or civil penalties; moreover, it *does not* address sums owed to someone other than the government. Interestingly, Section 523(a)(9)—the Mothers Against Drink Driving Amendment—was, as a historical matter, added because of the inadequacy of Sections 523(a)(6) and (7), and even to the extent some courts might find a drunk driving damage award non-dischargeable, this result would take time and money to achieve. Moreover, H.R. 333 even expands the scope of Section 523(a)(9) to cover not just motor vehicles but boats and aircraft (Section 1209)—even though through litigation they might be considered within the scope of the existing provision. So, the one non-dischargeability provision specifically designed to protect women and women's rights is absent from H.R. 333.

CONCLUSIONS:

These remarks demonstrate why it is truly disingenuous to say the H.R. 333 helps women and children. I fervently wish that it did. Unfortunately, in my professional judgment, H.R. 333, taken as a whole, does not improve the lives of women and children. To say that it does is simply false advertising.

I appreciate the Committee on the Judiciary taking the time to listen toand reflect upon my remarks and would welcome the opportunity to elaborate further if the Committee would consider that helpful. My written responses to selected of the questions presented to me at the hearing will be delivered to the Committee under separate cover forthwith, with the understanding that these written answers, like this statement, will be included in the record of this hearing.

Chairman SENSENBRENNER. Mr. Silvers.

TESTIMONY OF DAMON SILVERS, ESQ., OFFICE OF THE GENERAL COUNSEL, AFL-CIO, WASHINGTON, DC

Mr. SILVERS. Thank you and good morning, Mr. Chairman. On behalf of the American Federation of Labor and Congress of Industrial Organizations, representing over 13 million working men women and their unions, I would like to thank the committee for

[6] One could fashion a short waiting period between filing and online access to provide creditors a window in which to seek protection. Other approaches for protection need to be considered including limiting certain types of data that are available to certain entities seeking access. All of this needs to be explored more fully *before* we require debtors to tender more information to the bankruptcy courts.

the opportunity to present our views on the vital subject of bankruptcy reform.

In the last Congress, the AFL-CIO opposed the Bankruptcy Conference Report, H.R. 2415, a bill that would have placed jobs at risk, burdened the court system and unfairly prejudiced working families who look to the bankruptcy system for assistance. We were joined in our opposition by all of our affiliated unions that took a position on bankruptcy, including the Teamsters, the Auto Workers, the Steel Workers, the Service Employees, AFSCME and UNITE.

H.R. 333, this year's version of the bankruptcy bill, is essentially a resubmission of last year's conference report, and accordingly we oppose it. We strongly urge this committee to consider not just our views but those that you heard just a moment ago from the National Bankruptcy Conference—as the prior witness put it, an organization with no ax to grind, whose report on H.R. 333 found that bill to be flawed in, quote, basic areas.

Rather than proceed with H.R. 333 we urge this committee consider returning to the balanced, deliberate approach that resulted in the passage of the modern bankruptcy code in the 1970's. When this committee last considered this matter in 1999, our economy was going through an unprecedented period of growth and prosperity. Today we are in far more uncertain times, and large employers throughout the United States are seeking the protection of the bankruptcy laws. Ten major steelmakers have filed for bankruptcy since September 1998. Since September 1 of 2000, major retail, apparel, textile firms, paper manufacturers and airlines have all filed under Chapter 11. Firms such as LTV and Wheeling-Pittsburgh Steel, Pillowtex, Bradlees, Montgomery Ward, TWA, Owens-Corning and Armstrong Industries. Hundreds of thousands of jobs and the economic future of communities all across America directly depend on these firms being able to successfully reorganize, not to mention the firms that may file next week or next month or next year. While the reasons for each bankruptcy are unique to the firm and the industry, each of these firms' futures depends on the successful functioning of the business bankruptcy system.

In these circumstances America's working families cannot be exposed to the risks of H.R. 333, a one-sided, ill-considered provision of the bankruptcy code. Specifically, the bill appears a design to encourage liquidation which will necessarily lead to job loss. Key provisions that would have this effect would include: the general provisions in Title IV expanding the grounds on which a court can dismiss a Chapter 11 case or convert it to a liquidation; the Small Business Amendments restricting business to Chapter 11; the expansion of the definition of the single asset real estate debtors and the removal of the cap in the total size of the estate governing the single asset real estate provisions; the changes to the deadlines for assumption and rejection of certain leases, particularly in the area of shopping centers and retail establishments. The imposition of mandatory deadlines for extension of exclusivity; and finally and perhaps most dangerously, the amendments regarding asset securitization, limiting the assets available to a debtor during a bankruptcy case.

The committee should be extremely concerned that these provisions' effect on the ability of major employers to reorganize and its effect on the state of small business in an economic downturn have not been the subject of much attention or deliberation in what frankly appears to be a reckless rush to deliver a bill satisfactory to certain narrow creditor interests.

For example, earlier this week in the LTV Chapter 11 case in the Northern District of Ohio, Judge Bodoh used the current latitude provided by the Bankruptcy Code to find that securitized assets remained within LTV's estate. Absent such a finding, he specifically opined LTV would have been unable to reorganize and would have moved into liquidation this week, leading to the loss of thousands of jobs and the collapse of a retiree health care system serving tens of thousands more.

If H.R. 333's inflexible language on asset securitization had been in effect this week, LTV Steel might very well be in liquidation today. Taken as a whole, these provisions threaten the ability of the Bankruptcy Code to accomplish its mission of orderly reorganizations that preserve going concerned, value and jobs.

As I mentioned, they are particularly a threat to small business who are less likely to have sophisticated bankruptcy counsel or access to financial resources.

I would now like to be briefly address consumer bankruptcy. When large employers are financially distressed, when mass layoffs and downsizings are again in the news, working families need the protection of the consumer bankruptcy system. Academic research has shown that the vast majority of individuals who file bankruptcy cases are truly in need of financial relief. They are working families like Mr. Trapp, overloaded with debt in proportion of income. They file because of catastrophic events like job loss and medical bills and they have very low incomes by national standards. We at the AFL-CIO read these studies and we see our members. We read H.R. 333 and we see the most powerful financial institutions in the world trying to squeeze a few dollars more out of the American most vulnerable working families at the most vulnerable time.

Chairman SENSENBRENNER. The gentleman's time has expired. Could you wrap up in a few seconds so we can get to the Q and A, please?

Mr. SILVERS. Thank you, Mr. Chairman. In our written testimony we discuss some provisions of the bill that we think are useful, as well as some further ideas. We would be happy to talk about them in the Q and A, and we thank you for the opportunity to address the committee this morning.

Chairman SENSENBRENNER. Thank you very much, Mr. Silvers.

[The prepared statement of Mr. Silvers follows:]

PREPARED STATEMENT OF DAMON A. SILVERS, ESQ., OFFICE OF THE GENERAL COUNSEL, AFL-CIO, WASHINGTON, DC

Good morning, my name is Damon Silvers, I am an Associate General Counsel of the American Federation of Labor and Congress of Industrial Organizations, representing over 13 million working men and women and their unions. We would like to thank the Committee for the opportunity to present our views on the vital subject of bankruptcy reform. The AFL-CIO is committed to improving the economic lives of working people and their families. We support reforms that allow the bankruptcy system to work effectively for consumers in need of financial relief and to protect

workers in financially troubled businesses. However, we are deeply concerned that any unbalanced effort to rewrite the law in this complex area in a time of economic uncertainty will lead to serious job loss on the business side and grave injustice on the consumer side.

In the last Congress, the AFL-CIO opposed the bankruptcy conference report, H.R. 2415, and its predecessor bills, bills that would have placed jobs at risk, burdened the court system, and unfairly prejudiced working families who looked to the bankruptcy system for assistance. We were joined in our opposition by all of our affiliated unions that took a position on bankruptcy—including the Teamsters, the United Auto Workers, United Steel Workers, Service Employees, and AFSCME. H.R. 333, the Bankruptcy Reform Act of 2001, is a resubmission of H.R. 2415, and accordingly we oppose it. We strongly urge this Committee to consider not just our views, but those of the National Bankruptcy Conference, whose report on H.R. 2415 found that bill to be "flawed" in "basic areas."[1] Rather than proceed with H.R. 333, the approach taken by the last Congress, we urge this Committee consider returning to the balanced, deliberate approach that resulted in the passage of the modern bankruptcy code in the 1970's.

When this Committee last considered this matter in 1999, our economy was going through an unprecedented period of growth and prosperity. Today, we are in far more uncertain times, and large employers throughout the United States are seeking the protection of the bankruptcy laws. Ten major steelmakers have filed for bankruptcy since 1998. Already 10,000 jobs have been lost at these firms alone during this period. Since September 1, 2000, major retail, apparel and textile firms, paper manufacturers and airlines have filed under Chapter 11—firms such as LTV and Wheeling-Pittsburgh Steel, Pillowtex, Bradlees, Montgomery Ward, TWA, Owens-Corning and Armstrong Industries. Hundreds of thousands of jobs and the economic future of communities all across America directly depend on these firms being able to successfully reorganize. While the reasons for each bankruptcy are unique to the firm and the industry, each of these firms' futures depends on the successful functioning of the business bankruptcy system. In these circumstances, America's working families cannot be exposed to the risks of H.R. 333, a one-sided, ill-considered revision of the bankruptcy code.

The remainder of our statement first addresses changes to the business bankruptcy code in H.R. 333 that undermine Chapter 11's goals of promoting reorganization and preserving jobs. Next, we will briefly address consumer provisions in the bill. Finally, we identify provisions in some recent bankruptcy bills that we support and suggest other proposed reforms that should be included in bankruptcy legislation.

BUSINESS BANKRUPTCY

The principal goal of Chapter 11 is to preserve going concern value by encouraging troubled firms to reorganize rather than liquidate. In 1978, when Congress overhauled business bankruptcy and enacted Chapter 11, Congress expressly recognized that encouraging businesses to reorganize helps preserve jobs. Reversing the fundamental pro-reorganization features of Chapter 11, increases the risk of business shut-downs and threaten workers' jobs.

H.R. 333 appears designed to encourage liquidations, which will necessarily lead to job loss. Key provisions that would have this effect include: the general provisions in Title IV expanding the grounds on which a court can dismiss a Chapter 11 case or convert it to a liquidation, the small business amendments restricting access to Chapter 11; the expansion of the definition of single asset real estate debtors; the changes to the deadlines for assumption and rejection of certain leases; the imposition of mandatory deadlines for extensions of "exclusivity;" and the amendments regarding asset securitization limiting the assets available to a debtor during a bankruptcy case.

Small Business Amendments

The Bankruptcy Code already contains several provisions applicable to small businesses. These are principally designed to streamline the bankruptcy process for less complex cases, and apply on a voluntary basis to businesses with debts not exceeding $2 million. In sharp contrast, the proposed amendments in H.R. 333 are mandatory, anti-reorganization and hostile to small business. They would add strict time limits and extensive mandatory requirements for filing and confirming a reorganization plan. Chapter 11 cases could be converted or dismissed from bankruptcy altogether for failure to meet these and other new requirements. Harsh new rules lim-

[1] National Bankruptcy Conference, "Report on H.R. 2415," (2001), p. 3.

iting subsequent bankruptcy filings are also proposed, despite the lack of any credible evidence that "serial filing" is a problem among business bankruptcies. As burdensome as these new strictures would be, they are made more onerous by severely limiting the court's exercise of discretion to manage these cases. Rules for obtaining relief from these provisions create a high burden for the debtor and would curtail the court's authority to meet the exigencies of a particular case.

The ostensible purpose of these amendments is to weed out cases that cannot reorganize by imposing an early detection system. We believe this purpose can best be accomplished by making better use of the tools already in the law to promote greater oversight and case management. For example, business examiners can already investigate businesses and determine whether they are candidates for reorganization. Operating trustees are also possible in cases of gross mismanagement or incompetence. Imposing inflexible requirements and strict deadlines on companies that can least afford them will lead to unnecessary business shut-downs as companies that may well be capable of reorganization are instead forced into liquidation because they cannot scale the hurdles imposed by these requirements. In addition to the companies that try to reorganize but can't navigate their way through the new mandates, there will be companies that simply don't try at all. The ultimate result will be lost jobs and lost value.

Lest anyone think this is an unimportant exception, the definition of a small business in H.R. 333 would sweep in businesses with debts of up to $ 3 million. This would mean that many—if not most—of the business cases in an average district would be covered by these rules.

Elimination of the $4 million Single Asset Real Estate Cap

In the "technical corrections" title, H.R. 333 proposes to change the definition of a "single asset real estate debtor" to eliminate the $ 4 million cap which restricts the real estate businesses that are subject to special rules limiting the application of the automatic stay. The definition of "single asset real estate" added in 1994 as section 101(51B) of the Code was not precise enough to limit it to the widely recognized prototype single asset debtor. Secured lenders have tried to apply the single asset definition to non-real estate businesses, such as a steel plant and a marina, for example. Businesses with significant real estate components, such as hotels, casinos, shopping centers, nursing homes, and office complexes of all types may be fair game under the current definition, even where they have none of the attributes of the classic single asset real estate debtor. Hotels, shopping centers and office buildings may be especially vulnerable because they can be single projects or parcels and generate their income through the collection of rents. A sudden takeover of the property by the secured creditor under the rules limiting the automatic stay places those working at the site (either employees of the debtor or of a management company hired by the debtor, or of tenants of the debtor) at risk of losing their jobs.

To date, the significant limiting factor in the application of these rules has been the $4 million cap. The amendment to eliminate the cap would place a wide variety of properties large and small at risk of foreclosure and threaten jobs at these properties. Absent rules that specifically exclude properties housing significant business enterprises, there should be no expansion in the definition of single asset real estate debtor.

Other Amendments Discouraging Successful Reorganizations

H.R. 333 would amend sections 1168 and 1110 of the Bankruptcy Code, covering railroads and aircraft. to extend the already broad right of a secured creditor to enforce its rights and remedies under a security agreement, lease or sales contract, including amendments to require immediate surrender of the equipment where the secured lender is entitled to exercise its rights. These provisions create substantial obstacles to reorganizing firms in job-intensive industries vital to the functioning of the larger economy. The remedies currently available are already too broad and should not be enlarged further.

H.R. 333 would also amend Section 365(d)(4) regarding non-residential leases to virtually eliminate the court's discretion to extend the period of time in which the debtor may assume or reject the leases. Leases of this kind are significant in cases involving retailers. Assumption of executory contracts, including leases, carry significant financial consequences, which is why the Code permits the debtor some flexibility in deciding to assume or reject the contract. This provision should be eliminated.

Similarly, H.R. 333 would place an outside limit of 18 months on the period of time during which only the debtor may file a reorganization plan. This is merely another attempt to arbitrarily limit the court and the debtor in developing a reorga-

nization plan. Courts routinely entertain motions for extension of exclusivity and are capable of limiting exclusivity when circumstances warrant.

H.R. 333's section entitiled "Asset-backed securitization" would exclude from the debtor's estate certain assets transferred in an asset securitization transaction. The provision could reduce the assets available to the estate for funding operations during a reorganization. As currently drafted, the provision would not permit the determination of whether the assets are property of the estate, except as characterized by the parties to the transaction. There already are reports that suggest this provision would have affected LTV Steel's ability to obtain post-petition credit following its recent Chapter 11 filing. This provision should either be eliminated entirely, or amended to permit the court to determine whether, based upon the characteristics of the transaction, the assets are property of the estate.

Taken as a whole, these provisions threaten the ability of the bankruptcy code to accomplish its mission of encouraging orderly reorganizations that preserve going concern value and jobs. There are provisions that may destabilize existing bankruptcy proceedings affecting many of the major employers discussed above. They are particularly a threat to small businesses, who are less likely to have sophisticated bankruptcy counsel or adequate access to financing sources. This seems perverse in light of the widely acknowledged role of small business as a source of job creation and economic activity.

CONSUMER BANKRUPTCY

We would now like to briefly address consumer bankruptcy. When large employers are financially distressed, when mass layoffs and downsizings are again in the news, working families need the protections of the consumer bankruptcy system. Yet H.R. 333 proposes to dramatically limit access to Chapter 7 and Chapter 13 despite dramatic declines in overall consumer filings in 1999 and the first three quarters of 2000. Proponents of the bill attribute the increase in filings to widespread instances of abuse by indivduals who actually are not in financial distress.

Academic research has shown that the vast majority of individuals who file bankruptcy cases are truly in need of financial relief. They are working families overloaded with debt in proportion to their incomes, they file bankruptcy cases because of catastrophic events in their lives such as job loss, divorce and unexpected medical bills; they have very low incomes by national standards—including many at or below poverty level.[2] A comparison of debt and income profiles of debtors over a 17 year period suggests that incomes of Chapter 7 consumer debtors has fallen over time while debt to income ratios have remained consistent.[3] Data such as this suggests that the cause of increased filings is a growing number of low income debtors, rather than growing abuse or a decline in the stigma of bankruptcy.[4] Attempts to suggest otherwise in the Credit Research Center study sponsored by the credit card industry have met with considerable skepticism in the peer-reviewed academic literature.[5]

Not surprisingly, consumer bankruptcy filings closely track increases and decreases in household debt.[6] Studies have shown that debt levels have risen among lower-earning households.[7] In 1997, the growth in household debt exceeded the growth in disposable income, according to the Federal Reserve.[8]

In addition, the growth in lending vehicles has added other readily available sources of debt—some that precariously places people's homes at risk.[9] In the sub-

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[2] Teresa A. Sullivan, Elizabeth Warren and Jay Lawrence Washington, *As We Forgive Our Debtors: Bankruptcy and Consumer Credit in America* (1989); Sullivan, et al., "Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankruptcy 1981–1993," 68 Am. Bankr. L.J. 121 (1994).

[3] Elizabeth Warren, "The Bankruptcy Crisis", 73 Indiana Law Journal 1079, 1097–8 (November, 1998).

[4] Id.

[5] "Personal Bankruptcy, The Credit Research Center Report on Debtors' Ability to Pay." United States General Accounting Office, Report to Congressional Requesters (February, 1998); see also Klein, "Means-Tested Bankruptcy: What Would it Mean?" 28 Mem. St. U. L. Rev. 711 (Spring, 1998); Warren, "The Bankruptcy Crisis," 73 Indiana Law Journal 1079 (November, 1998).

[6] Warren, "The Bankruptcy Crisis," 73 Indiana Law Journal at 1080.

[7] Mark Zandi, "Easy Credit, Profligate Borrowing, Tough Lessons," Regional Financial Review (January, 1997).

[8] Monetary Policy Report to Congress, 83 Fed. Reserve Bull. 1, 19 (March 1, 1997). See also "Family Finances in thwe U.S.: Recent Evidence from the Survey of Consumer Finances." Federal Reserve Bulletin (January, 1997).

[9] Nussbaum, "Lenders Laud the Value of Home Sweet Equity," The New York Times, Section 3, p. 10 (March 22, 1998). See also, "Today's House Buyers Sometimes Live Closer to the Finan-

prime market, for example, lenders seek out riskier borrowers and now offer home equity financing at loan-to-value ratios exceeding 100%, charging high rates to offset the greater risk. Another lending practice targets low income and minority neighborhoods with "serial" refinancing loans which carry high interest rates and other onerous terms.[10]

We at the AFL-CIO read these studies and we see our members—trying to manage the debt burdens necessary to function in our society during years when economic security has been hard to come by for working families. We read this bill, and we see some of the most powerful financial institutions in the world trying to squeeze a few dollars more out of America's most vulnerable working families at the most vulnerable time in their lives.

The growth in personal bankruptcy filings implicates difficult issues such as low wage jobs; inadequate access to health care; the aftermath of divorce and other personal catastrophes. Closing the door to the bankruptcy court will not eliminate these problems and certainly will not solve them. It will merely further victimize America's most vulnerable working families at their time of greatest need.

MEASURES THE AFL-CIO SUPPORTS

Protection of Retirement Funds

We support a property exemption for retirement monies held in tax exempt retirement plans; permit loan repayments to certain retirement and thrift savings plans and exempt such loans from discharge. These provisions would make the treatment of retirement monies more consistent and clarify the law with regard to loans.

Section 724(b) Amendment

H.R. 333 would amend Section 724(b) to change the payment priority where proceeds of property subject to a tax lien are distributed. The amendment is drafted to preserve the relative position of the wage priority claims under Section 507(a)(3) and Section 507(a)(4) ahead of the tax liens, and in that respect follows current law favoring the payment of priority wages and benefits in Chapter 7 cases. The AFL-CIO supports and appreciates this provision of the proposed amendment. However, further clarification is needed in proposed sections 724(e) and (f) regarding recoveries from unencumbered property and the obligation of secured creditors to make payments prior to invading the tax lien. Absent further statutory changes, which we can provide upon request, employees may find themselves caught between the taxing authority and other secured creditors in attempting to obtain payment.

OTHER REFORMS CONGRESS SHOULD CONSIDER

Payroll Deductions

Employee payroll deduction monies owed to third parties should be excluded from property of the estate. Funds of this kind may be trapped in company bank accounts by a bankruptcy filing. A statutory change would protect monies owed by employees to third parties, such as an employee's Section 401(k) plan contributions, credit union payments and the like, and avoid the risk of non-payment by the employee. Allowing the debtor to remit the payments to the intended third-party recipients would prevent the employee from becoming an involuntary debtor.[11]

Employee Representation.

Requiring better disclosure of employee claims on bankruptcy petitions, explicit encouragement of employee creditors committees and better written policy guidelines for the United States Trustee when forming creditors committees would improve the ability of employee representatives to participate in business bankruptcy cases. We urge Congress to implement these changes as proposed by the National Bankruptcy Review Commission.

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cial Brink," The Wall Street Journal, November 11, 1998, A1 (describing low-down payment mortgage lending).

[10] Nussbaum, "Lenders Laud the Value of Home Sweet Equity," The New York Times, Section 3, p. 10 (March 22, 1998); Stevenson, "How Serial Refinancings Can Rob Equity," The New York Times, Section 3, p. 10 (March 22, 1998). See also Forrester, "Mortgaging the American Dream: A Critical Evaluation of the Federal Government's Promotion of Home Equity Financing," 60 Tulane L. Rev. 373 (1994).

[11] This recommendation takes on particular significance after the decision of the Seventh Circuit Court of Appeals in *In re Milwaukee Cheese of Wisconsin, Inc.*, 112 F.3d 845 (7th Cir. 1997). There, the court held that "thrift savings plan" monies held by the employer and repaid to employees prior to the company's bankruptcy filing had to be turned back to the estate—with some 12 years' worth of accrued interest.

Chapter 9

Finally, Congress should work with organized labor and other interested parties to draft rules that protect collective bargaining agreements in Chapter 9 municipality cases. Improving labor-management relations and encouraging collective bargaining are important and recognized goals that are equally important to bankruptcy reorganizations in the public and private sector. Reform in this area is long overdue.

The AFL-CIO looks forward to a continuing dialogue on these and other matters of concern as Congress considers the important subject of bankruptcy reform.

IN RE: LTV STEEL COMPANY, INC., et al., Debtors.
JOINTLY ADMINISTERED CASE NUMBER 00-43866

UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OFOHIO

2001 Bankr. LEXIS 131

February 5, 2001, Filed

DISPOSITION: [*1] Emergency motion of Abbey National Treasury Services PLC ("Abbey National") for modification of the Court's interim order of December 29, 2000 overruled.

CASE SUMMARY

PROCEDURAL POSTURE: Creditor secured by accounts receivable filed an emergency motion for modification of an interim order allowing debtors to use cash collateral in which creditor had an interest. Creditor asserted it was deprived of due process as it had insufficient notice of the cash collateral hearing, that debtor had no interest in the receivables, and it was not adequately protected.

OVERVIEW: Creditor's transaction had been an asset-backed securitization, where creditor loaned funds to debtor, debtor transferred receivables to a new entity, and new entity granted the security interest to creditor. The court found creditor and its agent had actual notice of the cash collateral hearing, the agent had a full and fair opportunity object, and creditor was in direct communication with its agent before the hearing. The order provided adequate protection. Elaborate post-deprivation procedures had been established and a final hearing was set. Debtor had a significant interest in the cash collateral, without which debtor would have immediately ceased business. Ultimate issue of whether debtor sold the receivables to the new entity could not be resolved without an evidentiary hearing. The suggestion that debtor lacked an ownership interest in proceeds from its products was difficult to accept. Debtor had at least an equitable interest in the receivables which was property of the estate sufficient to support the order. Use of the receivables would increase the value of post-petition receivables in which creditor had a security interest. There was a sufficient equity cushion.

OUTCOME: The motion was overruled. Actual notice of the hearing had been given to creditor and its agent. Issue of whether debtor actually sold the receivables to a new entity, and thus whether the receivables were property of the estate was fact-intensive and required an evidentiary hearing.

CORE TERMS: interim order, receivables, collateral, inventory, lender, modify, collateral order, adequately protected, pre-petition, interim, elaborate, deprived, administered, emergency, post-petition, occurrence, borrower, fair opportunity, state law, steel, modification, discovery, deprive, circumstances surrounding, evidentiary hearing, equitable interest, security interest, subsidiary, financing, surprise

CORE CONCEPTS -

Civil Procedure: Relief From Judgment: Motions to Alter or Amend
The decision to grant a motion for relief under Fed. R. Civ. P. 60(b) lies within the court's discretion.

Civil Procedure: Relief From Judgment: Motions to Alter or Amend
A Fed. R. Civ. P. 60(b) motion may be granted for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; or (6) any other reason justifying relief from the operation of the judgment.

Constitutional Law: Procedural Due Process: Scope of Protection
The core of due process is the right to notice and a meaningful opportunity to be heard. In considering a party's claim that it was deprived of due process, the court must consider if it has a property interest that entitles it to due process protection and, if such an interest exists, what process is due.

Constitutional Law: Procedural Due Process: Scope of Protection
Determination of the mandates of the due process clause in a specific circumstance requires the court to consider

three factors: (1) the private interest affected by the deprivation; (2) the risk of an erroneous deprivation and the probable value of additional safe-guards; and (3) the interest of the party seeking a remedy prior to a final hearing. However, the usual rule has been where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.

Constitutional Law: Procedural Due Process: Scope of Protection
The sufficiency of predeprivation procedures must be considered in conjunction with the options for postdeprivation review; if elaborate procedures for postdeprivation review are in place, less elaborate predeprivation process may be required.

Bankruptcy Law: Estate Property: Debtor's Interests
11 U.S.C.S. § 541(a) provides that upon the filing of a bankruptcy petition an estate is created consisting of all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C.S. § 541(a)(1). The estate created by the filing of a Chapter 11 petition is very broad, and property may be included in debtor's estate even if debtor does not have a possessory interest in that property.

JUDGES: WILLIAM T. BODOH, UNITED STATES BANKRUPTCY JUDGE.

OPINIONBY: WILLIAM T. BODOH

OPINION: MEMORANDUM OPINION

This cause is before the Court on the emergency motion of Abbey National Treasury Services PLC ("Abbey National") for modification of an interim order entered by the Court on December 29, 2000. That order permitted LTV Steel Company, Inc., Debtor and Debtor-in-Possession in these jointly administered proceedings ("Debtor"), to use cash assets that are claimed to be cash collateral in which Abbey National has an interest. A hearing was held on this matter on January 18, 2001. Richard M. Cieri, Esq. and Bruce Bennett, Esq. appeared on behalf of Debtor. Thomas D. Lambros, Esq., David Spears, Esq. and Lindsee P. Granfield, Esq. appeared on behalf of Abbey National. This is a core proceeding over which the Court has jurisdiction pursuant to 28 U.S.C. § 157(b)(2)(M) and (O). The following constitutes the Court's findings of fact and conclusions of law pursuant to FED. R. BANKR. P. 7052.

DISCUSSION

A. Facts [*2]

Debtor is one of the largest manufacturers of wholly-integrated steel products in the United States. Debtor mainly produces flat rolled steel products, hot and cold rolled sheet metal, mechanical and structural tubular products, and bimetallic wire. Debtor currently employs approximately 17,500 people in various capacities, and Debtor is also responsible for providing medical coverage and other benefits to approximately 100,000 retirees and their dependents. Debtor and 48 of its subsidiaries filed voluntary petitions for relief under Chapter 11 of Title 11, United States Code, on December 29, 2000. These cases are jointly administered.

This is not the first occasion on which Debtor has filed for relief under the Bankruptcy Code. Debtor previously filed a voluntary Chapter 11 petition in the Bankruptcy Court for the Southern District of New York on July 17, 1986. Debtor successfully emerged from Chapter 11 on June 28, 1993. Indeed, the current controversy stems from a series of financial transactions that Debtor executed after its previous reorganization. The transactions in question are known as asset-backed securitization or structured financing ("ABS"), and are generally designed[*3] to permit a debtor to borrow funds at a reduced cost in exchange for a lender securing the loan with assets that are transferred from the borrower to another entity. By structuring the transactions in this manner, the lender hopes to ensure that its collateral will be excluded from the borrower's bankruptcy estate in the event that the borrower files a bankruptcy petition.

Abbey National is a large financial institution located in the United Kingdom. Debtor and Abbey National entered into an ABS transaction in October 1994. To effectuate this agreement, Debtor created a wholly-owned subsidiary known as LTV Sales Finance Co. ("Sales Finance"). Debtor then entered into an agreement with Sales Finance which purports to sell all of Debtor's right and interest in its accounts receivables ("receivables") to Sales Finance on a continuing basis. Abbey National then agreed to loan Two Hundred Seventy Million Dollars ($270,000,000.00) to Sales Finance in exchange for Sales Finance granting Abbey National a security interest in the receivables. On the date Debtor's petition was filed, Chase Manhattan Bank ("Chase Manhattan") was Abbey National's agent for this credit facility.

In 1998, Debtor[*4] entered into another ABS financing arrangement. To that end, Debtor created LTV Steel Products, LLC ("Steel Products"), another wholly-owned subsidiary. Debtor entered into an agreement with Steel Products which purports to sell all of Debtor's

right, title and interest in its inventory to Steel Products on a continuing basis. Chase Manhattan and several other banking institutions then agreed to loan Thirty Million Dollars ($30,000,000.00) to Steel Products in exchange for a security interest in Steel Products' inventory. Abbey National is not involved in this ABS facility, and it had no interest in pre-petition inventory allegedly owned by Steel Products.

Neither Sales Finance nor Steel Products is a debtor in this proceeding. Nevertheless, Debtor filed a motion with the Court on December 29, 2000 seeking an interim order permitting it to use cash collateral. This cash collateral consisted of the receivables and inventory that are ostensibly owned by Sales Finance and Steel Products. Debtors stated to the Court that it would be forced to shut it doors and cease operations if it did not receive authorization to use this cash collateral. A hearing was held on Debtor's cash collateral[*5] motion on December 29, 2000 as part of the first day hearings.

Abbey National was not present at the cash collateral hearing. However, the Court notes that Abbey National had actual notice of the hearing, first, in the form of an e-mail sent by a Chase Manhattan employee to Abbey National on December 28, 2000, and second, in the form of a telephone call made from a Chase Manhattan employee to Abbey National on December 29, 2000. Furthermore, it is clear that Debtor had given advance notice of its intention to file for bankruptcy protection to Chase Manhattan, Abbey National's agent, in the week prior to December 29, 2000. Chase Manhattan was present at the December 29, 2000 hearing.

On December 29, 2000, Debtor and Chase Manhattan reached an agreement regarding an interim order permitting Debtor to use the cash collateral. Chase Manhattan did not formally consent to the entry of this order, as it could not secure Abbey National's consent to the form of the order, but Chase Manhattan did negotiate some of the terms of the order and did not raise an objection to its entry by the Court. The Court determined that entry of the interim order was necessary to permit Debtor to continue business[*6] operations, that the interests of Abbey National and all other creditors who had an interest in the cash collateral were adequately protected by the order, and that entry of the order was in the best interests of the estate and creditors of the estate. Accordingly, the Court entered the order tendered by Debtor, the relevant provisions of which are summarized below:

1. Recognition that there is a dispute between Debtor and the secured lenders of Sales Finance and Steel Products as to whether the transactions between Debtor and those entities were true sales or disguised financing vehicles;

2. An order requiring the secured lenders to turn over to Debtor the cash proceeds of the inventory and receivables which are to be used to provide working capital for Debtor;

3. Recognition that in the event the Court determines these transactions to be true sales, the secured lenders whose cash collateral was used will be entitled to administrative expense claims against the estate;

4. Adequate protection was provided to the secured lenders in the form of senior liens on the inventory and receivables and weekly interest payments to the lenders at pre-petition non-default[*7] rates.

It is this order that Abbey National seeks to modify. Specifically, Abbey National asks the Court to modify the interim cash collateral order nunc pro tunc to include the following provisions:

a. The Debtors shall transfer to Sales Finance all receivables created on or after December 29, 2000 and not previously sold to Sales Finance and that would have been sold to Sales Finance were it not for the occurrence of a Liquidation Event;

b. Steel Products would continue to purchase Inventory from the Inventory Sellers and Sales Finance would continue to purchase Receivables from the Receivables Sellers, each on the same basis and on the same terms as existed prior to the Petition Date;

c. The respective Collection Accounts would be administered by the Collateral Agent in the same manner as was administered prior to the Petition Date. Therefore, notwithstanding the occurrence of any Termination Date, collection on account of the Receivables would not be required to be applied to principal payments or amortization payments (other than any payments required in connection with the maintenance by the borrowers of their respective borrowing bases);

d. Steel[*8] Products and the Collateral Agent under the Inventory Facility would continue to automatically release all liens against the Receivables purchased by Sales Finance from Steel Products;

e. All minimum borrowing base and collateral value requirements set forth in the Receivables Facility and the Inventory Facility will continue in full force and effect;

f. In all other respects, the Receivables Facility and the Inventory Facility will continue to operate as required after the occurrence of a Liquidation Event including

without limitation, the reimbursement of all expenses of each Receivables Lender and Inventory Lender.

(Abbey National's Emergency Motion to Modify Interim Order at 14-16).

Abbey National argues that the interim cash collateral order should be modified because: 1) it did not receive effective notice of the December 29, 2000 hearing and was thus denied due process of law; 2) there is no basis for the Court to determine that the receivables which are Abbey National's collateral are property of Debtor's estate and 3) that even if the receivables are property of Debtor's estate, that Abbey National's interests are not adequately protected because the pre-petition[*9] receivables are diminishing at a rapid rate and will soon be depleted. Debtor argues that Abbey National did receive notice of the December 29 hearing, that Abbey National has failed to state grounds to modify the interim order pursuant to FED. R. BANKR. P. 9024, and that Abbey National's interests in the receivables are adequately protected.

B. Issue

There are four issues before the Court. These are: 1) the procedural basis for Abbey National's motion; 2) whether the circumstances surrounding the December 29, 2000 hearing deprived Abbey National of its right to due process; 3) whether the interim order should be modified because the cash collateral was not property of Debtor's estate; and 4) whether the interim order failed to adequately protect Abbey National's interest in the collateral.

C. Analysis

1. Procedural Basis for Abbey National's Motion

As a preliminary matter, the Court must address the procedural basis for Abbey National's motion. Abbey National has not cited a single rule of civil or bankruptcy procedure in support of its motion. Debtor contends that because Abbey National's motion seeks to modify a previous order of the Court, it must be construed[*10] as a motion for relief from judgment pursuant to FED. R. CIV. P. 60(b), made applicable to this proceeding pursuant to FED. R. BANKR. P. 9024. Abbey National has not responded to this contention. Because it is clear that Abbey National is seeking relief from the Court's interim order, we shall treat Abbey National's motion as a motion brought under Rule 60(b).

The decision to grant a motion for relief under Rule 60(b) lies within the Court's discretion. Miller v. Owsianowski (In re Salem Mortgage Co.), 791 F.2d 456, 459 (6th Cir. 1986). A Rule 60(b) motion may be granted for the following reasons:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence . . . (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged . . . or (6) any other reason justifying relief from the operation of the judgment.

FED. R. CIV. P. 60(b).

Because Abbey National has not presented its arguments in conformity with Rule 60(b), we shall address Abbey National's arguments in relation to[*11] the subsections of Rule 60(b) that appear to coincide with those arguments. We can safely say at the outset that Abbey National has not raised any argument relating to newly discovered evidence or the satisfaction of a judgment and thus we will not consider those elements of Rule 60(b).

2. Due Process

Abbey National's first argument in support of its motion is that it did not have "effective notice" of the cash collateral hearing and that Chase Manhattan, as Abbey National's agent, supported the entry of the interim order without its consent. Abbey National contends that by entering the interim order under these circumstances, it was deprived of due process. We treat these arguments as being raised under Rule 60(b)(1) and (3) for surprise and or/fraud by an adverse party.

Abbey National's argument that the circumstances surrounding the December 29, 2000 hearing deprived it of due process is not well taken. The Court recognizes that "the core of due process is the right to notice and a meaningful opportunity to be heard." LaChance v. Erickson, 522 U.S. 262, 266, 118 S. Ct. 753, 756, 139 L. Ed. 2d 695 (1997). In considering Abbey National's claim that it was[*12] deprived of due process, we must consider if it has a property interest that entitles it to due process protection and, if such an interest exists, what process is due. Leary v. Daeschner, 228 F.3d 729, 741-42 (6th Cir. 2000). It is not contended by either party that Abbey National lacks a property interest in its collateral, nor that the interim cash collateral order deprives Abbey National of the full use of its property because the order prevents Abbey National from exercising its state law rights against the receivables. Accordingly, Abbey National was entitled to a pre-deprivation hearing. Id. at 743.

Determination of the mandates of the due process clause in a specific circumstance requires the Court to consider three factors: the private interest affected by the deprivation; the risk of an erroneous deprivation and the probable value of additional safe-guards; and the interest of the party seeking a remedy prior to a final hearing. Mathews v. Eldridge, 424 U.S. 319, 335, 96 S. Ct. 893, 903, 47 L. Ed. 2d 18 (1976); see also Connecticut v. Doehr, 501 U.S. 1, 11, 111 S. Ct. 2105, 2112, 115 L. Ed. 2d 1 (1991). However, [*13] "the usual rule has been 'where only property rights are involved, mere postponement of the judicial enquiry is not a denial of due process, if the opportunity given for ultimate judicial determination of liability is adequate.'" Mitchell v. W.T. Grant Co., 416 U.S. 600, 611, 94 S. Ct. 1895, 1902, 40 L. Ed. 2d 406 (1974) (quoting Phillips v. Commissioner, 283 U.S. 589, 596-97, 51 S. Ct. 608, 611, 75 L. Ed. 1289 (1931).

Addressing the three Mathews factors, it is clear that Abbey National has a significant interest in the cash collateral, and that the terms of the interim order deprive Abbey National from immediately exercising its state law collection rights against the collateral. However, Abbey National has failed to adequately explain why the hearing of December 29, 2000 failed to meet the requirements of due process. Abbey National and its agent had actual notice of that hearing, Abbey National's agent had a full and fair opportunity to appear before the Court and object to entry of the order, and Abbey National was in direct communication with its agent before the hearing. Additionally, the terms of the interim order provided adequate protection[*14] to Abbey National's interest. Furthermore, the hearing was held in open Court with counsel of various parties present. These facts distinguish this case from the ex parte proceedings found to violate due process in Sniadach v. Family Finance Corp. of Bay View, 395 U.S. 337, 89 S. Ct. 1820, 23 L. Ed. 2d 349 (1969); Fuentes v. Shevin, 407 U.S. 67, 92 S. Ct. 1983, 32 L. Ed. 2d 556 (1972); and Doehr, 501 U.S. at 18, 111 S. Ct. at 2116.

Moreover, Abbey National has failed to point out any additional safeguards that would have provided better protection to it than those already provided. This would be a difficult task in any event, for in addition to the initial hearing and adequate protection granted to protect Abbey National's interest, the Court has established rather elaborate post-deprivation procedures, detailed more fully below, to ensure that Abbey National has a full and fair opportunity to present its arguments to the Court. Accordingly, the Court concludes that the risk that the December 29 hearing resulted in an erroneous deprivation of Abbey National's interest in the cash collateral is remote.

Finally, it is clear that Debtor has[*15] a significant interest in the cash collateral that was the subject of the interim order. The Court is satisfied that without entry of the interim order, Debtor would have been forced to immediately cease its business operations. Such an occurrence would have eliminated Debtor's chance to reorganize its business and would have had dire consequences for Debtor's employees, customers and creditors. We find that Debtor's interest in the collateral thus outweighed Abbey National's interest, at least for purposes of determining the amount of process to which Abbey National was entitled.

Based upon this analysis, the Court concludes that the circumstances surrounding the hearing of December 29, 2000 provided Abbey National with sufficient due process. It is clear that "the sufficiency of predeprivation procedures must be considered in conjunction with the options for postdeprivation review; if elaborate procedures for postdeprivation review are in place, less elaborate predeprivation process may be required." Leary, 228 F.3d at 743. In this instance the Court has provided substantial and elaborate procedures to ensure that Abbey National is afforded every opportunity to [*16]further its objections to the cash collateral order. A final hearing has been set in this matter for March 7, 2001, and the Court has permitted both parties an opportunity to conduct extensive discovery prior to that hearing. Furthermore, the Court conditioned the entry of its interim order on the granting of adequate protection to Abbey National's interest in the cash collateral, and the Court is satisfied that such protection will fully protect Abbey National's interest. Furthermore, in the event that Abbey National succeeds in its claim that the transfer of receivables to Sales Finance was in fact a true sale, Abbey National has an adequate remedy against Debtor in the fact that the terms of the interim order would grant Abbey National an administrative claim against Debtor's estate. The Court concludes that these elaborate procedures are more than sufficient to ensure that Abbey National is not deprived of its right to due process.

The Court's analysis of Abbey National's due process argument indicates that Abbey National was not unduly surprised by the entry of the interim order. Indeed, the fact that Abbey National will have a full and fair opportunity to prosecute its objections[*17] to the entry of a final cash collateral order weighs against granting them relief from judgment on the basis of surprise. Furthermore, to the extent that Abbey National has suggested that Chase Manhattan and Debtor conspired to misrepresent the extent of Abbey National's interest in the receivables as well as its objection to entry of the interim order, the Court finds that this characterization of the events of December 29, 2000 is inaccurate. Counsel

for Chase Manhattan and Debtor made it quite clear that a major lender did not consent to the entry of the interim order, which was why Chase Manhattan did not consent to its entry. Because we conclude that neither Chase Manhattan nor Debtor misrepresented these matters to the Court, there is no basis for us to grant relief from the interim order on the basis of fraud. Accordingly, the Court concludes that relief from the interim order is not appropriate pursuant to Rule 60(b)(1) and (3).

3. Whether the Receivables Are Property of Debtor's Estate

Abbey National's next argument is that the receivables which constitute its collateral are not property of Debtor's estate, and thus this Court lacked jurisdiction to enter the interim[*18] order. We shall construe this as an argument that the interim order is void pursuant to Rule 60(b)(4).

Section 541(a) of the Bankruptcy Code provides that upon the filing of a bankruptcy petition an estate is created consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The estate created by the filing of a Chapter 11 petition is very broad, and property may be included in Debtor's estate even if Debtor does not have a possessory interest in that property. United States v. Whiting Pools, Inc., 462 U.S. 198, 204, 205-06, 103 S. Ct. 2309, 2313-14, 76 L. Ed. 2d 515 (1983).

Abbey National contends that the interim order is flawed because, on its face, the transaction between Debtor and Sales Finance is characterized as a true sale. Therefore, Abbey National argues, since Debtor sold its interests in the receivables to Sales Finance, Debtor no longer has an interest in the receivables and they are not property of the estate. However, Abbey National has admitted to the Court, both in its pleadings and in oral argument, that the ultimate issue of whether Debtor actually sold[*19] the receivables to Sales Finance is a fact-intensive issue that cannot be resolved without extensive discovery and an evidentiary hearing.

We find Abbey National's argument for "emergency" relief to be not well taken for several reasons. First, Abbey National's position in this regard is circular: we cannot permit Debtor to use cash collateral because it is not property of the estate, but we cannot determine if it is property of the estate until we hold an evidentiary hearing. We fail to see how we can conclude that the receivables are not property of Debtor's estate until an evidentiary hearing on that issue has been held. Because the determination of this issue must await further discovery, we decline to grant Abbey National relief from the interim order.

Furthermore, there seems to be an element of sophistry to suggest that Debtor does not retain at least an equitable interest in the property that is subject to the interim order. Debtor's business requires it to purchase, melt, mold and cast various metal products. To suggest that Debtor lacks some ownership interest in products that it creates with its own labor, as well as the proceeds to be derived from that labor, is difficult[*20] to accept. Accordingly, the Court concludes that Debtor has at least some equitable interest in the inventory and receivables, and that this interest is property of the Debtor's estate. This equitable interest is sufficient to support the entry of the interim cash collateral order.

Finally, it is readily apparent that granting Abbey National relief from the interim cash collateral order would be highly inequitable. The Court is satisfied that the entry of the interim order was necessary to enable Debtor to keep its doors open and continue to meet its obligations to its employees, retirees, customers and creditors. Allowing Abbey National to modify the order would allow Abbey National to enforce its state law rights as a secured lender to look to the collateral in satisfaction of this debt. This circumstance would put an immediate end to Debtor's business, would put thousands of people out of work, would deprive 100,000 retirees of needed medical benefits, and would have more far reaching economic effects on the geographic areas where Debtor does business. However, maintaining the current status quo permits Debtor to remain in business while it searches for substitute financing, and[*21] adequately protects and preserves Abbey National's rights. The equities of this situation highly favor Debtor. As a result, the Court declines to exercise its discretion to modify the interim order pursuant to Rule 60(b)(4).

4. Adequate Protection

The final argument Abbey National has raised in support of its motion is that its interests in the collateral are not adequately protected. Specifically, Abbey National contends that the pre-petition receivables in which Abbey National has an interest are being depleted at a rate of Ten Million Dollars ($10,000,000.00) per day, and that the receivables will be entirely consumed in short order. Additionally, Abbey National asserts that the interim order diminished the value of Abbey National's liens. We shall treat this line of argument as one arising under Rule 60(b)(6).

Abbey National's contentions that its interest is not adequately protected can be boiled down to a simple issue. Prior to the filing of Debtor's petition, the

outstanding balance on Abbey National's loan to Sales Finance was approximately Two Hundred Twenty-Four Million Eight Hundred Thousand Dollars ($224,800,000.00). This loan to Sales Finance was secured[*22] by the receivables transferred to Sales Finance, and this financing arrangement was rated AAA by Standard & Poors. However, the terms of the interim order have altered the nature of Abbey National's liens. Under the terms of the interim order, Abbey National and the other secured lenders have been granted liens on Debtor's post-petition inventory and receivables. Abbey National's loan is thus now secured by inventory and assets which do not have a AAA rating, and Abbey National must now share its liens with Debtor's other secured lenders.

We find Abbey National's arguments to be not well taken. First, we find Abbey National's contention that its collateral is being consumed at a rate of Ten Million Dollars ($10,000,000.00) per day to be disingenuous. It is true that the pre-petition receivables are being used by Debtor to purchase and manufacture more steel. However, Debtor's use of the pre-petition receivables will inevitably lead to an increase in the value of post-petition receivables and inventory, in which Abbey National has a security interest.

This conclusion is amply supported by the affidavit of John T. Delmore, Debtor's Assistant Controller. Mr Delmore's affidavit[*23] indicates that as of January 15, 2001, there was a sufficient equity cushion in both post-petition inventory and receivables to provide adequate protection to all of Debtor's secured lenders. The amount of the respective equity cushions equaled 39% for the receivables lenders and 179% for the inventory lenders. Furthermore, it appears that Debtor's business will continue to generate additional post-petition receivables and inventory sufficient to protect Abbey National's interest in the near future. Because we find that Abbey National's interest in cash collateral is adequately protected by an equity cushion and by the other terms of the interim order, the Court declines to exercise its discretion to modify the interim order pursuant to Rule 60(b)(6).

CONCLUSION

For the reasons stated above, the Court concludes that Abbey National's motion seeking to modify the Court's interim order permitting the use of cash collateral on December 29, 2000 is properly characterized as a motion seeking relief from judgment pursuant to FED. R. CIV. P. 60(b). Furthermore, the Court finds that Abbey National has failed to establish that modification of the interim order is warranted. Accordingly, [*24] Abbey National's emergency motion is overruled.

An appropriate order shall enter.

WILLIAM T. BODOH

UNITED STATES BANKRUPTCY JUDGE

ORDER

For the reasons set forth in the Court's memorandum opinion entered this date, the emergency motion of Abbey National Treasury Services PLC ("Abbey National") for modification of the Court's interim order of December 29, 2000 is overruled.

IT IS SO ORDERED.

WILLIAM T. BODOH

UNITED STATES BANKRUPTCY JUDGE

Chairman SENSENBRENNER. The committee will ask questions of the witnesses under the 5-minute rule, alternating on each side in the order in which members appeared on that side. The Chair will waive his right to ask questions and recognize the gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I begin by noting this is the second day in a row that I arrived here before you did, so I want to keep my perfect record well known in the public before it evaporates somewhere in the course of the 107th Congress.

Three questions for four witnesses. Mr. Trapp, what would have happened to you under this proposed law in terms of taking advantage of Chapter 7? Would you have been able to afford the lawyers' fees to establish the so-called special circumstances to defend against creditors' motions?

To Attorney Mabey and Attorney Silvers, under the bill's proposed changes to Chapter 11, many are worried about job losses that would result from the hard and fast 180 day limitation on exclusivity, the strict limitation on the assumption or rejection of commercial leases, and the importation of all exceptions to discharge in section 523(a). How would these changes affect the confirmation and success of reorganization plans?

And, Professor Gross, yesterday we heard impassioned defense of child support and alimony provisions in the bill yesterday from the director of the San Francisco program, Mr. Philip Strauss. Can you comment on his contention that this bill would actually help women and children? As a matter of fact, he said it would be a big help for women and children. So govern yourselves accordingly and if you need any more additional comments you can submit them in writing very soon after the hearing.

Mr. Trapp.

Mr. TRAPP. Yes, sir, Mr. Conyers. Under this bill the burden of proof would have been placed on me and my family to show that we had special circumstances. This would have required us to take on a lawyer at an hourly rate rather than the flat

fee that we paid for our bankruptcy last year. This would have been more expenses that we couldn't afford, along with the additional paperwork and time and such. It would have definitely been prohibitive. So it still would have put the burden of proof, as I said, on us and made it much more difficult; whereas the process that we went through was relatively uncomplicated and provided the necessary relief that we really did need.

Mr. CONYERS. I can imagine, and we sympathize with you. And you seem to have been a lightening rod for a lot of people wanting to try to prove that things weren't that bad.

But I move now to Professor Gross for her comments, and then the other two gentlemen.

Ms. GROSS. I am aware of Mr. Strauss's comments. I've read his written statement and have heard him speak on this issue. He is focused on the government acting as a debt collector. And the government acting as a debt collector has interests that are not always consonant with the interests of women and children. They may be, but they are not always. And in speaking, he fails to focus on that. He also fails to focus on the fact that the government's interest in collection relates to past-due obligations. Women emerging from bankruptcy whether as a debtor or as a creditor care about their prospective ability to collect, and they don't want a collision with the past; they want to move forward. They've lived without the money in the past. They need the money in the future.

And let me give you a concrete example. In his statement, Mr. Strauss observes that there's no collision at the end of the day between the government and women, even if there are lots more nondischargable debts, because there's so much protection out there in the law now to enable women, children and the government to collect. What I would say to you is that's not so. If that were so, why is the debt collection level by the government and indeed his own office so low, and the debt collection ability of credit card companies so high? They are not on a level playing field and the existing legal protections to get alimony, maintenance and child support will not level the field. They're not working, and in this instance the government should not win over women and children. They just shouldn't.

Mr. CONYERS. Thank you.

Chairman SENSENBRENNER. The gentleman's time has expired. And let me say that in terms of responses to questions in writing, I would appreciate that they be in by the end of the month so that we can close out the hearing record and get it off to the GPO for printing.

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I thank the Chair. First I would like to ask unanimous consent to enter into the record the statement of the International Council of Shopping Centers on the Bankruptcy Abuse Prevention Act.

Chairman SENSENBRENNER. Without objection.

[The information referred to follows:]

PREPARED STATEMENT OF THE INTERNATIONAL COUNCIL OF SHOPPING CENTERS

INTRODUCTION

The International Council of Shopping Centers (lCSC) is pleased to present this written statement for the record to the House Judiciary Committee in conjunction with its February 7 and 8, 2001 hearings on the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2001* (H.R. 333).

ICSC is the global trade association of the shopping center industry. Its 40,000 members in the United States, Canada and more than 70 other countries around the world include shopping center owners, developers, managers, investors, lenders, retailers and other professionals. The shopping center industry contributes significantly to the U.S. economy. In 1999, shopping centers in the U.S. generated over $1.2 trillion in retail sales and over $47 billion in state sales tax revenue, and employed over 11 million people.

First and foremost, ICSC would like to commend Congress, and this Committee in particular, for its efforts over the past few years to enact meaningful bankruptcy reform legislation. We are hopeful that H.R. 333, introduced by Representative George Gekas (R-PA), will be swiftly enacted so it can end existing abuses of the bankruptcy system. Although all of ICSC's concerns are not addressed in H.R. 333, we believe it is a wellbalanced piece of legislation and should be approved and signed into law as soon as possible.

BUSINESS BANKRUPTCY ABUSES ARE A GROWING PROBLEM

As we are well aware, an increasing number of retailers and entertainment establishments have been filing for bankruptcy protection over the last several years, including Bradlees, Crown Books, Discovery Zone, Edison Brothers, Garden Botanika, General Cinema, Montgomery Ward, Paul Harris Stores, Planet Hollywood, Service Merchandise, and United Artists, just to name a few. According to industry sources, included in the total number of businesses filing Chapter 11 bankruptcies in 2000 are 176 companies with assets totaling $95 billion. It seems as if every week another longstanding business is declaring bankruptcy. Furthermore, as our nation's economic growth continues to soften, it is very likely that additional businesses—both large and small alike—will be forced to seek the protections of Chapter 7 and 11 of the U.S. Bankruptcy Code.

ICSC supports and respects an underlying goal of the bankruptcy system that companies facing financial catastrophe should be able to reorganize their businesses under Chapter 11. Unfortunately, more and more solvent businesses are taking advantage of the system and filing for bankruptcy protection in order to accomplish goals that would otherwise not be permissible, such as shedding undesirable leases.

In addition, many U.S. bankruptcy judges and trustees are not abiding by existing rules that were enacted by Congress to protect shopping center owners. As a result, many shopping center owners are losing control over their own properties, neighboring tenants are losing business, retail employees are losing jobs or suffering reduced working hours, and local economies are being threatened.

SHOPPING CENTERS NEED SPECIAL PROTECTION UNDER THE BANKRUPTCY CODE

Bankruptcies pose unique risks and hardships to shopping center owners that are not faced by other creditors because such owners are *compelled creditors* to their retail tenants. As a compelled creditor, a shopping center owner must, under the Bankruptcy Code, continue to provide leased space and services to its debtor tenants without any real assurance of payment or knowledge as to whether or when its leases will be assumed or rejected or whether its stores will be vacated.

On the other hand, trade creditors can decide for themselves whether or not they want to continue providing credit to its bankrupt customers for goods or services. Banks and other lenders are not obliged to continue making loans to their clients once they file for bankruptcy. Utility companies can demand security deposits before they provide additional services to their customers. In fact, some judges are granting "critical vendor motions" made by certain creditors that allow them to receive their pre-petition claims (before all other creditors) in exchange for agreeing to provide their goods or services to the debtor during bankruptcy.

Another element unique to shopping center owners is the interdependence and synergy that exists between a shopping center and its tenants. Owners carefully design a "tenant mix" for each of its shopping centers in order to maximize customer traffic from its market area. The tenant mix includes tenants based on their nature or "use", their quality, and their contribution to the overall shopping center, and is enforced by lease clauses that describe the required uses, conditions and terms of operation. Such clauses are designed to prevent an owner from losing control over its own property and to maintain a well-balanced shopping atmosphere for the local community.

For example, an owner and a retailer of upscale ladies' shoes may enter into an agreement that restricts the tenant, or an assignee, from selling low quality, discounted footwear or changing its line of business to one that competes with another store in the same shopping center. When a use clause is ignored during bankruptcy proceedings, the delicate retail balance and synergy that has been painstakingly achieved by an owner with its tenants is disturbed and can deal a devastating blow to the entire shopping center, and to the community at large.

Acknowledging that shopping center owners are in a truly unique position once one of its tenants files for bankruptcy, Congress enacted special protections in Section 365 of the Code in 1978 and 1984. Unfortunately, many of these laws either have not been enforced or have been liberally construed against shopping center owners beyond Congress' original intent.

LEASES NEED TO BE ASSUMED OR REJECTED WITHIN A REASONABLE, FIXED TIME PERIOD

Under Section 365(d)(4), tenants have 60 days after filing for bankruptcy to assume or reject their leases. If additional time is needed, the court may extend the time period "for cause". Unfortunately, in most cases, the "for cause" exception has become the rule. As a matter of practice, bankruptcy judges routinely extend the

60-day period for several months or years. In many instances, debtors do not have to decide what they plan on doing with their leases until their plans of reorganization are confirmed. Some debtors are even permitted to make such decisions after the date of confirmation.

As a result, the stores of these bankrupt retailers often remain closed for long periods of time, casting a dark shadow on the entire shopping center. Even if a shopping center owner receives rent from the bankrupt tenant during this period, a vacant store usually creates a negative impact on the other stores in the shopping center. Not only do the neighboring stores suffer reduced traffic and sales, but the owner, by virtue of percentage rent clauses that have been written into their leases, suffers reduced percentage rent income from its other tenants.

To make matters worse, the owner is unable to make arrangements to lease out the vacant space to another potential tenant since the bankrupt retailer is not required to inform the owner whether it plans to assume or reject the lease. It is this uncertainty that is most frustrating to shopping center owners. They, and the rest of the shopping center, are essentially kept in limbo until the debtor, or the debtor's trustee, makes a decision to assume or reject its lease. Owners are not attempting to pressure debtors to reject their leases. Instead, they simply want a determinable period of time for their bankrupt tenants to assume or reject their leases.

The current situation is clearly unfair to shopping center owners and has to be remedied. While we realize that 60 days in most cases is not enough time for a bankrupt retailer to decide which of its leases it wants to assume or reject, we strongly believe that a reasonable, *fixed* time period must be created so an owner, and the rest of the tenants in the shopping center, have certainty as to when a lease of a vacant store will be either assumed or rejected.

One must remember that, in most cases, a debtor can decide when it files for bankruptcy protection. Retail chains do not suddenly decide they will file for bankruptcy. They typically review their economic situation well in advance of filing a bankruptcy petition. Retailers and their advisors have a pretty good indication even before they file for bankruptcy which leases they want to assume and which they want to reject since it is often the very reason they are filing for bankruptcy.

Section 404(a) of H.R. 333 would require a debtor tenant to assume or reject its leases within 120 days after filing for bankruptcy. Prior to the expiration of the 120 days, a judge could extend this time period for an additional 90 days upon the motion of the trustee or owner "for cause". Additional extensions could only be granted upon the prior written consent of the owner.

By requiring an owner's consent for additional time after the initial 120-day and court-extended 90-day periods, shopping center owners would a retain a certain degree of control of their property if a tenant has not decided to assume or reject its leases within 210 days. Owners would often be amenable to extending the decision period for assumption or rejection for a certain amount of time if it appears to be in the best interest of both parties.

While ICSC believes that 120 days is ample time for retailers in bankruptcy to make informed decisions as to which leases should be assumed and which should be rejected, to the extent the other shopping center provisions listed below are included in the final package, we would support this provision of H.R. 333.

"USE" CLAUSES NEED TO BE ADHERED TO BY TRUSTEES UPON ASSIGNMENT

As mentioned above, a well balanced "tenant mix" helps create the character and synergy among the various tenants of a shopping center. A lease's "use" clause is specifically designed to maintain this tenant mix, and is supposed to be adhered to upon assumption or assignment. Unfortunately, a growing number of judges are allowing trustees to assign shopping center leases to outside retailers in clear violation of existing use clauses and Code Sections 365(f)(2)(B) and 365(b)(3).

A recent notable case involves a children's educational retailer in the Boston-area in which a judge allowed the trustee to assign two of its unexpired leases to a jeweler and a candle shop, even though another children's educational retailer offered bids, albeit lower ones, on those leases.

Use clauses are mutually agreed-upon provisions that are intended to direct the use of a particular property to a particular use. They do not prevent the assignment of a property to another retailer; however, the new tenant is supposed to adhere to the lease's use clause.

Congress has already recognized in the Bankruptcy Code that a shopping center does not merely consist of land and buildings. It is also a particular mix of retail uses which the owner has the right to determine. Thus, Section 365(f)(2)(B) already requires that a trustee has to obtain adequate assurance that a lease's use clause will be respected before he or she can assign the lease to a third party. Section

365(b)(3)(C), defining "adequate assurance", states that ". . . adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance . . . that assumption or assignment of such lease is subject to all the provisions thereof, including (but not limited to) provisions such as radius, location, *use*, or exclusivity provision . . ."

Yet, a number of bankruptcy judges have ignored this requirement. This abuse of the Bankruptcy Code must end. Section 404(b) of H.R. 333 would amend Section 365(f)(1) to make it crystal clear to all trustees that the shopping center provisions contained in Section 365(b), including that relating to adequate assurance that use clauses will be respected, must be adhered to before they can assign leases to other retailers.

SHOPPING CENTER OWNERS NEED GREATER ACCESS TO CREDITORS' COMMITTEES

Another growing concern of the shopping center industry is the lack of appointments by many U.S. trustees of shopping center owners to creditors' committees during bankruptcy proceedings. A creditors' committee is the key decision-making body in a bankruptcy case as it helps formulates how and when a debtor is going to reorganize its business. In addition to having a vested interest in the outcome of a bankruptcy case, a shopping center owner can provide valuable knowledge, insight and perspective to a creditors' committee in order to assist in the creation of a successful reorganization plan.

Under current law, U.S. trustees are authorized under Section 1 102(a)(1) to appoint a committee of creditors holding unsecured claims. Unfortunately, many trustees have excluded shopping center owners from these committees, even if they qualify to serve under Section 1102(b)(1). This section states that a creditors' committee ". . . shall ordinarily consist of the persons, willing to serve, that hold the seven largest claims against the debtor of the kinds represented on such committee . . .".

Even in cases where an owner is not one of the seven largest pre-petition creditors, it usually is one of the seven largest post-petition creditors due to damage claims from rejected leases. A retailer may have been making timely lease payments up to the time it filed for bankruptcy; however, if it later defaults on payments (which it is obligated to make) or decides to reject some or all of its leases, the shopping center owner usually has very large potential rejection claim damages. Certainly, such an owner should be entitled to participate on these creditors' committees.

Although bankruptcy judges currently may order the appointment of *additional* committees to assure adequate representation of creditors, only the trustees are actually authorized to appoint such committees. Therefore, the discretion to add shopping center owners to creditors' committees is solely vested with the U.S. trustees. Section 405 of H.R. 333 would put this discretion into the hands of the bankruptcy judges as it would permit them, after receiving a request from an interested party, to order a change in the *membership* of a creditors' committee to ensure the adequate representation of creditors.

NON-MONETARY DEFAULTS NEED TO BE CURED BEFORE A LEASE CAN BE ASSUMED

Under Section 365(b)(1)(A) of the Bankruptcy Code, a trustee may not assume an unexpired lease unless he or she cures, or provides adequate assurance that he or she will promptly cure, all existing monetary and non-monetary defaults. This provision was enacted by Congress to ensure that existing leases are adhered to before they may be assumed and later assigned to another tenant. Unfortunately, some judges are allowing leases to be assumed and assigned despite the fact that such leases remain in default.

Section 328 of H.R. 333 would amend existing law by providing that nonmonetary defaults of unexpired leases of real property that are "impossible" to cure would not prevent a trustee from assuming a lease. Unlike monetary defaults, certain nonmonetary defaults are impossible to cure. For example, a vacant store can later be reopened; however, the default (the vacating of the store) can never be fully cured since it is impossible to reopen the store during the time it was vacant.

However, Section 328 also provides that ". . . if such default arises from a failure to operate in accordance with a *nonresidential* real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated . . .". Therefore, a trustee can assume a vacant store so long as its nonmonetary default is cured (or reopened) at *and* after the time of assumption. ICSC supports this provision since it would require trustees to abide by the terms of a commercial lease agreement upon its assumption.

A REASONABLE ADMINISTRATIVE PRIORITY FOR RENTS SHOULD BE ENACTED

Under current law, post-petition rents are treated as an administrative priority until a lease is assumed or rejected under Section 365(d)(3). If a lease is rejected, postrejection rents are treated as an unsecured claim under Section 502(b)(6) which usually limits the claim to one year's rent. The Bankruptcy Code, however, does not specifically address claims resulting from nonresidential real property leases that are assumed and subsequently rejected.

However, in a 1996 U.S. Court of Appeals case, *Klein Sleep Products*, the court held that *all* future rents due under an assumed lease, regardless of whether it is subsequently rejected, should be treated as an administrative priority and not limited by Section 502(b)(6). As a practical matter, shopping center owners prefer to lease their property to operating retailers as soon as possible to maintain a vibrant center and collect rent, rather than maintain a vacant store whose unpaid rents are treated as an administrative priority.

Section 445 of H.R. 333 would treat rents due under an assumed and subsequently rejected lease as an administrative priority for two years after the date of rejection or turnover of the premises, whichever is later, "without reduction or setoff for any reason except for sums actually received or to be received from a nondebtor". Any remaining rents due for the balance of the lease term would be treated as an unsecured claim limited under Section 502(b)(6).

While ICSC prefers that rents due under an assumed and subsequently rejected lease be treated as an administrative priority for three years, and that any remaining rents due under the lease be treated as an unsecured claim *not* limited under Section 502(b)(6), we accept this provision as a reasonable compromise so long as the other shopping center provisions listed above are included in the final package.

Mr. GEKAS. Thank you, Mr. Chairman.

Mr. Trapp, you did receive a discharge in bankruptcy; is that correct?

Mr. TRAPP. That's correct.

Mr. GEKAS. When you entered the proceedings which resulted in that, did you not have the burden of proof of showing that your assets were so minimal that the burden of debt could not be met by your assets, thereby justifying bankruptcy?

Mr. TRAPP. That's correct.

Mr. GEKAS. So you did have the burden of proof then as you would under the current bill. Let me ask you this: Did you have a lawyer?

Mr. TRAPP. Yes.

Mr. GEKAS. So the lawyer had to consult with you, and you with him, and he had to prepare the proper papers to indicate that you were eligible for bankruptcy; isn't that correct?

Mr. TRAPP. Correct.

Mr. GEKAS. And if you under this bill had to, had to have a lawyer, as you probably would have had, he would have had to prepare under the new set of guidelines as imposed by this law; isn't that correct?

Mr. TRAPP. Yes.

Mr. GEKAS. Who indicated to you that this would be more difficult than the current circumstances under which you did have the burden of proof and had to hire a lawyer?

Mr. TRAPP. The only proof that I had to present at that time was to show our actual debts. I didn't have to show, give any explanation of my daughter's medical problems, our situation in our home prior, during and after, you know, during her illness and rehabilitation.

Mr. GEKAS. You mean you didn't have to show her expenses.

Mr. TRAPP. I had to show the——

Mr. GEKAS. Extraordinary medical expenses.

Mr. TRAPP. Extraordinary; hundred thousand dollars plus in medical——

Mr. GEKAS. Yes. What in this bill do you think would prevent from you showing just the bills that showed extraordinary medical expenses for the daughter?

Mr. TRAPP. I'm not familiar with the bill well enough to say that. But I wouldn't have come here today if I didn't think that this would provide a much more harsh burden on us.

Mr. GEKAS. But I have to ask you, what is that burden, if you had to show in the first instance, which we agree you should have, and were granted relief when you showed a list of extraordinary medical expenses for your daughter, and the burden of proof remains almost the same here with respect to showing circumstances in which these bills have destroyed your financial situation?

Mr. TRAPP. One of differences I believe is that the creditors would have the right to challenge me, to challenge our situation and our debt, and that would be the extent of——

Ms. GROSS. Mr. Gekas, if I could——

Mr. GEKAS. What indication did you have that the creditors would not have been able to challenge the first bankruptcy that you had?

Mr. TRAPP. They did not challenge in any way.

Mr. GEKAS. I'm not asking you whether they challenged. Did they have the opportunity to challenge?

Ms. GROSS. Mr. Gekas, I think you're asking him to draw legal conclusions. Mr. Trapp is not a lawyer.

Chairman SENSENBRENNER. Professor Gross, this is Mr. Gekas's time. He can choose who he wishes to ask the questions of. Please respect his right to do so.

Mr. GEKAS. We have to mollify Professor Gross's indignation here, we have to mollify it and cater to it. I am in great sympathy with Mr. Trapp and his circumstances. He was granted relief in the bankruptcy. And his comparison of this is on practical matters, not on legal. I asked him—he's the one that used burden of proof, Professor Gross. And so my question was at the burden of proof. That's a legal legality.

But let's go on. I would like to have you answer some more questions, Mr. Trapp. And nobody's after you. We want to see where—how you would have been harmed by going bankrupt under this bill, which we think you would not have been.

Mr. Mabey—Mabby—Mabey. The provisions to which you made illusion in your opening remarks, were they not somewhat or entirely recommendations of the bankruptcy commission which advised the Congress on proposed changes in the Bankruptcy Code?

Mr. MABEY. No.

Mr. GEKAS. None.

Mr. MABEY. No. The means testing provisions——

Mr. GEKAS. No, no. I'm talking about the business provisions that you outlined.

Mr. MABEY. No, I don't believe so; not to my recollection.

Mr. GEKAS. I would ask you please to review the bankruptcy commission recommendations with respect to the 180 days to the sections that you mentioned: 708, 409, 417.

Mr. MABEY. Yes. I don't believe 708 was a recommendation. That's not my recollection.

Chairman SENSENBRENNER. The gentleman's time has expired.

The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Thank you, Mr. Chairman. Mr. Mabey, in calculating the amount of money you have available from income, I understand you go back 6 months and take an average.

Mr. MABEY. That's correct.

Mr. SCOTT. How does that work if you've lost your job?

Mr. MABEY. Well, if you've lost your job, then going forward you don't have the money to repay your debts and yet the law would assume that you have that money.

Mr. SCOTT. Well, how do you pay it? You don't have a job, so how does that work?

Mr. MABEY. Then you would be thrust upon the requirement to come forward and prove special circumstances and no reasonable alternative with respect to such matters as where you live, how much you need for clothing, for food, and such.

Mr. SCOTT. Under present chapter—under present wage earner plans, how does it work if you lose your job and can't make your payments? Do you get a recalculation?

Mr. MABEY. Yes.

Mr. SCOTT. Would this be different?

Mr. MABEY. There would be under this bill an opportunity to file new budgets and the like on a yearly basis. The threshold means testing, however; does average your last 6 months earnings, irrespective of whether you're able to earn that money now that you've lost your job.

Mr. SCOTT. What is the difference now in the judge's discretion to find abuse under the bankruptcy law?

Mr. MABEY. Now the judge has——

Mr. SCOTT. And how does this bill change it?

Mr. MABEY. The judge currently has discretion to determine substantial abuse. The judge, for instance, can take account of how you got in this fix. It could look at Mr. Trapp's circumstances and compare them to someone else's and say that Mr. Trapp is an honest but unfortunate debtor and therefore it does not constitute a substantial abuse. Currently there is no requirement that the judge impose the IRS standards with respect to housing and other expenses upon individual debtors. The judge has discretion now to take account of these special circumstances. And a major position of the National Bankruptcy Conference is that there should be additional elbow room in this bill for the judicial discretion to take account of these hard cases.

Mr. SCOTT. How are pensions affected by this bill and how is that different from the present law?

Mr. MABEY. There are some provisions which protect pensions in this new bill in a way that we believe would be constructive. But the—but if a person has to borrow from the pension or otherwise use that money to pay for special circumstances such as Mr. Trapp's van or the like, those special circumstances cannot well be taken account of without establishing, without meeting a high—as Mr. Trapp puts it—burden of proof.

Mr. SCOTT. Now, if you have excess over the amount of your calculated available income of $200 a month, do I understand that you essentially cannot file Chapter 7?

Mr. MABEY. Yes, that is correct. You would, unless you could meet the burden of showing special circumstances and no alternative means to bring your monthly obligations within the bounds that the IRS has set.

Mr. SCOTT. Professor Gross, could you tell me what effect this bill would have on a woman whose husband had a business failure and she was the cosigner on some of the loans?

Ms. GROSS. Well one of the risks to her is she might have to access the bankruptcy system and she would be subject to these same increased burdens because she might become a debtor herself, and it is a marked shift from current law. Currently the presumption is in favor of the debtor, and if a creditor wants to object, that creditor has to move. This bill shifts the presumption and puts the burden of proof on the debtor to show that he or she is entitled to the relief. That's a huge difference and an enormous burden on people trying to access the system.

Mr. SCOTT. If I could say very briefly——

Chairman SENSENBRENNER. The gentleman's time has expired and there are other members who wish to ask questions.

Mr. SCOTT. Can I have 10 seconds?

Chairman SENSENBRENNER. Ten seconds is fine.

Mr. SCOTT. It's just that it would also put her in a situation where she could not file for bankruptcy. She would be essentially captured by the system for the next 5 years if she had any disposable income at all.

Thank you, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. At the request of Mr. Conyers, I ask unanimous consent that two items be placed in the record. First, a letter dated February 7 to the gentleman from New York, Mr. Nadler, from Linda Lea M. Viken of Rapid City, South Dakota; and secondly, a letter dated February 7 to Senator Kennedy from Charles C. Shainberg, representing the American Academy of Matrimonial Lawyers.

Is there any objection to putting these items in the record? Hearing none, so ordered.

[The information referred to follows:]

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February 7, 2001

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Representative Jerald Nadler
B336 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Representative Nadler:

I write to you as an individual and in my capacity of Chair of the Federalization of Family Laws Committee of the American Academy of Matrimonial Lawyers. AAML is comprised of lawyers around the country who specialize in family law. For myself, I have practiced family law for over 20 years, and have been in bankruptcy court on issues of dischargeability and payment of support and property settlements.

The AAML, at the recommendation of the Federalization of Family Laws and Legislation Committees, has taken a position in opposition to what is now designated S.220 and H.R.333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001." (How we wish it really did that.)

This proposed law changes the status quo to the determent of women and children. While the rhetoric is that the bill helps in the collection of support (and property settlements), the reality is that the bill takes away the current protections of the existing bankruptcy laws. Because certain credit card obligations will not be dischargeable, in a Chapter 13 plan the support and property settlement payments will be in competition with the payments on the non-discharged credit card debt. In contrast, the current law requires the full payment of support obligations FIRST. Since there are limited funds, there will be only a partial payment made on these support obligations if this proposal becomes law. By limiting the dischargeability in a Chapter 7, the benefits of a "fresh start" are lost and the bankrupt is still unable to meet his obligations. As you know, under federal law only one half of a person's paycheck can be garnished for support, and in some states if a creditor already has a garnishment in place, it would impair the ability of a former spouse to garnish–reducing the support payment.

**Fellow of the American Academy of Matrimonial Lawyers*
**Board Certified - Family Law Trial Advocacy*

Representative Jerald Nadler
February 7, 2001
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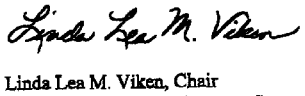
You have received a very detailed letter from one of our members, Marshall Wolf, Esq., who has eloquently set forth in detail our concerns and I join in his analysis.

We are grateful for your opposition to this bill. Please let me know what we can do to be of help. Please, do not let them put credit cards before kids.

Sincerely yours,



Linda Lea M. Viken, Chair
Federalization of Family Laws Committee
American Academy of Matrimonial Lawyers

LLV/rt

The American Academy of Matrimonial Lawyers

"Who are we?"

The American Academy of Matrimonial Lawyers was founded in 1962 to improve the practice of law and the administration of justice in the area of divorce and family law.

A small group of nationally known lawyers founded the Academy in recognition of a need to humanize and dignify this most traumatic area of family relations. The group's stated purpose in forming the Academy was:

> *"To encourage the study, improve the practice, elevate the standards and advance the cause of matrimonial law, to the end that the welfare of the family and society be preserved."*

Expertise and Professionalism

The Fellows of the Academy concentrate their practices in family and matrimonial law.

This legal specialty includes divorce, legal separation, annulment, custody, property valuation and division, and support. Fellows are recognized by their fellow lawyers and by the judges where they practice as the top experts in their field.

Every Fellow, by his or her personal conduct, must demonstrate a professional and ethical commitment to his or her clients and to society at large in resolving what are often intensely complex and emotional family problems.

By demonstrating the highest standards of matrimonial practice themselves, Fellows of the Academy have set the standard for the rest of the matrimonial bar. They have improved the quality of family law practice in general throughout this country-for attorneys and litigants alike.

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February 7, 2001

Senator Edward M. Kennedy
315 Russell Senate Office Building
United States Senate
Washington, DC 20510

Representative Jerald Nadler
B336 Rayburn House Office Building
United States House of Representatives
Washington, DC 20515

Dear Senator Kennedy and Representative Nadler:

As president of the American Academy of Matrimonial Lawyers (AAML), I am writing to express the deep concern of the Academy over the re-introduction and fast-tracking of the bankruptcy "reform" legislation S.220 and H.R.333 and it's adverse effect on children and families receiving child support payments.

The Academy believes credit card debts should retain their unsecured status, because their non-dischargeability will affect the debtor's ability to pay child support, alimony and property settlements.

The bill as written will change existing law in a way that is extremely harmful to women and children. While at first reading it appears that support payments have "priority," the reality is that protection exists only for a limited amount of time.

In a Chapter 7 case the non-dischargeability of the credit card debt will mean that the debtor does not truly have a "fresh start" and will be unable to pay all his remaining obligations; most specifically support obligations and potentially a property settlement payment.

Representative Jerald Nadler
Senator Edward M. Kennedy
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In a Chapter 13 case the credit card debts are treated equally with support obligations when devising a payment plan, thus the support obligation receives a pro-rata payment only while under existing law they have a priority.

We believe that children should come before credit card companies.

We urge the defeat of this legislation.

Respectfully yours,

CHARLES C. SHAINBERG

CCS:jad
cc: President George W. Bush
U.S. Senate Members
U.S. House Members
All Fellows AAML

Via Facsimile Only

Chairman SENSENBRENNER. The gentleman from Wisconsin, Mr. Green.

Mr. GREEN. Thank you Mr. Chairman.

Judge Mabey, we heard a great deal about what you don't like in this bill. Could you tell us about provisions that you do like?

Mr. MABEY. Yes. A couple of examples are this bill does put some restrictions on the homestead exemption. As you know, bankruptcy law is Federal law, but the Federal law allows the States to give precedence to their homestead exemptions, and some States such as Florida and Texas have virtually unlimited homestead exemptions. This has brought the bankruptcy section into ill repute because wealthy people could protect million or multimillion dollar homes. This statute does require that you have to have lived in the State for a couple of years before you can get the benefit of the homestead exemption. I think it would be better just to put a $100,000 limit on the homestead exemption. But this bill makes progress in that respect.

Also with respect to repeat filing of bankruptcy, it's the view of the National Bankruptcy Conference that there has been abuse in this area. And this bill does take some actions to limit repeat filings. Now, we believe that if you file and you don't comply with the court provisions and the case is dismissed, you ought not to be able to just keep filing. There ought to be restrictions. This bill imposes some restrictions which would probably make some sense. However, Mr. Trapp's situation where you file and get a discharge and then your situation worsens and it doesn't improve and you may

need to again go into bankruptcy, perhaps the bill's provision needs a little elbow room there.

Mr. GREEN. Any other provisions that you can think of off the top of your head?

Mr. MABEY. Yes. There are in the bill separate from the consumer provisions some important provisions with respect to the international bankruptcies and how those provisions—and how those bankruptcies should be taken care of. International bodies have proposed legislation to be adopted internationally. This bill has a separate package sort of in it, adopts those provisions.

Mr. GREEN. Thank you.

Professor Gross, how about you? You've made your distaste abundantly clear. How about what you do like in this bill?

Ms. GROSS. There are certainly provisions, and I would be happy in writing to go through a list of those.

Mr. GREEN. Fair enough.

[The information referred to follows:]

PREPARED STATEMENT OF PROFESSOR KAREN GROSS, NEW YORK LAW SCHOOL, NEW YORK, NY

At the hearing on February 8, 2001 in respect of H.R. 333 ("Bankruptcy Abuse Prevention and Consumer Protection Act of 2001"), I (along with the other witnesses) were asked various questions in respect of the proposed bankruptcy legislation. Chair F. James Sensenbrenner, Jr., indicated that our responses thereto could be made in writing and included in the record of this Hearing. To facilitate answering, I have combined questions that basically were asking—in one form or another—similar things. Accordingly, my answers to the questions are hereby elaborated as follows:

1. FOR THE INDIVIDUAL DEBTOR, ARE THERE DIFFERENT ENTRY LEVEL REQUIREMENTS UNDER CURRENT LAW AS COMPARED TO H.R. 333 IN TERMS OF ACCESSING THE BANKRUPTCY SYSTEM, AND DO THESE CHANGES AFFECT THE "BURDEN OF PROOF"?

There are most assuredly different and more stringent requirements under H.R. 333 in terms of entry into the bankruptcy system, and these changes make it significantly harder for individual debtors to seek Chapter 7 bankruptcy relief. The proposed changes, housed in the so-called "means-test," increase the requirements—both procedurally and substantively—that a consumer must satisfy. These requirements, as to which I have enormous disagreements, increase costs and time for an individual debtor. For a person who is economically marginal at the start, these hurdles are set too high; some deserving debtors will not be able to afford the time and money it takes to prove they are worthy of access to the bankruptcy laws of this country. To paraphrase the language of a Supreme Court Justice in a bankruptcy case, you could be too poor to go broke.

What this means, in a legal sense, is that the entry level requirements for accessing the bankruptcy system radically shift the burden of proof. Under current law, individuals can access the bankruptcy system with relative ease, including those appearing without a lawyer (which is a sizable portion of the debtor population and which some people estimate is approximately 20% nationwide). The bankruptcy door is open, including the benefits of the automatic stay which immediately curbs the problematic and overwhelming debt collection efforts that drove some debtors, particularly the elderly and women, into the system in the first instance. Up until this point in time, the entry requirements (including as assessment of chapter choice alternatives) have not been particularly onerous in practical terms, although they can be psychologically devastating for some debtors. Once a case is filed, the Court, the U.S. Trustee and/or creditors can proceed under various provisions to dismiss or convert the debtor's case. Moreover, certain categories of debts are non-dischargeable and certain other creditor protections kick in, including exceptions to the automatic stay. Stated differently and in shorthand form, just because a person has entered the system does not mean he/she can ultimately get the benefits sought. Quite correctly, entry into the system is just the beginning.

Under proposed H.R. 333, the burden of proof shifts right from the get-go. Debtors have to prove they are entitled to bankruptcy relief and the bar is set high. Credi-

tors do not have to prove anything; indeed, the entire burden is on the debtor to prove he/she is entitled to bankruptcy relief—including that he/she fits within one of the exceptions to the means-test. This makes life vastly easier on creditors than current law as they do not need to spend time and money to assess a particular debtor's personal situation; they just sit back and wait (having extended credit to these individuals in the first instance perhaps too quickly or without adequate controls or without sufficient ongoing monitoring). The bankruptcy door is shut and debtors must pry it open. For many debtors, particularly the elderly, women and those who cannot afford counsel, there is effectively a bar to entry which, if not navigated, eliminates bankruptcy relief under Chapter 7. For example, a woman who needs to seek relief because of her husband's business failure—and she is obligated on his debt—can be subjected to the threshold requirement and denied access to Chapter 13. For the rich, bad actor debtor—the very one we should be trying to capture—these entry requirements will not prove problematic at many turns. They have the time and money to get into the system in the first instance. Bankruptcy becomes, right from the start, a filter to assist creditor debt collection.

Make no mistake about it. H.R. 333 radically changes more than 100 years of bankruptcy law and in doing so, shifts the burden from the creditor or the Court or the U.S. Trustee onto the debtor to determine bankruptcy access. How ironic that in an era of reasonable economic stability, we curtail the ability of those in need to access the judicial system to obtain bankruptcy relief.

2. MUCH HAS BEEN SAID ABOUT THE BENEFITS OF THE SO CALLED DOMESTIC SUPPORT PROVISIONS AND THE BENEFITS THESE PROVISIONS PROVIDE FOR WOMEN AND CHILDREN. DO YOU SHARE THE VIEWS, EXPRESSED BY ATTORNEY PHILIP L. STRAUSS AT THE HEARING ON FEB. 7, 2001, THAT THESE PROVISIONS ASSIST WOMEN AND CHILDREN?

As my oral and written testimony expressed, I am deeply concerned about the impact H.R. 333—including many aspects of the support provisions—will have on women and children. Notice the specific groups that Attorney Strauss specifically mentions in his written testimony as supportive of the domestic support provisions: the San Francisco Family Support Bureau of the Office of the District Attorney (his office), the National Child Support Enforcement Association, the National Association of Attorneys General and the National District Attorneys Association. These are all agencies charged directly or indirectly with collecting back alimony on behalf of the government. Sometimes these dollars go directly to the benefit of women and children—which is at once beneficial and commendable. But, at other times, they are collecting for the government qua government. There is a reason why women's groups are not on his list; many well-known and well-regarded women's groups DO NOT support H.R. 333; if the support provisions were so good, why are the very groups charged with protecting women and children not wholeheartedly in support of this legislation?

I most certainly do not object to the government collecting back alimony, maintenance and support as a general notion. What I object to is the government doing so when it (i) competes with the opportunity for women and children to collect current and future support for themselves; (ii) diminishes the available assets; or (iii) weakens the prospects for a successful reorganization, most particularly in Chapter 13.

Under H.R. 333, taken as a whole, the support provisions—when exercised by the government—can interfere with the rights of women in the above-identified ways. Not all women involved in bankruptcy are owed back alimony, maintenance and support. Women appear in bankruptcy as creditors, debtors and innocent third parties. We need legislation that protects ALL women touched by bankruptcy. H.R. 333 cannot be cherry-picked. You cannot pick a provision—say making women and children a first priority—and conclude from that that the bill as a whole is workable and beneficial. One needs to see the support provisions in context; one needs to see how they will play out with real women in real life. Subtitle II of Title II of H.R. 333 does not stand alone.

3. YOU MENTIONED THAT THE PROPOSED LEGISLATION POSES PRIVACY RISKS FOR WOMEN AND CHILDREN. HOW DOES THIS OCCUR AND DOES THE BILL, IN ITS PRESENT FORM, ADDRESS YOUR CONCERNS?

As detailed in my written testimony, there are many ways in which H.R. 333 jeopardizes the personal privacy of women and their children and may even pose a serious safety risk. This is because the legislation almost completely ignores the impact of online (electronic) filing of bankruptcy cases. Let me provide some concrete exam-

ples. Suppose a woman is a debtor who has a former spouse who has stalked her. Suppose there have been issues about custody and concerns about kidnaping or prolonged "borrowing" of children. If this woman seeks bankruptcy relief, her life becomes an open book. Known and unknown predators will be able to learn a great deal about this debtor online—with a password obtained without any requirements and payment of a modest fee. Where she lives, where she works, whom she owes (including account numbers) will be out on the web. She will not know this is occurring until it is too late. Suppose there is a woman who is the creditor of either a business or an individual seeking bankruptcy relief. Suppose this woman creditor has also been harassed or stalked or abused in a prior relationship. As soon as this debtor seeks relief and lists its/his creditors, the woman creditor's name and address become public and accessible online, and she has no way of knowing about or stopping this ahead of time. Her address—most private to her—will be public, despite other court orders to the contrary.

These, among other issues, are of concern to me, particularly since H.R. 333 requires debtors to submit increased amounts of data. Current Section 107 is inadequate for these purposes; indeed, on its face, it does not even purport to protect women in the examples cited. Until some protection for women debtors is developed, this legislation is premature. In this regard, I have consulted with and participated in studies on the impact of electronic filing and bankruptcy and have spoken at various conferences on this topic. I would be happy to provide additional information to this Committee should its members care to review same.

As an academic, I value data and its utility in making informed policy choices. That said, we still need to work to protect personal privacy and to balance legitimate and important data access with appropriate protections.

Ms. GROSS. But let me give you several examples. I think permitting the stay to be lifted to enable women, children and me government agencies to collect alimony, maintenance and child support makes sense. I think that's a good idea. I think provisions that try to curb repeat filers who use different names is a good idea, because now we don't have a system of ensuring that debtors who file in one place are known in another place, and it does not make sense for the same debtor to be able to file in six different jurisdictions over a short period of time.

I think that there are some provisions in the bill related to increased data collection about how the bankruptcy system is operating. I think that's also wise because it's better to make policy on the basis of what's happening, based rather than on some theoretical understanding of the system.

So I think increased data collection, carefully thought about and carefully culled in terms of privacy, makes sense.

I think that some form of post-bankruptcy financial education makes sense, not on a mandatory basis until we do a pilot study to see if it works, but it is absolutely wise to think about the fact that many debtors are not financially literate and we can do much more than give them a fresh start. We can give them the tools to start over. So it's a teachable moment. We should use it. We should do a pilot study to assess how best to do that before we roll it out nationwide. But that makes sense.

So those are some examples of areas in which I think there are provisions that in isolation are beneficial.

Mr. GREEN. And, Mr. Silvers, same question.

Mr. SILVERS. Certainly. There are several items within the bill that we think are at least in part appropriate ones. The preservation of the wage priority in section 724 for assets subject to a tax lien is something that we feel positively about. Similarly to the discussion about the protection of retirement monies in 401(k) accounts, it goes in a positive direction, as does the homestead protection that the previous witness mentioned. But I hope it's clear that

these are essentially fragments of light in what is otherwise a very dark picture.

Mr. GREEN. Mr. Chairman, my time has expired.

Chairman SENSENBRENNER. The time of the gentleman has expired.

The gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Mr. Mabey, to pick on your observations regarding the homestead exemption, I mean, let's be really clear about this. Without the cap, you can have a situation where someone could own a home either in Florida or Texas with millions of dollars that would be—that would be protected.

Mr. MABEY. Yes, that's unfortunately true.

Mr. DELAHUNT. So in terms of diminishing the reputation of the bankruptcy system, if that continues we only have, I take it, extended the requirement that that be the primary residence—is it now for 2 years under this bill?

Mr. MABEY. Yes, 780 days.

Mr. DELAHUNT. I mean, do you really believe that someone who is sophisticated, financially literate, would be unable to retain counsel to defer the necessity for filing a bankruptcy claim in a 2-year time frame in the real world, Mr. Mabey?

Mr. MABEY. In the real world, the sophisticated, probably high-profile person can get around this provision. There ought to be a stricter limit on the homestead exemption.

Mr. DELAHUNT. Okay. What would your recommendation be in terms of—let's talk about years. I'm really directing this to some of my colleagues who I know are concerned about the perception of fairness, particularly my friend from Florida, the gentleman Mr. Scarborough.

Mr. MABEY. Well——

Mr. DELAHUNT. Is 2 years—what about 5 or 7? Give me a quick number.

Mr. MABEY. Well, let me answer it this way. Is it fair when bankruptcy is a national law to allow a Floridian a $5 million homestead exemption?

Mr. DELAHUNT. No, I don't think it is, but we have time constraints. Give me a number in terms of years that you think would be sufficient to prevent a sophisticated individual from circumventing the intent of the law.

Mr. MABEY. There ought to be an absolute cap. If there isn't, I'd suggest 5 years.

Mr. DELAHUNT. Five years. Well, thank you. You know, bankruptcy has actually declined in the past 2 years.

Mr. MABEY. That's correct. About 160,000 fewer bankruptcies over the last 2 years.

Mr. DELAHUNT. Fine. Do you see that trend continuing?

Mr. MABEY. It seems to be continuing. At least bankruptcies in year 2000 were fewer than in fiscal 1999, but it's hard to predict.

Mr. DELAHUNT. In terms of—I think it's a very interesting point. I think we really have to understand that the relationship between unemployment and bankruptcy—is there data that exists regarding that relationship?

Mr. MABEY. Yes. For instance, those who file bankruptcy who are 60 years and older, the high majority of them file because they lost their job or they were downsized to a lesser——

Mr. DELAHUNT. They were downsized. I can remember that term being used quite frequently in the mid-90's and early 90's, economic insecurity and downsizing. I fear for a time when that may reoccur. And again I think it was you, Mr. Mabey, that talked about when individuals are faced with this situation and it's the last 6 months of their earnings that is used to compute. What if they don't have a job? It's a—it's a pretense. It's an assumption that just doesn't exist in people—in real people's daily lives. If you're out of work, you're out of work.

Mr. DELAHUNT. And particularly if you're living from hand to mouth, from paycheck to paycheck—and that's an awful lot of Americans—and then you find yourself without a job, and you have a formula—correct me if I'm misstating—and you have a formula that says we'll average the last 6 months. Well, you're in this predicament because you lost your job, and that average just doesn't work in real terms, in real life, with real people.

Chairman SENSENBRENNER. The gentleman's time has expired. The machine was not reset.

The gentleman from California, Mr. Issa.

Mr. ISSA. Thank you, Mr. Chairman.

I'd like to first give fair warning to the panel. I'm one of the token nonlawyers on Judiciary. So I'll try to ask short questions and short answers that mostly come from my 20 years in the business community.

Mr. Mabey, I appreciate that you have agreed with I think both sides that there were abuses in the system that need to be corrected, whether or not you agree with all the corrections. Mr. Trapp, though, I'd be interested to know, do you also believe that there were abuses in the bankruptcy law, yourself excluded, that legitimately need to be corrected?

Mr. TRAPP. I do.

Mr. ISSA. And I appreciate your passing up this—this application. I read it from a business view, and I suggest you not return it.

Mr. TRAPP. Well, I was lucky enough to pull it out of the mailbox myself. I'm sure that my wife would not have allowed me to even peruse it.

Mr. ISSA. This looks like a group that, in my opinion, takes advantage of those who have fallen on hard times; and they go out of their way to say, if you've lost your credit standing we're going to help you out for $10,000. This type of group I suspect also needs to be reformed.

Mr. TRAPP. Yes, I agree.

Mr. ISSA. The question I have, though, is during the very difficult times you and your family went through, not uncommon to happen to many families in America, I heard you say in your testimony that basically to make ends meet you continually ran up various credit cards; is that correct?

Mr. TRAPP. We did. We were forced to fall back on them, yes.

Mr. ISSA. And, in fairness, at the time that you were running them up, with knowing that your child had a chronic situation, one

for which there was no short cure, did you have a reasonable expectation you would be able to pay those off?

Mr. TRAPP. We did up until a certain point. We were relatively debt free 5 years ago when we purchased our home, and then we had a couple of major surgeries, and my wife was—we were both working, but unfortunately mostly my wife had to spend a lot of time off at the hospital and overseeing my daughter's care. So there was a lot of lost income.

Also, at times like that or hard times like that when you're sitting at your daughter's bedside or you're wondering what the future does hold, some of your economic decisions and—may not be the best. I will take responsibility for my spending.

Mr. ISSA. Certainly.

Mr. TRAPP. Also, I would expect these corporations to take responsibility for their lending, also.

Mr. ISSA. Well, I think we certainly agree that under the old and the new rules they would still have a loss in most cases, including yours. There may be some debate about how large each loss would be.

Mr. Silvers, I had a question for you. It seemed that you were particularly concerned about saving companies like Montgomery Wards. In light of their closing the doors and not meeting their obligations to customers who bought product over Christmas, how do you propose that we continue saving companies like that?

Mr. SILVERS. Well, I hope I made clear in my testimony that when you look at the range of major employers that have filed for Chapter 11 in the last few months there are all sorts of reasons behind that. And the point I was trying to make there was not—was not that any particular company may take a particular path to restructuring, but that if you look at any of these companies, there are—there is a major public interest and to the extent they are viable enterprises, ensuring that they are restructured on a sound basis and that jobs and going concern value are preserved. And I would submit that if you look down the list of those companies that have filed for Chapter 11 in the last year or so almost all of them fit that description.

That does not mean that there are not constituents of those companies that have legitimate claims against them, all right, that need to be balanced. That's the purpose of the Code, is to balance those claims in such a way that the society's larger interest in preserving value is met; and, respectfully, we believe that this bill does not do that. In fact, it dramatically lessens the possibility of achieving that goal of preserving jobs and preserving value.

Mr. ISSA. I appreciate your comments.

I might tell you from the bottom, the AFL-CIO is a very large organization normally dealing with very large companies. And as a small businessman, actually, a microbusinessman that became a small businessman, I've gotten firsthand to see the ripple effect of large companies, if you will, using to the maximum extent possible, one might say abusing the system, to close stores, sometimes held by small people, that's their only piece of real estate, after a great investment by the small businessman to refurbish the store to make concessions. And hopefully this legislation is designed to lessen the ripple effect of large businesses dumping on small busi-

nesses, thus creating secondary work for the bankruptcy court, of which there has been a considerable amount over the years. And I picked retail because, although I was in manufacturing, I saw the most abuse, after airlines of course, in retail.

I have a closing question——

Chairman SENSENBRENNER. Gentleman's time has expired.

Mr. ISSA. Thank you very much. I appreciate it.

Chairman SENSENBRENNER. The Chair asks unanimous consent that a statement of Chief Judge Edward R. Becker of the United States Court of Appeals for the Third Circuit on behalf of the Judicial Conference of the United States on this bill be included in the record, and without objection so ordered.

[The prepared statement of Judge Becker follows:]

PREPARED STATEMENT OF CHIEF JUDGE EDWARD R. BECKER, UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

My name is Edward Becker, and I am the Chief Judge of the United States Court of Appeals for the Third Circuit. I appear before you as a member of the Executive Committee of the Judicial Conference of the United States to present the position of the Judicial Conference with regard to H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001." I thank you for the opportunity to appear today and would like to address six areas of concern to the judiciary: appeal of bankruptcy court decisions, need for new judgeships, re-allocation of revenues generated by filing fees, mandatory data collection, filing of tax returns with the bankruptcy court, and amendment of bankruptcy rules.

DIRECT APPEALS

The Judicial Conference strongly opposes section 1234 of the bill regarding expedited appeal of bankruptcy cases. As proposed, this provision would revise the basic structure for appeals from the orders of the bankruptcy court by providing that all bankruptcy court orders appealed to the district court would become orders of the district court 31 days after such appeal is filed, unless the district court decides the case within 30 days or extends the time period for decision. Functionally, this will result in all appeals from bankruptcy courts being routed directly to the United States Court of Appeals, depositing some four thousand new cases per year on these courts.

Turning first to the provisions of section 1234, I note that, as a general matter, the Judicial Conference opposes statutory litigation priorities, expediting requirements, or time limitation rules in specified types of civil cases beyond those few categories of proceedings already identified in 28 U.S.C. § 1657 as warranting expedited review.[1] Mandatory priorities and expediting requirements run counter to principles of effective civil case management. Individual actions within a category of cases inevitably have different needs for priority treatment and are best determined on a case-by-case basis. In addition, as the number of categories of cases receiving priority treatment increases, the ability of a court to expedite review of any of these cases is restricted. Because 28 U.S.C. § 1657 already authorizes the court to expedite a proceeding if "good cause is shown," additional restrictions on federal courts are unnecessary.

Beyond creating general case management problems by imposing such a time limit on the district courts, the particularly short time limit imposed by the proposed legislation would undermine the administration of justice. The district court would be required either to extend the 30 day period as a matter of routine or to make a determination as to whether direct appeal is appropriate or not within the 30 day period. The 30 day period running from the date of filing the appeal is patently insufficient to allow practitioners the time needed to adequately brief the issue, much less to allow the district court adequate time for review. It is clear to me that, as a practical matter, this provision requires direct review of these cases in the court of appeals. The 30 day layover in district court only increases costs to the litigants and will prove to be a meaningless step on the way to review by the court of appeals.

[1] Report of the Proceedings of the Judicial Conference of the United States, September 1990, p. 80.

The Judicial Conference has concluded that the inevitable result of this provision will be to saddle the courts of appeals with thousands of new cases. According to a study of the Federal Judicial Center, it has the potential to increase bankruptcy appeals by 400%. The circuit courts now handle approximately 1,000 bankruptcy appeals each year. Under the proposed procedure, the courts may be faced with 4,000 new cases annually. Such a precipitous increase in the caseloads of the courts of appeals is utterly unprecedented. All of the chief judges of the twelve regional circuit courts of appeals strongly oppose this provision. Many of these courts maintain incredibly high workloads while being chronically shorthanded. A significant increase in the volume of bankruptcy appeals exacerbates a grievous problem and negatively affects the prompt and effective processing of all appeals.

The proposal is particularly unfair to parties to a bankruptcy appeal. It will most certainly increase the cost of the appeal. Practice, including briefing, is more complicated and time consuming in appellate courts than in district courts. Attorney fees and other costs to the parties will increase in 80% of all appeals, the percentage of appeals that currently proceed no further than the district courts. Further, appeals are handled far more expeditiously in district courts than in courts of appeals. Indeed, the current system is working well; the district judges by and large do a good job with these cases. In sum, the proposal provides for increased expense and increased delay for parties to a bankruptcy appeal, and attempts to fix something that "ain't broke."

The Judicial Conference recommends a proposal for expedited appeal of a targeted number of bankruptcy cases which is attached hereto. This proposal redresses the primary complaints regarding the existing statutory scheme for bankruptcy appeals: the need for expeditious final disposition of appeals in time sensitive cases (where the success of a reorganization depends upon a quick decision), and putative inefficiency in the development of binding precedential case law.[2] The Judicial Conference proposal will solve these problems without creating the aforementioned unnecessary problems for litigants and the courts of appeals.

The Conference position is that bankruptcy court orders should be reviewable directly in the courts of appeals if, upon certification from the district court or bankruptcy appellate panel, the court of appeals determines that (1) a substantial question of law or matter of public importance is presented and (2) an immediate appeal to the court of appeals is in the interests of justice. This would allow direct appeal where necessary to establish precedential case law and meet special needs of parties, while leaving intact the basic bankruptcy appellate structure. Most bankruptcy appeals are currently resolved effectively by the district courts or by the parties, as shown by a Federal Judicial Center review reflecting that 73% of bankruptcy appeals in the district courts were resolved with little or no judicial involvement. By preserving the district court as a forum for meaningful review, the Conference proposal satisfies two objectives—it allows for timely resolution of appeals at minimal cost to litigants, and it facilitates the establishment of precedential case law in bankruptcy without placing undue burdens on the courts of appeals.

JUDGESHIPS

Section 1224 of the bill would create 23 new temporary bankruptcy judgeships and extend the existing temporary judgeships in the northern district of Alabama, the district of Puerto Rico, and the eastern district of Tennessee for a period of three years, and extend the existing temporary judgeship in the district of Delaware for a period of five years. The section also contains a provision to extend the temporary judgeship in the district of South Carolina for a period of three years. Because the term of South Carolina's temporary judgeship lapsed on December 31, 2000, however, the bill will no longer have its intended effect with regard to that judgeship. The term of a judgeship that no longer exists cannot be extended. Therefore, the bill needs to "re-authorize" that judgeship by including it among the new judgeships created by the bill.

The bill falls somewhat short of the needs of the judiciary. The Judicial Conference recommends authorization of 23 judgeships provided for in the bill, as well as an additional judgeship in the district of Maryland and a judgeship in the district of South Carolina to replace the lapsed judgeship. In addition, the Conference urges

[2] The argument is made that direct appeals to the court of appeals will create more precedent AND that more precedent will lead to more certainty in the law and less litigation. My thirty years experience on the federal bench tells me that the opposite is true. More precedent leads to *more* litigation.

that 13 of these judgeships be established on a permanent basis[3] and the other 12 on a temporary basis;[4] that the current temporary judgeships in the district of Puerto Rico, the northern district of Alabama and the district of Delaware be converted to permanent positions; and, that the temporary judgeship in the eastern district of Tennessee be extended for a period of five years.

The Judicial Conference is required by law to submit recommendations to Congress regarding the number of bankruptcy judges needed and the districts in which such judgeships are needed.[5] This requirement has engendered a process whereby the need for additional judgeships is assessed on a biennial basis. The bankruptcy and district courts provide recommendations to their respective judicial councils. The judicial councils' recommendations are then subject to on-site surveys of the districts for which judgeships are requested.

Under the direction of the Conference Committee on the Administration of the Bankruptcy System, the surveys include a thorough review of the dockets in each respective court and interviews with the chief district judge, the bankruptcy judges, the bankruptcy clerk, the United States Trustee, and local bankruptcy attorneys. Suggestions for improvements in case management and methods to achieve greater efficiencies are solicited by the survey team. The survey team then prepares a written report and recommendation regarding each respective district that is submitted to the Committee's Subcommittee on Judgeships. The Subcommittee reviews each request for additional judgeships and survey report and then forwards these materials, with its recommendation, to the requesting appellate, district and bankruptcy courts for additional comment. All relevant materials are then provided to the full Committee, which makes recommendations to the Judicial Conference. The Conference makes its determination on the need for each requested judgeship and then submits its recommendation to Congress.[6]

Various factors are considered in this process for determining the need for new judgeships. The most significant factor is the "weighted judicial caseload" of each bankruptcy court. This figure is derived from a formula established as a result of a time study of the bankruptcy courts conducted by the Federal Judicial Center during 1988 and 1989. Absent exigent circumstances, the Judicial Conference considers requesting an additional judgeship only when the caseload of a court exceeds 1500 weighted filings per judge. In those instances in which the addition of a judgeship would result in a decrease of the caseload below 1500 weighted filings, the Conference seeks a temporary position; in those instances in which the weighted filings would remain above 1500 per judge even with the addition of another judge, the Conference seeks a permanent position.

Other factors which are taken into consideration during this review process, especially in those districts with case weights near the 1500 weighted filings threshold, include the nature and mix of the caseload of the court; historical caseload data and filing trends; geographic, economic and demographic factors; effectiveness of the case management efforts of the court; and, the availability of alternative resources for handling the caseload of the court.

Additional bankruptcy judgeships have not been authorized by Congress since 1992 when 35 new judgeships were approved. In response to a substantial increase in case filings, the Judicial Conference has made recommendations to Congress for additional bankruptcy judgeships in 1993, 1995, 1997 and 1999. These judgeships have not as yet been authorized by Congress.

The need for the required additional judicial officers is great. Bankruptcy filings continue at very high levels and well over a million cases are pending in our bankruptcy courts. While the judiciary employs a number of creative strategies to manage ever increasing caseloads, including the use of temporary bankruptcy judges, recalled bankruptcy judges, inter- and intracircuit assignments, additional law clerks,

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[3] District of Delaware (1), District of New Jersey (1), District of Maryland (3), Eastern District of Virginia (1), Eastern District of Michigan (1), Western District of Tennessee (1), Central District of California (3), Southern District of Georgia (1) and Southern District of Florida (1).

[4] District of Puerto Rico (1), Northern District of New York (1), Eastern District of New York (1), Southern District of New York (1), Eastern District of Pennsylvania (1), Middle District of Pennsylvania (1), Eastern District of North Carolina (1), Southern District of Mississippi (1), Eastern District of California (1), Central District of California (1), Southern District of Florida (1) and District of South Carolina (1).

[5] 28 U.S.C. § 152(b)(2).

[6] It should be noted that in those instances in which Congress declines to authorize the requested judgeships, the on-site survey process is not necessarily repeated before the request is renewed. Nevertheless, review of each request is conducted to determine whether or not the underlying justification for the request has changed to the extent that an on-site survey should be repeated.

and advanced case management techniques, there remains a dire need for more judicial resources to handle the burgeoning judicial workload.

FILING FEES

Section 325 of the bill amends the statutory filing fees for chapter 7 and chapter 13 cases and re-allocates a portion of the revenues generated by such fees from the judiciary and the Treasury general fund to the United States Trustee program. This amendment will reduce revenues to the judiciary of approximately $5 million per year. While the Judicial Conference takes no position regarding the proposed reduction of revenue to the Treasury general fund, it strongly opposes reducing revenue currently allocated to the judiciary and providing it to the United States Trustees. The existing fee structure takes into account the significant costs the judiciary bears in administering the Bankruptcy Code. The costs of the United States Trustees are far exceeded by the costs of maintaining 324 bankruptcy judgeships and the staffs and facilities for these judgeships.

The current fee schedule took effect in December 1999.[7] That schedule reflects an increase of $25 in the filing fee for both chapter 7 and chapter 13 cases to a total of $155, and allocates the increased filing fee revenue equally between the judiciary and the United States Trustee program. Assuming total filings of approximately 1.3 million per year, as based upon fiscal year 2000 figures, this increase would annually generate approximately $16.25 million each for the judiciary and the United States Trustee program. The increase was enacted with an understanding by the Appropriations Committees that these funds were required by the judiciary to meet its current statutory responsibilities, without taking into account any additional funding that would be required to meet the new responsibilities imposed by the bankruptcy reform legislation.

This bill would further revise filing fees to $160 for chapter 7 cases and $150 for chapter 13 cases and reduce that portion of the filing fee that is allocated to the judiciary from $52.50 as provided under current law to $50.00 in chapter 7 cases and $45.00 in chapter 13 cases. Assuming the annual filing of approximately 900,000 chapter 7 cases and 400,000 chapter 13 cases, this provision would have the effect of reducing revenues to the judiciary by over $5 million per year, while increasing revenues to the United States Trustee program by over $7 million per year.

The Judicial Conference strongly opposes this re-allocation of revenues at a cost to the judiciary of more than $25 million over the next five years. Not only are these funds required by the judiciary to meet its current statutory responsibilities, but other provisions of this bill will require additional expenditures by the judiciary of an estimated $80 million during the same five year period. Moreover, revising filing fees that took effect only 14 months ago, with all the attendant administrative costs and disruptions, would seem to be an unwise expenditure of taxpayer funds.

DATA COLLECTION

Section 601 of the bill directs the clerks of court to collect, and the Administrative Office to compile and report, financial data of consumer debtors and certain categories of case event statistics in consumer bankruptcy cases. The Congressional Budget Office estimates that this requirement will cost the judiciary $30 million over the next five years.

The Judicial Conference is opposed to the provisions of the bill that direct the judiciary to collect and report financial data that is unnecessary to fulfill its responsibility to report to Congress and the public information on the adjudication of cases. Under these provisions, the financial data is to be derived from the schedules and statements filed by consumer debtors. This information, filed by debtors at the outset of bankruptcy cases and in many instances without the assistance of a lawyer, is, at best, of questionable reliability.[8] Both assets and liabilities are frequently valued inaccurately by consumer debtors, and some debt simply cannot be valued definitively at the outset of the case because it is unliquidated, contingent or disputed. Therefore, these provisions will not generate "improved bankruptcy statistics," but will impose significant costs upon the taxpayers.

A far superior approach, in our view, is to append the responsibility to collect, compile and report financial data to the responsibility of the United States Trustees to conduct audits under the bill. This approach would have two significant benefits: it would yield audited, and thus accurate, data, and it would accomplish this at a fraction of the cost to the taxpayer. We believe that this data would meet the needs of Congress to conduct a continuing assessment of the functioning and effectiveness

[7] Omnibus appropriations bill for fiscal year 2000 (Pub. L. No. 106–113).

[8] *See* Report of the National Bankruptcy Review Commission, vol. 1, ch. 4 (October 20, 1997).

of the bankruptcy system. The staff of the Administrative Office is prepared to work with congressional staff to craft an appropriate replacement for the provision that currently appears in this legislation.

In the event Congress is committed to imposing the responsibility to collect, compile and report financial data upon the judiciary, we respectfully request extension of the date upon which this provision would take effect. Compliance with these new requirements will require revising official bankruptcy forms, developing new statistical data fields, training clerks in entering additional data into our computer systems, devising data extraction programs, and reprogramming Administrative Office statistical compilation programs. We will also have to coordinate with forms publishers and software developers so that the new forms can be made available to attorneys and debtors. In order for these responsibilities to be met in an accurate and thorough manner, we recommend that the provisions regarding collection and reporting of financial data be revised to take effect 24 months after enactment of the bill, with the first report due to Congress no later than 36 months after enactment of the bill.

The bill also requires the bankruptcy clerks and the Administrative Office to collect and report certain case event statistics. While the judiciary is the appropriate entity to collect and report this information, this responsibility would similarly pose a significant problem. Events occurring in bankruptcy cases are reported to the Administrative Office through the electronic case management systems of the courts. The current systems, however, are nearing the end of their useful lives and cannot collect additional information of the sort required by these bills. To upgrade these systems to meet the requirements of this legislation would require a major financial investment, contrary to good government and common sense, and divert resources from and delay the development and deployment of a new, modern electronic case management system that is in the process of being deployed in the bankruptcy courts.

This new system will not be installed and operating in all districts for at least three and a half years. Accordingly, if the judiciary is to be required to collect and report these case event statistics system-wide, we urge that this provision be revised to take effect 48 months after enactment of the bill, with the first report due to Congress no later than 60 months after enactment of the bill.

INCOME TAX RETURNS

The bill requires chapter 7 and chapter 13 debtors, upon request of a creditor, to file with the bankruptcy court copies of federal income tax returns for the three year period preceding the order for relief and for the period during which the case is pending. The bill further requires the court to limit access to the returns pursuant to security procedures promulgated by the Director of the Administrative Office and requires the court to destroy the returns three years after the case is closed.

Implementation of this provision would entail development and maintenance of a filing system separate from the public case files, with access limited to trustees and parties in interest. Court files, with the narrow exception of sealed records, are public records available on request.

Because the sealing of records is relatively rare, sealed records can be easily segregated from the public case file. The routine filing of tax returns, however, would be problematic.

Recognizing that tax returns are not to be made available to the public, the bill requires the Director of the Administrative Office to establish procedures to safeguard the confidentiality of tax information and to establish a system to make the information available to the United States trustee, case trustee, and any party in interest. To carry out this responsibility, it would be necessary to establish a separate filing system for tax returns in each clerk's office, as well as to provide personnel to manage it so that unlawful dissemination of this information would not occur. This would be a costly undertaking requiring additional office space and personnel.

As the United States Trustee's files are not public records, limiting access to trustees and parties in interest would not require segregating tax returns and creating separate procedures governing access to them. The Trustee's office also has personnel and procedures in place to deal with debtors. While the Trustees may well need some additional resources to meet this responsibility, that cost should be far less than the cost of establishing a new separate system in each clerk's office.

Accordingly, the Judicial Conference takes the position that the bankruptcy courts should not be required to maintain tax returns filed by debtors, which are typically of no use in the administration of bankruptcy cases. The Conference believes that responsibility for collection and maintenance of these tax returns would be more ap-

propriately assigned to the United States Trustees, who are responsible for supervising and estates and approving distributions to creditors.

BANKRUPTCY RULES

Section 102 of the bill establishes standards governing sanctions for abusive filings that are inconsistent with Bankruptcy Rule 9011. In addition, section 319 states the sense of Congress suggesting several changes to Bankruptcy Rule 9011. The cumulative effect of the provisions will cause confusion and needless satellite litigation. Accordingly, they should be deleted from the bill.

There are six provisions in the bill that directly task the Supreme Court or the Judicial Conference or its Advisory Committee on Bankruptcy Rules to promulgate a bankruptcy rule or an official form to implement a new requirement added by an amendment of the Bankruptcy Code. Section 221 amends section 110 of the Code to require bankruptcy petition preparers to provide to the debtor a notice, the contents of which are detailed in section 110(2)(B). The provision states that the notice shall be an official form issued by the Judicial Conference. Section 419 requires the Judicial Conference's Advisory Committee on Bankruptcy Rules, after considering the views of the Executive Office for United States Trustees, to propose for adoption rules and forms to assist a debtor to disclose the value, operations, and profitability of any closely-held business. Section 433 requires the Advisory Committee to propose for adoption a standard form disclosure statement and plan of reorganization for small businesses. Section 435 requires the Advisory Committee to propose for adoption rules and forms for small-business debtors to file periodic financial and other reports. Section 716 expresses the sense of Congress that the Advisory Committee propose rules amending Bankruptcy Rules 3015 and 3007 to extend deadlines for governmental units to object to confirmation of chapter 13 plans and to restrict the rights of interested parties to object to tax claims until the filing of a required tax return. Finally, section 1233 takes the extraordinary step of amending the Rules Enabling Act to prescribe the form to assist a debtor to report monthly income and expenses required to implement amended section 521 of the Code.

These provisions are unnecessary because the Advisory Committee automatically reviews any legislation amending the Bankruptcy Code to identify and prescribe any needed amendments to rules and forms. More importantly, directing the Judicial Conference or one of its committees to amend a particular rule or form bypasses the initial stages of the Rules Enabling Act process and needlessly undercuts in varying degrees the proper role of the Judicial Conference and its committees, the bench and bar, the public, and the Supreme Court in that process.

CONCLUSION

In conclusion, the Judicial Conference urges the Committee to amend the legislation to replace the expedited appeal provision with the Judicial Conference proposal, to re-authorize the lapsed South Carolina judgeship and provide the other needed judgeships, to leave intact the current filing fee structure, to re-assign the responsibility to compile and report financial data and maintain tax returns to the United States Trustee program, which is better suited to meet these responsibilities, to extend the effective date for collection and reporting of case event statistics by the bankruptcy clerks and Administrative Office, and to delete the provisions regarding amendment of bankruptcy rules.

Again, thank you very much for this opportunity to appear before the Committee. I am prepared to answer any questions that you may have.

Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairman very much, and good morning to the panelists. I have appreciated the clarifications that have been offered by many of the testimonies that you have presented us with this morning.

Let me first characterize what I think the important responsibility of a committee such as the Judiciary Committee, looking at the major overhaul of a Code that has been in place since the 1800's, and that is to fix what may be broken and to leave alone what has been working. And I want to start with Mr. Trapp, first of all, to thank him for taking the intensity of our questions and to appreciate his having to symbolize the thousands of people who

need to take advantage of a system that allows you hopefully and prayerfully to get back on your feet.

Can I just ask whether the illness, and I believe of your daughter, is ongoing or what the circumstances—I am sorry if I missed—you're still dealing with this crisis?

Mr. TRAPP. Yes, it is ongoing; and, actually, it's not been diagnosed, so we don't know really what the future holds.

Ms. JACKSON LEE. And so you have an unsteady and unpredictable future; is that correct?

Mr. TRAPP. Very much so.

Ms. JACKSON LEE. You need a system that would be flexible in keeping you on your feet and possibly getting you back on your feet when you have maybe a big dip in your income?

Mr. TRAPP. Yes, that's correct. I'm really concerned that if this bill was to pass that we would not be able to seek additional help for another, whatever it is, 6 years or so.

Ms. JACKSON LEE. That's the question I am getting ready to ask you. What impact—you file d a Chapter 7?

Mr. TRAPP. Filed Chapter 7.

Ms. JACKSON LEE. And you might want to do some other things as advised by your adviser s, and this language prevents a filing in Chapter 13 in 5 years. How would that affect you?

Mr. TRAPP. Well, currently we can't file a Chapter 7 again for I think 5 years, and if this—if we could not file another Chapter 13, being in the unpredictable circumstances that we have, if we could not find additional help in our community and our family, we could theoretically, like I said, lose our home. We could be—lose our vehicle. I could be put in a—in a very bad position.

Ms. JACKSON LEE. Isn't your impression, having gone through this and I imagine the painfulness of dealing both with the sickness, dealing with your spouse, dealing with the financial responsibilities, is this something that you think thousands of Americans take advantage of frivolously?

Mr. TRAPP. I'm not in any position to say who does or doesn't take care of—you know, is frivolous about their spending. I imagine that there is quite a bit of that out there. I just—I do understand that the way that these lending companies has mass marketed revolving credit in this country is all pervasive. It's reached a saturation point.

Ms. JACKSON LEE. But it is not a pleasant experience. Is that—is that my understanding, that you didn't go through a pleasant experience?

Mr. TRAPP. No. We had a very difficult time making this decision. I had very good credit right up until the time that we discharged—did our bankruptcy. It was—it was—it was—the final straw that broke the back was another hundred thousand dollar bill from Children'S Hospital for—like my daughter's most recent surgery, and at that point we decided it was in her best interest to have my wife leave the Postal Service and take care of her full time and make this decision to do this bankruptcy.

Ms. JACKSON LEE. Well, I appreciate your temperance in your remarks, but I'm using you as an example that many of those who file bankruptcy come under the circumstances that you do, not willingly but out of necessity.

And I want to turn to Professor Gross for that very reason and would like to submit into the record a sentence from a letter from the representative of the Federation—Federalization of Family Laws Committee, American Academy of Matrimonial Lawyers, that simply says the—because certain credit card obligations will not be dischargeable in a Chapter 13 plan, the support and property settlement payments will be in competition with the payments on a nondischarged credit card debt. In contrast, the current law requires a full payment of support obligations first.

I just want to go back to this point on women and children and how in the world we can capture by the testimony of Mr. Strauss from California that we in any way make an equal playing field for our children when we have them fighting against credit card companie s for child support and alimony.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Indiana.

Ms. JACKSON LEE. Excuse me, Mr. Chairman, are you allowing the witness to answer the question? I just finished the question, and I thought that was the rule. If she could answer the question, I would be greatly appreciative.

Chairman SENSENBRENNER. Okay. Professor Gross, would you be happy to answer briefly?

Ms. GROSS. I'd be happy to answer. I think it's very important to point out that Mr. Strauss is focusing on past due, and he suggests that when the government goes to collect they are on a better footing. That's simply not true in reality. Otherwise, the government would collect a hundred percent. Credit card companies are much more able to collect. The playing field is simply not level; and, moreover, if it's not the government and women acting alone, it is clearly not level because they can't afford the time and money it would take to level the field. And so adding increased, non-dischargeable debts simply does not help women and children. It hurts them, and it hurts them badly.

Chairman SENSENBRENNER. The gentlewoman's time has expired. The gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. Thank you, Mr. Chairman.

Mr. Mabey, I want to go back to a question that you were asked earlier, kind of a fundamental question. We talked yesterday about and we got the numbers with regard to the increase in bankruptcies that have taken place over the past several years. There has been, as you pointed out, a reduction of about 160,000 bankruptcies, and that means the total figure is from 800,000 to about 1.24 million, as opposed to the peak of 1.4 million.

You were asked by my colleague, Mr. Delahunt, is that trend going to continue? You responded that it seems to be continuing to decline. Given the current economic situation that we find ourselves in, the projections in the near future and as Mr. Silvers testified that today we are in far more uncertain times and that large employers throughout the United States are seeking the protection of the bankruptcy laws, the economy shows that in fact that trend—and one or two data points does not a trend make, but even if we would say that, that trend is probably not going to continue, a reduction in bankruptcy, would you think?

Mr. MABEY. I think that's right, and Professor Gross has leaned over to tell me that there are data which show that bankruptcies are now increasing again. My data were through the end of the fiscal Year 2000. So I think that probably there will be a greater and greater—possibly there will be a greater and greater need for relief under the Bankruptcy Code.

Mr. HOSTETTLER. Right, and more bankruptcies filed as a result of that.

You mentioned the situation with the individual States not being able to—should not be able to determine the homestead level and that there should be a national cap for that. To a certain extent, I might agree with you, but if we could take just a hypothetical example.

In the State of Florida—I represent Indiana. I don't represent Florida, but I visit there from time to time. But take, for example, an individual who began a company in the late 1990's during this tremendous economic time which we've recently experienced; and instead of buying a $5 million house, they bought a $250,000 house and found themselves in a situation wherein—as pointed out by Mr. Silvers, they came to the year 2000 and times began to become rough. They had hired, employed 40, 50 workers and made paychecks out to their families; and they find themselves in a situation whereby they have to file bankruptcy. Is a hundred thousand dollars enough or are they too wealthy, do you think, and they should in fact be driven from their $250,000 home?

And I just say that to say I don't know what the number is. But individuals that have employed people and have profited from the economic situation might not be multi-multimillionaires. It might have been microsized businesses need to become small businesses and they took advantage of that. That may be sinful to some people, but they did that. And while the—all the while, they hired people, but they fell into this situation. Would a hundred thousand dollars be enough or——

Mr. MABEY. Let me explain that the cap which I suggested of a hundred thousand dollars didn't go to the value of the home but rather to how much equity the homeowner has. So, if I have a hundred thousand dollars of equity in my home that is protected from bankruptcy, I can take that hundred thousand dollars. I can, if I want to, buy another $200,000 home and make the mortgage payments. It gives me some protection. The difficult—we have a difficulty with treating people differently just because they may be in a State where you only get a $10,000 homestead exemption—and we believe that should be higher—and a State where maybe you can get a $10 million homestead exemption.

The Constitution says that Congress ought to enact uniform bankruptcy laws. We think they ought to be uniform in that sense, and the judge ought to have the discretion then to take account of the personal circumstances of the individual. Perhaps those circumstances in Florida, in Texas or in Utah ought to be different, but just the happenstance of tradition, history which gives—under which some States have very, very high or unlimited homestead exemptions and some have very, very low ones, you know, we think that just doesn't cut equitably.

Chairman SENSENBRENNER. The gentleman's time has expired. The gentleman from New York, Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman.

I'd like to ask Professor Gross, we heard earlier a member seek—on the question of special circumstances seek to elicit a legal opinion from Mr. Trapp who, as I understand it, is not a lawyer. So let me ask you if—if there is a significant difference between filing schedules as one does under the present law as against unrealistic assumptions which this bill would put in with—in terms of income and expenses and leave the owner—onus on the debtor to go to court and to prove special circumstances as the legislation allows. Is that a significant difference and what is the impact?

Ms. GROSS. It is a very significant difference, and I appreciate your giving me the opportunity to address that. I know Representative Gekas thought I was agitated, but it's really important to recognize that there's a legal difference now under the new legislation versus the old in terms of the burden on the debtor, and it is appreciably different. Currently, a debtor has a presumption of being entitled to file. That's what they're allowed to do. If the creditor wants to object, that creditor has to go forward.

Under the proposal, that shifts dramatically. There are enormous hurdles that have to be satisfied, not just paperwork but comparisons of your income to standards that are fixed as to which you may not fit, and if you don't fit you have the burden of showing that, all of which serve as a——

Mr. NADLER. Throwing that in a legal proceeding for which you have to hire an attorney?

Ms. GROSS. Absolutely. This would be very hard to do on your own. You have to leap very high under this proposal to even enter the system. That makes it harder for debtors to become——

Mr. NADLER. And would that cost the debtor a great deal of money to do that in terms of legal?

Ms. GROSS. It would cost them money, time and pain.

Mr. NADLER. Thank you.

Mr. Trapp, let me ask you a question. I understand you went bankrupt because of huge medical expenses for your daughter, and you just couldn't—which obviously weren't your fault, and it wasn't a frivolous filing. If you had been a situation where the new law was in effect, would you have been able to afford an attorney's fee to institute a legal proceeding to prove special circumstances with respect to the means test so you shouldn't be judged by the automatic means test because of special—could you have taken advantage of the special circumstances provision of the law? Could you have afforded to hire an attorney to try to prove that and also to defend against the creditors' motions that would have then been allowed in that proceeding?

Mr. TRAPP. I don't believe so. I don't believe I could have afforded the hourly rate which I probably would have had to pay for such to take on such an attorney as opposed to the flat rate that—and rather simple process that we went through for our bankruptcy.

Mr. NADLER. Thank you.

Mr. Mabey, on that question, if this provision were in effect, could you tell us in some typical areas what it might add to the

legal cost for a debtor to try to prove special circumstances to get out of this means test if it didn't fit him?

Mr. MABEY. Some hundreds of dollars, it has been suggested, possibly more.

Mr. NADLER. Possibly more than hundreds, possibly thousands?

Mr. MABEY. Possibly.

Mr. NADLER. And what kind of creditors' motions and how much money would that open them up to and how much might that cost to defend against?

Mr. MABEY. Well, under Mr. Trapp's circumstances, there are a number who could file actions. And the defense of those actions, for instance, the use of credit card money, going to the ATM and withdrawing cash in order to live, there would now be a presumption that if you withdrew $750 of cash in the 90 days before you filed, that that should be nondischargeable. That's another situation where you'd have to step in, hire——

Mr. NADLER. How much might that cost to defend against?

Mr. MABEY. Again, hundreds or possibly——

Mr. NADLER. So, Mr. Mabey, in your experience, very quickly then, in order to take advantage of this special circumstances provision and then subject themselves to these, would that put it beyond the ability of many people who are, in effect, in a bankruptcy situation?

Mr. MABEY. You know, I don't have the data in front of me, Mr. Nadler, but it would clearly burden the people who are least able to bear that burden.

Mr. NADLER. Okay. Thank you very much. I yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Going through the bill, I have noticed that there are some provisions that were in the House bill and some provisions that were in the Senate bill and some provisions that just appeared out of nowhere in the course of the conference, didn't turn up in any provision, either in the House bill or the Senate bill. They just like magic appeared.

One of those provisions is section 1310, which is a strange provision, not strange because of the beginning language but strange because of the time limitations in it. It says, notwithstanding any other provision of law or contract, the court within the United States shall not recognize or enforce any judgment rendered in a foreign court if by clear and convincing evidence the court in which recognition or enforcement of the judgment is sought determines that the judgment gives effect to any purported right or interest derived directly or indirectly from any fraudulent misrepresentation or fraudulent omission that occurred in the United States during the period January 1, 1975, and ending December 31, 1993.

Now, I can understand why you wouldn't want to base a claim on a fraudulent misrepresentation. What I can't understand is why—why after 1993, for example, or before 1975 the fraudulent claim might have been somehow different. I sense that there is some special interest going on. Does anybody know anything about the history of this provision that just kind of appeared in this bill?

Mr. MABEY. Mr. Watt, this provision appeared in this bill in conference, as I understand it. There were no hearings in the House or in the Senate. This bill has nothing to do with bankruptcy. This is a special interest provision which would really set foreign policy here with respect to whether we are going to honor British judgments in favor of Lloyd's of London against wealthy American names who provided insurance and became names under Lloyd's.

The U.S. Department of State finds it to be against public policy, in opposition to the U.S. position under the current Hague Convention negotiations. This is really an outright or it does not have anything to do with bankruptcy that the National Bankruptcy Conference can see. And it did appear, to the best of my knowledge, as you suggest, out of thin air in conference.

Mr. WATT. Does anybody know whose provision this is? I mean, who is the beneficiary of this provision, I guess, is—there's got to be some—I mean, it didn't—it's written too well and is too complicated for—for it just to have shown up from nowhere. I am just trying to figure out who——

Mr. GEKAS. Would the gentleman yield?

Mr. WATT. Brother Gekas can answer the question for me.

Mr. GEKAS. At the end of the process last term when we were up against White House demands and other necessities to get the bill passed, this was presented to us by people who were interested in, like——

Mr. WATT. By the White House, is that what you're——

Mr. GEKAS. No.

Mr. WATT. Okay. I didn't think you were getting ready to make that representation, because he just told me the Justice Department and Department of State didn't want it. So who was it that presented it?

Mr. GEKAS. I'm not certain.

Mr. WATT. Oh, okay.

Mr. GEKAS. But I must tell you this, that I acknowledge that in the interest of getting the bottom line bankruptcy reform passed that I acceded to this insertion.

Mr. WATT. But now that we have a new day of bipartisanship and clarity of thinking, I assume you'd support this bill if this provision went out completely?

Mr. GEKAS. I do not support the continuation of this language in this bill.

Mr. WATT. Are you going to join me in the amendment I am going to offer next week——

Mr. GEKAS. You don't even have to worry about that. I'll take care of that, don't you worry.

Mr. WATT. You mean you're going to offer the amendment?

Mr. GEKAS. Of course.

Mr. WATT. Oh, okay.

Mr. GEKAS. What I'm trying to say to you is——

Mr. WATT. I'll join you then.

Chairman SENSENBRENNER. The gentleman's time has expired. And let me say I think we have the makings of a deal.

Mr. WATT. Hey, we've got bipartisanship here going.

Chairman SENSENBRENNER. Then we ought to quit while we're ahead. There will be no further business before the committee. The committee stands adjourned.

[Whereupon, at 11:30 a.m., the committee was adjourned.]

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