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107TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPT. 107–3
Part 1

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

R E P O R T

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

TO ACCOMPANY

H.R. 333

TOGETHER WITH

DISSENTING VIEWS

FEBRUARY 26, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 333]

The Committee on the Judiciary, to whom was referred the bill (H.R. 333) amending title 11, United States Code, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 174, line 5, strike "30.76" and insert "33.87".

Page 316, strike line 16 and insert the following:

(1) by redesignating section 407 as 407A;

Beginning on page 330, strike line 19 and all that follows through line 10 on page 331 (and make such technical and conforming changes as may be appropriate).

Page 356, beginning on line 5, strike "and amended by this Act, is reenacted." and insert "is hereby reenacted, and as here reenacted is amended by this Act.".

Page 356, line 20, strike "2001" and insert "2004".

Page 368, line 4, strike "and (38)" and insert ", (38), and (54A)".

Page 380, strike lines 19 through 21, and insert the following:

(e) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) With respect to the temporary bankruptcy judgeship authorized for the district of South Carolina under paragraph (8) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), subsection (c)(1) as it applies to the extension specified in subparagraph (D) of such subsection shall take effect immediately before December 31, 2000.

THE AMENDMENT

H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, was ordered reported with an amendment. The amendment made conforming revisions to the bill.

PURPOSE AND SUMMARY

H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, is a comprehensive package of reform measures pertaining to both consumer and business bankruptcy cases. The purpose of the bill is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and by ensuring that the system is fair for both debtors and creditors.

The heart of H.R. 333's consumer bankruptcy reforms is the implementation of an income/expense screening mechanism ("needs-based bankruptcy relief") to ensure that debtors repay creditors the maximum they can afford. In addition to implementing needs-based bankruptcy relief, H.R. 333 institutes a panoply of other consumer bankruptcy reforms. These include new eligibility standards for bankruptcy relief, additional financial disclosure requirements for consumer debtors, and enhanced responsibilities for those charged with administering consumer bankruptcy cases. H.R. 333, likewise, institutes significant consumer protection reforms, including mandatory credit counseling requirements, required disclosures

in connection with certain credit transactions, and protections against abusive practices with respect to reaffirmation agreements.

The bill also includes extensive reforms pertinent to business bankruptcies. Many of these provisions are intended to heighten administrative scrutiny and judicial oversight of small business bankruptcy cases. In addition, the bill includes provisions designed to reduce systemic risk in the financial marketplace and clarify the treatment of tax claims in bankruptcy cases. H.R. 333 also creates a new form of bankruptcy relief for transnational insolvencies and includes provisions regarding family farmer debtors and health care providers.

BACKGROUND AND NEED FOR THE LEGISLATION

Congressman George W. Gekas (for himself and 56 original cosponsors) introduced H.R. 333 on January 31, 2001. H.R. 333 is the product of more than 3 years of Congressional consideration of bankruptcy reform legislation. As introduced, H.R. 333 is virtually identical to the conference report on H.R. 2415,[1] the Gekas-Grassley Bankruptcy Reform Act of 2000, which passed the House by voice vote on October 12, 2000,[2] and passed the Senate on December 7, 2000 by a vote of 70 to 28.[3] On December 19, 2000, the conference report was pocket-vetoed by President Clinton.

Support for bankruptcy reform legislation in the last two Congresses has been overwhelming and bipartisan. In the 105th Congress, for example, the House passed both H.R. 3150, the Bankruptcy Reform Act of 1998, and the conference report on that bill by a veto-proof margins.[4] In the last Congress, the House passed H.R. 833, the predecessor to H.R. 2415, by a veto-proof margin of 313 to 108.[5] Bankruptcy reform legislation has also enjoyed broad bipartisan support in the Senate.[6]

The Judiciary Committee commenced its consideration of bankruptcy reform early in 105th Congress. On April 16, 1997, the Subcommittee on Commercial and Administrative Law conducted a hearing on the operation of the bankruptcy system that was combined with a status report from the National Bankruptcy Review Commission.[7] This would be the first of 17 hearings on bankruptcy

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[1] H. Rep. No. 106–970 (2000). The only differences are H.R. 333's title and the deletion of section 1224 (pertaining to the Bankruptcy Administrator Program) from the conference report, as this provision was enacted into law. Federal Courts Improvement Act of 2000, Pub. L. No. 106–518, §501, 114 Stat. 2410, 2422 (2000).

[2] 146 Cong. Rec. H9840 (daily ed. Oct. 12, 2000)

[3] 146 Cong. Rec. S11730 (daily ed. Dec. 7, 2000). On October 19, 2000, the Senate, by a vote of 89 to 0, agreed to a motion to proceed to consideration of the conference report on H.R. 2415. 146 Cong. Rec. S10770 (daily ed. Oct. 19, 2000). A further motion to proceed was agreed to in the Senate on October 27, 2000 by a vote of 87 to 1. 146 Cong. Rec. S11205 (daily ed. Oct. 27, 2000). After a cloture motion failed by a vote of 53 to 30 on November 1, 2000, Senate Majority Leader Trent Lott moved to reconsider the vote. 146 Cong. Rec. S11450 (daily ed. Nov. 1, 2000). On December 5, 2000, the Senate agreed to a cloture motion by a vote of 67 to 31 and passed the conference report 2 days later. 146 Cong. Rec. S11553 (daily ed. Dec. 5, 2000).

[4] 144 Cong. Rec. H4442 (daily ed. June 10, 1998) (vote on final passage of H.R. 3150 was 306 to 118); 144 Cong. Rec. H10239–40 (daily ed. Oct. 9, 1998) (vote on final passage of the conference report on H.R. 3150 was 300 to 125).

[5] 145 Cong. Rec. H2771 (daily ed. May 5, 1999).

[6] On February 2, 2000, H.R. 833 was laid before the Senate by unanimous consent. The Senate struck all of H.R. 833's language after its enacting clause and substituted the text of S. 625, as amended. H.R. 833, as amended, was then passed by the Senate in lieu of S. 625 by a recorded vote of 83 to 14. 146 Cong. Rec. S255 (daily ed. Feb. 2, 2000).

[7] *Operation of the Bankruptcy System and Status Report from the National Bankruptcy Review Commission: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. (1997).

reform over the ensuing 4 years.[8] Ten of these hearings were devoted solely to consideration of H.R. 333 and its predecessors, H.R. 3150 (the Bankruptcy Reform Act of 1998) and H.R. 833 (the Bankruptcy Reform Act of 1999). Over the course of these hearings, nearly 130 witnesses, representing nearly every major constituency in the bankruptcy community, testified. With regard to H.R. 833 alone, testimony was received from 69 witnesses, representing 23 organizations, with additional material submitted by other groups. In fact, the subcommittee's inaugural hearing on H.R. 833 was held jointly with the Senate Subcommittee on Administrative Oversight and the Courts on March 11, 1999.[9] This marked the first time in more than 60 years that a bicameral hearing was held on the subject of bankruptcy reform.[10]

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[8] The dates and subject matters of these hearings were as follows:

April 16, 1997—Hearing on the operation of the bankruptcy system and status report from the National Bankruptcy Review Commission.

April 30, 1997—Hearing on H.R. 764, "Bankruptcy Amendments of 1997," and H.R. 120, "Bankruptcy Law Technical Corrections Act of 1997."

October 9, 1997—Hearing on H.R. 2592, "Private Trustee Reform Act of 1997" and review of post-confirmation fees in chapter 11 cases.

November 13, 1997—Hearing on the Report of the National Bankruptcy Review Commission.

February 12, 1998—Hearing on H.R. 2604, "Religious Liberty and Charitable Donation Protection Act of 1997."

March 10–11, 18–19, 1998—Hearings on H.R. 3150, "Bankruptcy Reform Act of 1998," H.R. 3146, "Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998," and H.R. 2500, "Responsible Borrower Protection Bankruptcy Act."

March 11–12, 18–19, 1999—Hearings on H.R. 833, "Bankruptcy Reform Act of 1999."

November 2, 1999—Joint oversight hearing on additional bankruptcy judgeship needs.

April 11, 2000—Oversight hearing on the limits on regulatory powers under the Bankruptcy Code."

February 7–8, 2001—Hearings on H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001."

[9] Representatives on behalf of the Commercial Law League of America, the Credit Union National Association, MBNA America Bank, N.A., National Retail Federation, and the National Consumer Law Center also testified. Some of the nation's leading jurists and academics presented testimony as well. *Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 106th Cong. (1999).

[10] Senators testifying at the hearing included Charles Grassley (R-Iowa), Joseph Biden (D-Del.) and Christopher Dodd (D-Conn.). House Members included Jim Moran (D-Va.), Pete Sessions (R-Texas) and Nick Smith (R-Mich.). Id. The March 16, 1999 hearing provided an opportunity for the subcommittee to hear divergent historical perspectives of consumer bankruptcy reform. Specific topics included an analysis of the history and significance of the "fresh start" discharge under American bankruptcy law, the impact of the Bankruptcy Reform Act of 1978, the historical underpinnings of needs-based bankruptcy relief, and how bankruptcy affects the rights of creditors. Another panel examined the need for consumer bankruptcy reform from various perspectives. *Bankruptcy Reform Act of 1999 (Pt. I): Hearing before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. (1999).

At its third hearing, on March 17, 1999, the subcommittee heard from many of the major organizations in the bankruptcy community, including the American Bankruptcy Institute, the American Financial Services Association, the National Association of Consumer Bankruptcy Attorneys, the National Bankruptcy Conference, the National Consumer Bankruptcy Coalition, the National Governors' Association, and the National Retail Federation, on the topic of consumer bankruptcy reform. A separate panel was devoted to judicial and administrative aspects of consumer bankruptcy reform. The hearing concluded with a statistical analysis of the needs-based reforms in H.R. 833. *Bankruptcy Reform Act of 1999 (Pt. II): Hearing before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. (1999).

The fourth and final hearing on H.R. 833 was held on March 18, 1999. One panel focused on the treatment of domestic support obligations under the bill. Another panel offered various perspectives on business bankruptcy reform provisions in the bill from some of the major organizations in the bankruptcy community, including the AFL–CIO, American Bankers Association, American Bar Association/Business Bankruptcy Section, Commercial Law League of America, National Association of Credit Managers, and the Office of Chief Counsel for Advocacy at the Small Business Administration. The final panel examined a variety of other provisions in H.R. 833, including the treatment of tax claims in bankruptcy cases, international insolvencies, financial contracts, and chapter 12 (family farmer bankruptcy relief). *Bankruptcy Reform Act of 1999 (Pt. III): Hearing before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. (1999).

It is also important to note that H.R. 333 is the product of extensive negotiation and compromise. Shortly after its predecessor, H.R. 833, was passed by the Senate last year, Members of the House and Senate, together with their staffs, spent nearly 7 months engaged in what was initially an informal conference to reconcile differences between the House and Senate passed versions of this bill. The product of these exhaustive efforts was the conference report on H.R. 2415, which is virtually identical to H.R. 333.

Consumer Bankruptcy

Overview. With respect to its consumer provisions, H.R. 333 responds to several significant developments. One of these developments was the exponential increase in consumer bankruptcy filings and the losses associated with these filings. Based on data released by the Administrative Office of the United States Courts, bankruptcy filings increased by more than 72 percent between 1994 and 1998.[11] For the first time in our nation's history, bankruptcy filings exceeded one million in 1996.[12] In calendar year 1997 alone, bankruptcy filings increased by more than 19 percent over the prior year. By 1998, the number of bankruptcy filings, according to the Administrative Office, reached an "all-time high" of more than 1.4 million cases.[13] Although the most recent reporting periods indicate that filings have somewhat decreased, the Administrative Office states that they "remain well above the one million mark."[14] Paradoxically, this dramatic increase in bankruptcy filing rates has occurred during a period when the economy was generally robust, with relatively low unemployment and high consumer confidence.[15]

Coupled with this development was the release of a study estimating that financial losses attributable to bankruptcy filings in 1997 exceeded $44 billion.[16] The committee received testimony in the last Congress stating that this figure, when amortized on a daily basis, amounts to a loss of "at least $110 million every day."[17] Various other studies, which thereafter became available, concluded that some bankruptcy debtors can, in fact, repay a significant portion of their debts.[18]

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[11] Administrative Office for United States Courts News Release, *Bankruptcy Filings Decrease in Fiscal Year 2000*, at 1 (Nov. 21, 2000).

[12] Administrative Office for United States Courts News Release, *Increase in Bankruptcy Filings Slowed in Calendar Year 1998*, at 1 (Mar. 1, 1999).

[13] *Id.*

[14] Administrative Office for United States Courts News Release, *Bankruptcy Filings Decrease in Fiscal Year 2000*, at 1 (Nov. 21, 2000). For example, the number of bankruptcy cases filed in fiscal year 2000 exceeded 1.3 million. *Id.*

[15] See, e.g., Congressional Budget Office, *Personal Bankruptcy: A Literature Review (Sept. 2000); Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 106th Cong. 97 (1999); *Bankruptcy Reform Act of 1998: Hearings on H.R. 3150 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. 141 (1998).

[16] *Bankruptcy Reform Act of 1998: Hearings on H.R. 3150 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 105th Cong. 147 (1998).

[17] *Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary*, 106th Cong. 26 (1999). This estimated loss has been calculated to be $400 per household. Id.

[18] See, e.g., *Bankruptcy Reform Act of 1999 (Part II): Hearing on H.R. 833 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. 298 (1999) (statement of Thomas S. Neubig, Ernst & Young LLP—Policy Economics and Quantitative Analysis Group, concluding that "large numbers of 1997 U.S. chapter 7 filers had the ability to repay large portions of their debts"); *Id.* at 228–29 (statement of Michael E. Staten,

Continued

The consumer bankruptcy provisions of H.R. 333 address the needs of creditors as well as debtors. With respect to the interests of creditors, this legislation responds to many of the factors contributing to the increase in consumer bankruptcy filings, such as lack of personal financial accountability,[19] the proliferation of serial filings, and the absence of effective oversight to eliminate abuse in the system. The bill's debtor protections consist of provisions allowing debtors to exempt certain education IRA plans, fortifying the Bankruptcy Code's exemptions for certain retirement pension funds, enhancing the professionalism standards for attorneys and others who assist consumer debtors with their bankruptcy cases, ensuring that debtors receive notice of alternatives to bankruptcy relief, requiring debtors to participate in debt repayment programs, and instituting a pilot program to study the effectiveness of consumer financial management programs.

Consumer creditor protections: needs-based reforms. Chapter 7 is a form of bankruptcy relief where an individual debtor receives an immediate unconditional discharge of personal liability for certain debts in exchange for turning over his or her nonexempt assets to a bankruptcy trustee for liquidation and distribution to creditors.[20] This "unconditional discharge" in chapter 7 contrasts with the "conditional discharge" provisions of chapter 13, under which a debtor commits to repay some portion of his or her financial obligations in exchange for retaining nonexempt assets and receiving a broader discharge of debt than is available under chapter 7.

Allowing consumer debtors in financial distress to choose voluntarily an "unconditional discharge" has been a part of American bankruptcy law since the enactment of the Bankruptcy Act of 1898.[21] The rationale of an unconditional discharge was explained by Congress more than 100 years ago:

> [W]hen an honest man is hopelessly down financially, nothing is gained for the public by keeping him down, but, on the contrary, the public good will be promoted by having his assets distributed ratably as far as they will go among his creditors and letting him start anew.[22]

The heart of H.R. 333's consumer bankruptcy reforms is the implementation of a needs-based screening mechanism, which uses the debtor's income and expenses to assess repayment ability. The

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Credit Research Center, concluding that "about 25 percent of chapter 7 debtors could have repaid at least 30 percent of their non-housing debts over a 5-year repayment plan, after accounting for monthly expenses and housing payments" and that "[a]bout 5 percent of chapter 7 filers appeared capable of repaying all of their non-housing debt over a 5-year plan," although these "calculations assumed income would remain unchanged relative to expenses over the 5 years"); Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors*, 7 AM. BANKR. L. J. 27, 31 (1999) (concluding that 3.6% of sampled debtors "emerged as apparent can-pays").

[19] As one academic explained:

> [S]hoplifting is wrong; bankruptcy is also a moral act. Bankruptcy is a moral as well as an economic act. There is a conscious decision not to keep one's promises. It is a decision not to reciprocate a benefit received, a good deed done on the promise that you will reciprocate. Promise-keeping and reciprocity are the foundation of an economy and healthy civil society.

Bankruptcy Reform: Joint Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary and the Subcomm. on Administrative Oversight and the Courts of the Senate Comm. on the Judiciary, 106th Cong. (1999) 98 (statement of Prof. Todd Zywicki).

[20] Under the Bankruptcy Code, only an individual may obtain a chapter 7 discharge. Thus, a corporation is not eligible to receive a discharge under chapter 7. 11 U.S.C. § 727(a)(1).

[21] Bankruptcy Act of 1898, 30 Stat. 544 (1898) (repealed 1978).

[22] H.R. REP. NO. 55–65, at 43 (1897).

concept of needs-based bankruptcy relief has long been debated in the United States. In 1932, President Herbert Hoover, for instance, recommended to the Congress the following:

> The discretion of the courts in granting or refusing discharges should be broadened, and they should be authorized to postpone discharges for a time and require bankrupts, during the period of suspension, to make some satisfaction out of after-acquired property as a condition to the granting of a full discharge.[23]

Congressional recognition of needs-based relief has been gradual. In 1938, chapter XIII (the predecessor to chapter 13 of the Bankruptcy Code) was enacted as a purely voluntary form of bankruptcy relief that allowed a debtor to voluntarily propose a plan to repay creditors out of future earnings.[24] Over the ensuing years, there continued to be repeated expressions of support for and opposition to needs-based bankruptcy reform.[25] The Bankruptcy Reform Act of 1978,[26] however, retained the principle that a debtor's decision to choose relief premised on repayment to creditors had to be "completely voluntary."[27]

Although as originally enacted, the Bankruptcy Code provided that a chapter 7 case could only be dismissed for "cause," the Code was in 1984 amended to permit the court to dismiss a chapter 7 case for "substantial abuse."[28] This provision, codified in section 707(b) of the Bankruptcy Code,[29] was added "as part of a package of consumer credit amendments designed to reduce perceived abuses in the use of chapter 7."[30] It was intended to respond "to concerns that some debtors who could easily pay their creditors might resort to chapter 7 to avoid their obligations."[31] In 1986, section 707(b) was further amended to allow a United States trustee (a Department of Justice official) to move for dismissal.[32]

Under current practice, section 707(b) motions are infrequently made for several reasons. First, neither the court nor the United States trustee is required to make these motions, even in cases evi-

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[23] President's Special Message to the Congress on Reform of Judicial Procedure, 69 Pub. Papers 83, 90 (Feb. 29, 1932).

[24] Chandler Act of 1938, 52 Stat. 840 (1938); *Bankruptcy Reform Act of 1999 (Part II): Hearing on H.R. 833 Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 106th Cong. 100 (1999) (statement of Prof. Lawrence P. King).

[25] See, e.g., Report of the Commission on the Bankruptcy Laws of the United States—July 1973, H.R. Doc. No. 93 137, pt. I, at 158 (1973) (observing that "proposals have been made to Congress from time to time that a debtor able to obtain relief under chapter XIII [predecessor of chapter 13] should be denied relief in straight bankruptcy"); *Hearings on H.R. 1057 and H.R. 5771 Before the Subcomm. No. 4 of the House Committee on the Judiciary*, 90th Cong. (1967). Organizations that testified before Congress in 1967 in support of such reform included the American Bar Association, the American Bankers Association, the Chamber of Commerce of the United States, Credit Union National Association, Inc., the National Federation of Independent Businesses, and the American Industrial Bankers Association. *Id.* The Commission on the Bankruptcy Laws of the United States, while supporting the concept that repayment plans should be "fostered," nevertheless concluded in 1973 that "forced participation by a debtor in a plan requiring contributions out of future income has so little prospect for success that it should not be adopted as a feature of the bankruptcy system." *Id.* at 159.

[26] Pub. L. No. 95–598, 92 Stat. 2549 (1978).

[27] H.R. REP. NO. 95–595, at 120 (1977) (observing that "[t]he thirteenth amendment prohibits involuntary servitude" and suggesting that "a mandatory chapter 13, by forcing an individual to work for creditors, would violate this prohibition").

[28] Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98–353, 98 Stat. 333.

[29] 11 U.S.C. § 707(b).

[30] 6 LAWRENCE P. KING ET AL., COLLIER ON BANKRUPTCY ¶ 707.LH[2], at 707–30 (15th ed. rev. 2000).

[31] *Id.* ¶ 707.04, at 707–15.

[32] Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99–554, 100 Stat. 3008.

dencing obvious abuse of the bankruptcy system. Second, other parties in interest, such as chapter 7 trustees and creditors, are prohibited from filing these motions. In fact, section 707(b) provides that a motion under that provision may not even be made "at the request or suggestion of any party in interest."[33] Third, the standard for dismissal—substantial abuse—is inherently vague, which has lead to its disparate interpretation and application by the bankruptcy bench.[34] Some courts, for example, hold that a debtor's ability to repay a significant portion of his or her debts out of future income constitutes substantial abuse and therefore is cause for dismissal;[35] others require some evidence of moral turpitude.[36] A fourth reason militating against filing section 707(b) motions is that the Bankruptcy Code codifies a presumption that favors granting a debtor a discharge.[37]

Over the course of its hearings in the last two Congresses, the committee received testimony explaining that if needs-based reforms and other measures were implemented, the rate of repayment to creditors would increase as more debtors are shifted into chapter 13 (a form of bankruptcy relief where the debtor commits to repay a portion or all of his debts in exchange for receiving a broad discharge of debt) as opposed to chapter 7 (a form of bankruptcy relief where the debtor receives an immediate discharge of personal liability on certain debts in exchange for turning over his or her nonexempt assets to the bankruptcy trustee for distribution to creditors).

Section 102 implements the act's needs-based bankruptcy reforms. Subsection (a) amends section 707(b) of the Bankruptcy Code to permit a court, on its own motion, or on motion of the United States trustee, private trustee, bankruptcy administrator, or party in interest, to dismiss a chapter 7 case for abuse if it was filed by an individual debtor whose debts are primarily consumer debts. Alternatively, section 102(a) permits a chapter 7 case to be converted to a case under chapter 11 or chapter 13 on consent of the debtor.

In addition, section 102(a) replaces the current law's presumption in favor of the debtor with a mandatory presumption of abuse that is triggered under certain conditions. Section 102(a) requires a court to presume that abuse exists if the amount of the debtor's income remaining, after certain expenses and other specified amounts are deducted from the debtor's current monthly income (a defined term),[38] when multiplied by 60, exceeds the lower of the

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[33] 11 U.S.C. § 707(b).

[34] See, e.g., David White, *Disorder in the Court: Section 707(b) of the Bankruptcy Code*, 1995–96 ANN. SURVEY OF BANKR. L. 333, 355 (1996) (noting that the courts "have taken divergent views in an attempt to define the term" and have resorted to "a variety of methods" in applying it to specific cases).

[35] See, e.g., *In re* Kelly , 841 F.2d 908, 913–14 (9th Cir. 1988) (observing that the "principal factor to be considered in determining substantial abuse is the debtor's ability to repay debts for which a discharge is sought").

[36] See, e.g., *In re* Braley, 103 B.R. 758 (Bankr. E.D. Va. 1989), *aff'd*, 110 B.R. 211 (E.D. Va. 1990). Notwithstanding the fact that the debtors in Braley had disposable monthly income of nearly $2,700, the bankruptcy court did not dismiss the case for substantial abuse. *Id.* at 760. The court concluded, "Based upon this legislative history, we are persuaded that no future income tests exists in 707(b) and if it did, as a finding of fact, the Braley family has insufficient future income to merit barring the door in light of the circumstances of this Navy family." *Id.* at 762.

[37] Section 707(b) of the Bankruptcy Code mandates that "[t]here shall be a presumption in favor of granting the relief requested by the debtor." 11 U.S.C. § 707(b).

[38] Section 102(b) defines "current monthly income" as the average monthly income from all sources that the debtor receives (or, in a joint case, the debtor and the debtor's spouse receive),

following: (1) 25 percent of the debtor's nonpriority unsecured claims, or $6000 (whichever is greater); or (2) $10,000. In addition to other specified expenses,[39] the debtor's monthly expenses—exclusive of any payments for debts (unless otherwise permitted)—must be the applicable monthly amounts set forth in the Internal Revenue Service Financial Analysis Handbook as Necessary Expenses under the National and Local Standards categories and the debtor's actual monthly expenditures for items categorized as Other Necessary Expenses. For purposes of this provision, the expenses include those of the debtor, the debtor's dependents, and the debtor's spouse, if not otherwise a dependent. For purposes of determining whether the mandatory presumption of abuse applies under the needs-based test, section 102(a) permits the debtor to deduct certain other liabilities.

The mandatory presumption of abuse may only be rebutted if: (1) the debtor demonstrates special circumstances that justify any additional expense or adjustment to the debtor's current monthly income for which there is no reasonable alternative; and (2) such additional expense or income adjustment causes the debtor's current monthly income (reduced by various amounts) when multiplied by 60 to be less than the lesser of either (i) 25 percent of the debtor's nonpriority unsecured claims, or $6,000 (whichever is greater), or (ii) $10,000.[40]

Where the mandatory presumption of abuse does not apply or has been rebutted, the court, in order to determine whether the granting of relief under chapter 7 would be an abuse of such chapter, must consider: (1) whether the debtor filed the chapter 7 case

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without regard to whether it is taxable income, in the 6-month period preceding the date of determination. It includes any amount paid on a regular basis by any entity (other than the debtor or, in a joint case, the debtor and the debtor's spouse) 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. It excludes Social Security Act benefits and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes.

[39] Section 102(a) mandates that the debtor's monthly expenses also include reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as identified in section 309 of the Family Violence Prevention and Services Act or other applicable law. In addition, the debtor may deduct up to an additional 5 percent of the food and clothing expense allowances under the National Standards category, if demonstrated to be reasonable and necessary.

Other liabilities that may be deducted include the debtor's average monthly payments on account of secured debts, calculated as the total of all amounts scheduled as contractually due over the 60-month period following the filing of the bankruptcy, divided by 60 months. This amount may include any additional payments to secured creditors that a chapter 13 debtor must make to retain possession of a primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents. With respect to claims and expenses entitled to priority under section 507 of the Bankruptcy Code, section 102(a) specifies that the debtor may deduct payments for these obligations, calculated as the total amount of all priority debts, divided by 60. If applicable, the debtor may deduct the following additional expenses:

(1) the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family who is unable to pay such expenses;

(2) the actual administrative expenses (including reasonable attorneys' fees) of administering a chapter 13 plan for the district in which the debtor resides, up to 10 percent of projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees; and

(3) 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 documents these expenses and provides a detailed explanation of why they are reasonable and necessary.

[40] The debtor must itemize and provide documentation of each additional expense or income adjustment and an explanation of the special circumstances that make such expense or income adjustment reasonable and necessary. In addition, the debtor must attest under oath to the accuracy of any information provided to demonstrate that such additional expenses or adjustments to income are required.

in bad faith; or (2) whether the totality of circumstances of the debtor's financial situation (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection) demonstrates abuse.

Should a court grant a section 707(b) motion made by a trustee and find that the action of debtor's counsel in filing the chapter 7 case violated Federal Rule of Bankruptcy Procedure 9011, section 102(a) mandates that the court order the attorney to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees. In addition, the court must assess an appropriate civil penalty, payable to the private trustee, bankruptcy administrator, or the United States trustee.[41]

Two types of "safe harbors" are recognized under section 102(a). One provides that only a judge, United States trustee, bankruptcy administrator, or private trustee may bring a motion under section 707(b) of the Bankruptcy Code if the chapter 7 debtor's income (or in a joint case, the income of debtor and the debtor's spouse) does not exceed the State median family income for a family of equal or lesser size (adjusted for larger sized families), or the State median family income for one earner in the case of a one-person household. The second safe harbor provides that no motion under section 707(b)(2) (dismissal based on the debtor's ability to repay) may be filed by a judge, United States trustee, bankruptcy administrator, private trustee, or other party in interest if the debtor and the debtor's spouse combined have income that does not exceed the State median family income for a family of equal or lesser size (adjusted for larger sized families), or the State median family income for one earner in the case of a one-person household.

Provisions of the bill that are directed to other forms of abuse include Section 102(f), which amends section 707 of the Bankruptcy Code to provide that a court may dismiss a chapter 7 case filed by an individual debtor convicted of a crime of violence (as defined in 18 U.S.C. § 16), or a drug trafficking crime (as defined in 18 U.S.C. § 924(c)(2)) on motion of the victim, under certain circumstances. Section 102(g) amends section 1325(a) of the Bankruptcy Code to require the court to find, as a condition of confirmation, that the debtor filed the chapter 13 case in good faith.

Protections for creditors—in general. H.R. 333 contains a broad range of reforms to provide greater protections for creditors, while ensuring that the claims of those creditors entitled to priority treatment, such as spousal and child support claims, are not adversely impacted. The bill accomplishes this goal by: (1) ensuring that creditors receive proper and timely notice of important events and proceedings in a bankruptcy case; (2) prohibiting abusive serial filings and extending the period between successive discharges; (3) implementing various provisions designed to improve the accuracy of the information contained in debtors' schedules, statements of financial affairs, and other documents; and (4) limiting abusive use

[41] Section 102(a) specifies that the signature of an attorney on a bankruptcy petition, pleading, or written motion constitutes a certification that the attorney has (1) performed a reasonable investigation into the circumstances giving rise to such petition, pleading or motion; and (2) determined that the document is well grounded in fact or 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 section 707(b)(1) of the Bankruptcy Code. Pursuant to section 102(a), the signature of an attorney on a bankruptcy petition constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

of homestead exemptions. It also clarifies that creditors holding consumer debts may participate without counsel at the section 341 meeting of creditors (which provides an opportunity for creditors to examine the debtor under oath).

Protection of family support obligations. Domestic support claimants receive a broad spectrum of special protections under H.R. 333. According to one law enforcement official who testified before this committee earlier this year:

> 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.[42]

The bill creates a uniform and expanded definition of domestic support obligations to include debts that accrue both before or after a bankruptcy case is filed. H.R. 333 accords the highest payment priority for these debts and gives new priority treatment to certain claims assigned to governmental units by a spouse, former spouse, child of the debtor, or parent of a child. In addition, the bill mandates that a chapter 13 or chapter 11 debtor must be current on postpetition domestic support obligations to confirm a plan of reorganization. The same obligation is imposed as a prerequisite for a chapter 13 debtor to receive a discharge. To facilitate the domestic support collection efforts by governmental units, H.R. 333 creates various exceptions to automatic stay provisions of the Bankruptcy Code (which enjoin many forms of creditor collection activities). It also broadens the categories of nondischargeable family support obligations with the result that these debts will not be extinguished at the end of the bankruptcy process. H.R. 333, in addition, mandates that spousal and child support claimants as well as State child support agencies receive specified information and notices relevant to pending bankruptcy cases.

Protections for secured creditors. H.R. 333 gives secured creditors a broad variety of enhanced protections. These include a prohibition against bifurcating a secured debt incurred within the 5-year period preceding the filing of a bankruptcy case if the debt is secured by a purchase money security interest in a motor vehicle acquired for the debtor's personal use. Where the collateral consists of any other type of property having value, H.R. 333 prohibits bifurcation of specified secured debts if incurred during the 1-year period preceding the filing of the bankruptcy case. The bill clarifies current law to specify that the value of a claim secured by personal property is the replacement value of such property without deduction for the secured creditor's costs of sale or marketing. In addition, the bill terminates the automatic stay with respect to personal property if the debtor does not timely reaffirm the underlying obligation or redeem the property. H.R. 333 also specifies that a secured claimant retains its lien in a chapter 13 case until the underlying debt is paid or the debtor receives a discharge.

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[42] *Bankruptcy Abuse Prevention and Consumer Protection Act of 2001: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 107th Cong.___(2001) (statement of Philip L. Strauss on behalf of the California District Attorneys Association and the California Family Support Council).

Protections for unsecured creditors. H.R. 333 contains various reforms tailored to remedy certain types of fraud and abuse within the present bankruptcy system. For example, the bill substantially limits a debtor's ability to file successive bankruptcy cases. It also addresses abusive practices by consumer debtors who, for example, knowingly load up with credit card purchases or recklessly obtain cash advances and then file for bankruptcy relief. In addition, H.R. 333 prevents the discharge of debts based on fraud, embezzlement, and malicious injury in a chapter 13 case.

Protections for lessors. With respect to the interests of lessors, H.R. 333 requires chapter 13 debtors to remain current on their personal property leases and provide proof of adequate insurance. The bill specifies that a lessor may condition assumption of a personal property lease on cure of any outstanding default and it provides that a lessor is not required to permit such assumption. The bill also addresses a problem faced by thousands of small landlords across the nation whose tenants file for bankruptcy relief solely for the purpose of staying pending eviction proceedings so that they can live "rent free."

Consumer debtor protections. The bill's consumer protections include provisions strengthening the professionalism standards for attorneys and others who assist consumer debtors with their bankruptcy cases. H.R. 333 mandates that certain services and specified notices be provided to consumers by professionals and others who render bankruptcy assistance. To ensure compliance with these provisions, the bill institutes various enforcement mechanisms.

In addition, H.R. 333 amends the Truth in Lending Act to require certain credit card solicitations, monthly billing statements, and related materials to include important disclosures and explanatory statements regarding introductory interest rates and minimum payments, among other matters. These additional disclosures are intended to give debtors important information to enable them to better manage their financial affairs.

Reforms aimed to help debtors understand their rights and obligations with respect to reaffirmation agreements are also included in the legislation. To enforce these protections, for example, H.R. 333 requires the Attorney General to designate a U.S. Attorney for each judicial district and a FBI agent for each field office to have primary law enforcement responsibility regarding abusive reaffirmation practices.

In addition, the legislation substantially expands a debtor's ability to exempt certain tax-qualified retirement accounts and pensions. It also creates a new provision that allows a consumer debtor to exempt certain education IRA and State tuition plans for his or her child's postsecondary education from the claims of creditors.

Most importantly, H.R. 333 requires debtors to participate in credit counseling programs before filing for bankruptcy relief (unless special circumstances do not permit such participation). The legislation's credit counseling provisions are intended to give consumers in financial distress an opportunity to learn about the consequences of bankruptcy—such as the potentially devastating effect it can have on their credit rating—and guidance about how to manage their finances, so that they can avoid future financial difficulties.

Other debtor protections include expanded notice requirements for consumers. Under the bill, individuals with primarily consumer debts must receive notice of alternatives to bankruptcy relief before they file for bankruptcy and it requires them to be informed of other matters pertaining to the integrity of the bankruptcy system. The legislation also permits certain filing fees and related charges to be waived, in appropriate cases, for individuals who lack the ability to pay these costs.

Business Bankruptcy. H.R. 333 contains a comprehensive set of reforms pertinent to business bankruptcies. They include provisions addressing the special problems presented by small business bankruptcies and single asset real estate debtors as well as provisions dealing with business bankruptcy cases in general. H.R. 333 establishes a new form of bankruptcy relief for transnational insolvencies that is intended to promote international comity and greater certainty. It also includes provisions concerning the treatment of certain financial contracts under the banking laws as well as under the Bankruptcy Code. H.R. 333 responds to the special needs of family farmers by making chapter 12 of the Bankruptcy Code (a form of bankruptcy relief available only to eligible family farmers) permanent.

Small business/single asset real estate debtors. Most chapter 11 cases are filed by small business debtors. Although the Bankruptcy Code envisions that creditors should play a major role in the oversight of chapter 11 cases, this often does not occur with respect to small business debtors. The main reason is that creditors in these smaller cases do not have claims large enough to warrant the time and money to participate actively in these cases. The resulting lack of creditor oversight creates a greater need for the United States trustee to monitor these cases closely. Nevertheless, the monitoring of these debtors by United States trustees varies throughout the nation.

H.R. 333 addresses the special problems presented by small business cases by instituting a variety of time frames and enforcement mechanisms designed to weed out small business debtors who are not likely to reorganize. It also requires these cases to be more actively monitored by United States trustees and the bankruptcy courts. The small business and single asset real estate provisions of H.R. 333 are largely derived from consensus recommendations of the National Bankruptcy Review Commission.[43] These provisions have also received broad support from many in the business community.[44]

With regard to the Bankruptcy Code's treatment of single asset real estate debtors, H.R. 333 makes several amendments. First, it eliminates the monetary cap from the single asset real estate debtor definition. Second, it makes these debtors subject to the bill's small business reforms. Third, H.R. 333 amends the automatic stay provisions by permitting a single asset real estate debtor to make requisite interest payments out of rents or other proceeds generated by the real property.

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[43] See generally Report of the National Bankruptcy Review Commission, at 303–706 (Oct. 20, 1997).

[44] See, e.g., *Bankruptcy Abuse Prevention and Consumer Protection Act of 2001: Hearing Before the Subcomm. on Commercial and Administrative Law of the House Comm. on the Judiciary*, 107th Cong.____(2001) (statement of R. Bruce Josten on behalf of the U.S. Chamber of Commerce).

Financial contracts. H.R. 333 contains a series of provisions pertaining to the treatment of certain financial transactions under the Bankruptcy Code and relevant banking laws. These provisions are intended to reduce "systemic risk" in the banking system and financial marketplace. To minimize the risk of disruption when parties to these transactions become bankrupt or insolvent, the bill amends provisions of the banking and investment laws, as well as the Bankruptcy Code, applicable to certain types of financial transactions.[45] In addition to the Bankruptcy Code, the bill amends the Federal Deposit Insurance Act; Financial Institutions Reform, Recovery and Enforcement Act of 1989; Federal Deposit Insurance Corporation Improvement Act of 1991; Federal Reserve Act; and Securities Investor Protection Act of 1971.

Many of these provisions are derived from recommendations issued by a presidential interagency working group[46] and revisions espoused by the financial industry. Other provisions would treat certain asset-backed securitizations as valid transfers and limit the authority of a court or administrative agency to enjoin certain actions.

Transnational insolvencies. In response to the increasing globalization of business dealings and operations, the bill establishes a separate chapter under the Bankruptcy Code devoted to transnational insolvencies. These provisions are intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of these cases.

Health care providers. H.R. 333 adds a provision to the Bankruptcy Code specifying requirements for the disposal of patient records in a chapter 7, 9, or 11 case of a health care business where the trustee lacks sufficient funds to pay for the storage of such records in accordance with applicable Federal or State law. These requirements are intended to protect the privacy and confidentiality of a patient's medical records when they are in the custody of a health care business in bankruptcy.

In addition, the bill includes a provision according administrative expense priority to the actual, necessary costs and expenses of closing a health care business (including the disposal of patient records or transferral of patients) incurred by a trustee, Federal agency, or a department or agency of a State. It also requires the court to order the appointment of an ombudsman within 30 days after the commencement of a chapter 7, 9 or 11 case by a health care provider, unless the court finds that such appointment is not necessary for the protection of patients under the specific facts of the

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[45] The report on H.R. 4393, a bill substantially similar to title X of H.R. 833 that was introduced in the 106th Congress by Banking and Financial Services Committee Chair James Leach (R-Iowa), explained as follows:

> Systemic risk is the risk that the failure of a firm or disruption of a market or settlement system will cause widespread difficulties at other firms, in other market segments or in the financial system as a whole. If participants in certain financial activities are unable to enforce their rights to terminate financial contracts with an insolvent entity in a timely manner, or to offset or net their various contractual obligations, the resulting uncertainty and potential lack of liquidity could increase the risk of an inter-market disruption.

H. REP. NO. 105–688, Part 1, at 2 (1998).

[46] The Working Group's members included representatives from the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Reserve Bank of New York, the Securities and Exchange Commission, and the Department of the Treasury, including the Office of the Comptroller of the Currency. *Id.* at 1.

case. The ombudsman is responsible for monitoring the quality of patient care and to represent the interests of the patients. Other provisions include the requirement that a bankruptcy trustee use all reasonable and best efforts to transfer patients from a health care business that is being closed to an appropriate alternative facility that meets certain specified criteria.

Other Provisions Having General Impact. H.R. 333 contains several provisions having general impact with respect to bankruptcy law and practice. For example, it requires the Executive Office for United States Trustees to compile various statistics regarding chapter 7, 11 and 13 cases and to make these data available to the public. Other general provisions include allowing compensation to be shared with bona fide public service attorney referral programs, and mandating that a bankruptcy court conduct scheduling conferences in bankruptcy cases if necessary to further the expeditious and economical resolution of such cases.

The bill makes several revisions to the Bankruptcy Code's preference provisions. Under H.R. 333, a defendant in a preference action may establish that the transfer was made in the ordinary course of the debtor's financial affairs or business, or that the transfer was made in accordance with ordinary business terms. The bill also establishes a threshold amount as a prerequisite to the commencement of a preferential transfer proceeding. In addition, H.R. 333 amends the venue provisions for preferential transfer actions. A preferential transfer action in the amount of $10,000 or less would have to be filed in the district where the defendant resides. Currently, this amount is fixed at $1,000.

HEARINGS

The committee held 2 days of hearings on H.R. 333 on February 7 and 8, 2001. Testimony was received from eight witnesses, representing seven organizations. During the course of the first hearing, the committee received testimony from Kenneth Beine on behalf of the Credit Union National Association who explained how the current bankruptcy system impacts small businesses and nonprofits. The committee also received testimony from R. Bruce Josten on behalf of the U.S. Chamber of Commerce who described the current consumer bankruptcy law's adverse impact on businesses. In addition, the committee heard from Phillip Strauss, a professional with more than 25 years of experience in child support enforcement. Speaking on behalf of the California District Attorneys Association and the California Family Support Council, Mr. Strauss described the ways in which H.R. 333 would help ensure payment of these obligations. George Wallace, the final witness appeared on behalf of The Coalition for Responsible Bankruptcy Laws. He explained the differences between the version of the bill as reported by the committee in the 106th Congress and H.R. 333.

The second day of hearings provided a different perspective. The witnesses included Charles Trapp, who was a former chapter 7 debtor. He was joined by Ralph Mabey, who appeared on behalf of the National Bankruptcy Conference and Professor Karen Gross of New York Law School. The final witness was Damon Silvers, who testified on behalf of the AFL–CIO. Although each of these witnesses acknowledged that H.R. 333 did make needed improvements

to current bankruptcy law, they questioned the efficacy of certain provisions of the bill.

COMMITTEE CONSIDERATION

On February 14, 2001, the committee met in open session and ordered favorably reported the bill H.R. 333 with amendment by a recorded vote of 19 to 8, a quorum being present.

VOTES OF THE COMMITTEE

1. An amendment offered by Mr. Conyers and Ms. Waters to create an exception to the nondischargeability of certain specified debts if the debtor's ability to pay domestic support obligations is impaired by such limitation on the debtor's discharge. Defeated 10 to 14.

AYES	NAYS
Mr. Conyers	Mr. Sensenbrenner
Mr. Nadler	Mr. Gekas
Mr. Watt	Mr. Smith (TX)
Mr. Lofgren	Mr. Goodlatte
Ms. Jackson Lee	Mr. Chabot
Ms. Waters	Mr. Barr
Mr. Meehan	Mr. Hutchinson
Mr. Delahunt	Mr. Cannon
Mr. Baldwin	Mr. Graham
Mr. Weiner	Mr. Bachus
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Ms. Hart

2. An amendment offered by Mr. Watt to specify that the terms "cash advances" and "extensions of consumer credit under an open end credit plan" do not include expenditures reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor with respect to determining the dischargeability of these debts. Defeated 8 to 15.

AYES	NAYS
Mr. Conyers	Mr. Sensenbrenner
Mr. Nadler	Mr. Gekas
Mr. Watt	Mr. Smith (TX)
Mr. Lofgren	Mr. Gallegly
Ms. Jackson Lee	Mr. Goodlatte
Ms. Waters	Mr. Chabot
Mr. Weiner	Mr. Barr
Mr. Schiff	Mr. Hutchinson
	Mr. Cannon
	Mr. Graham
	Mr. Bachus
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Ms. Hart

3. An amendment offered by Mr. Conyers (1) to permit the extension of certain time periods pertaining to the assumption and rejection of unexpired leases of nonresidential real property, the filing of chapter 11 plans of reorganization and the obtaining of acceptances, the provision of adequate assurance of payment for utility service in a chapter 11 case, the performance of specified duties of trustees and debtors in possession in small business cases, and plan filing and confirmation in small business cases; and (2) to create an exception to the exclusion of asset-backed securitizations as property of the estate in section 912. Defeated 6 to 18.

AYES	NAYS
Mr. Nadler	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Jackson Lee	Mr. Smith (TX)
Ms. Waters	Mr. Gallegly
Mr. Weiner	Mr. Goodlatte
Mr. Schiff	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Cannon
	Mr. Graham
	Mr. Bachus
	Mr. Scarborough
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Mr. Issa
	Ms. Hart
	Mr. Flake

4. An amendment offered by Mr. Nadler to make specified debts relating to violations of law concerning certain health care facilities and the provision of health services nondischargeable. Defeated 9 to 20.

AYES	NAYS
Mr. Nadler	Mr. Sensenbrenner
Mr. Scott	Mr. Gekas
Mr. Watt	Mr. Coble
Mr. Lofgren	Mr. Smith (TX)
Ms. Jackson Lee	Mr. Gallegly
Ms. Waters	Mr. Goodlatte
Ms. Baldwin	Mr. Chabot
Mr. Weiner	Mr. Barr
Mr. Schiff	Mr. Jenkins
	Mr. Hutchinson
	Mr. Cannon
	Mr. Graham
	Mr. Bachus
	Mr. Scarborough
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Mr. Issa

Ms. Hart
Mr. Flake

5. An amendment offered by Ms. Jackson Lee to prohibit a creditor in a bankruptcy case from asserting any claim if the creditor failed to comply with certain requirements of the Consumer Credit Protection Act for the amount of the debt that a debtor incurred on a credit card issued in violation of such requirements. Defeated 6 to 18.

AYES	NAYS
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Jackson Lee	Mr. Coble
Ms. Waters	Mr. Smith (TX)
Ms. Baldwin	Mr. Gallegly
Mr. Schiff	Mr. Chabot
	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Cannon
	Mr. Graham
	Mr. Bachus
	Mr. Scarborough
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Ms. Hart
	Mr. Flake

6. An amendment offered by Mr. Watt to an amendment by Ms. Waters to exempt certain debtors from specified filing requirements. Defeated 9 to 13.

AYES	NAYS
Mr. Scarborough	Mr. Sensenbrenner
Mr. Conyers	Mr. Gekas
Mr. Frank	Mr. Coble
Mr. Scott	Mr. Goodlatte
Mr. Watt	Mr. Chabot
Ms. Waters	Mr. Hutchinson
Mr. Delahunt	Mr. Bachus
Ms. Baldwin	Mr. Hostettler
Mr. Schiff	Mr. Green
	Mr. Keller
	Mr. Issa
	Ms. Hart
	Mr. Flake

7. An amendment offered by Ms. Waters to provide that the exceptions to the automatic stay do not apply to certain types of debtors. Defeated 9 to 13.

AYES	NAYS
Mr. Conyers	Mr. Sensenbrenner
Mr. Frank	Mr. Gekas
Mr. Scott	Mr. Smith (TX)

Ms. Jackson Lee	Mr. Chabot
Ms. Waters	Mr. Barr
Mr. Meehan	Mr. Hutchinson
Ms. Baldwin	Mr. Graham
Mr. Weiner	Mr. Bachus
Mr. Schiff	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Mr. Issa
	Ms. Hart

8. An amendment offered by Mr. Meehan to require the applicable State median income amount specified in sections 102 (needs-based reforms) and 318 (duration of chapter 13 plans) to be adjusted, under certain circumstances, to reflect the percentage change in the Consumer Price Index for All Urban Consumers for each subsequent year during which median income is not reported by the Bureau of the Census. Defeated 9 to 13.

AYES	NAYS
Mr. Conyers	Mr. Sensenbrenner
Mr. Frank	Mr. Gekas
Mr. Scott	Mr. Smith (TX)
Mr. Watt	Mr. Barr
Ms. Jackson Lee	Mr. Hutchinson
Mr. Meehan	Mr. Graham
Mr. Delahunt	Mr. Bachus
Ms. Baldwin	Mr. Scarborough
Mr. Schiff	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Ms. Hart
	Mr. Flake

9. An amendment offered by Mr. Delahunt to eliminate the 2-year reachback period applicable to the exemption limitation in section 322 and to increase the exemption amount to $500,000. Defeated 6 to 18.

AYES	NAYS
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Waters	Mr. Coble
Mr. Delahunt	Mr. Smith (TX)
Ms. Baldwin	Mr. Chabot
Mr. Schiff	Mr. Barr
	Mr. Hutchinson
	Mr. Graham
	Mr. Bachus
	Mr. Scarborough
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Mr. Issa
	Ms. Hart
	Mr. Flake

Ms. Jackson Lee
Mr. Wexler

10. An amendment offered by Ms. Baldwin to accord administrative expense priority under section 503(b)(1)(A) of the Bankruptcy Code to wages and benefits attributable to any period of time after a bankruptcy case is filed as a result of the debtor's violation of Federal or State law, without regard to when the original unlawful act occurred or to whether any services were rendered. Defeated 3 to 15.

AYES	NAYS
Mr. Watt	Mr. Sensenbrenner
Ms. Baldwin	Mr. Gekas
Mr. Schiff	Mr. Coble
	Mr. Smith (TX)
	Mr. Chabot
	Mr. Barr
	Mr. Hutchinson
	Mr. Graham
	Mr. Bachus
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Mr. Issa
	Ms. Hart
	Mr. Flake

11. An amendment offered by Ms. Baldwin to expand the Bankruptcy Code's definition of "family farmer". Defeated 4 to 13.

AYES	NAYS
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Baldwin	Mr. Coble
Mr. Schiff	Mr. Smith (TX)
	Mr. Chabot
	Mr. Barr
	Mr. Hutchinson
	Mr. Graham
	Mr. Bachus
	Mr. Keller
	Mr. Issa
	Ms. Hart
	Mr. Flake

12. An amendment offered by Mr. Schiff to amend a safe harbor provision in section 102 with respect to the treatment of spousal income. Defeated 5 to 13.

AYES	NAYS
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Waters	Mr. Coble
Ms. Baldwin	Mr. Chabot
Mr. Schiff	Mr. Barr
	Mr. Hutchinson

Mr. Graham
Mr. Bachus
Mr. Hostettler
Mr. Green
Mr. Issa
Ms. Hart
Mr. Flake

13. An amendment offered by Mr. Schiff to require the Comptroller General of the United States to study and file a report containing the results of the study to determine any effect that H.R. 333 has on the ability of a parent to pay child support or the ability of a parent to collect child support. Defeated 5 to 16.

AYES	NAYS
Mr. Scott	Mr. Sensenbrenner
Mr. Watt	Mr. Gekas
Ms. Waters	Mr. Coble
Ms. Baldwin	Mr. Smith (TX)
Mr. Schiff	Mr. Chabot
	Mr. Barr
	Mr. Hutchinson
	Mr. Cannon
	Mr. Graham
	Mr. Bachus
	Mr. Hostettler
	Mr. Green
	Mr. Keller
	Mr. Issa
	Ms. Hart
	Mr. Flake

14. Part one of an amendment offered by Mr. Sensenbrenner, which conforms the fee allocation percentage in section 325 with that specified under Section 406(b) of the Judiciary Appropriations Act, as amended. Passed 22 to 0.

AYES	NAYS
Mr. Sensenbrenner	
Mr. Gekas	
Mr. Smith (TX)	
Mr. Goodlatte	
Mr. Chabot	
Mr. Barr	
Mr. Hutchinson	
Mr. Cannon	
Mr. Graham	
Mr. Bachus	
Mr. Scarborough	
Mr. Hostettler	
Mr. Green	
Mr. Keller	
Mr. Issa	
Ms. Hart	
Mr. Flake	
Mr. Nadler	

Mr. Scott
Mr. Watt
Ms. Baldwin
Mr. Schiff

15. Part two of an amendment by Mr. Sensenbrenner to conform a statutory cross reference necessitated by the enactment of the Commodity Futures Modernization Act of 2000. Passed 21 to 0.

AYES	NAYS
Mr. Sensenbrenner	
Mr. Gekas	
Mr. Goodlatte	
Mr. Chabot	
Mr. Barr	
Mr. Hutchinson	
Mr. Cannon	
Mr. Graham	
Mr. Bachus	
Mr. Scarborough	
Mr. Hostettler	
Mr. Green	
Mr. Keller	
Mr. Issa	
Ms. Hart	
Mr. Flake	
Mr. Nadler	
Mr. Scott	
Mr. Watt	
Ms. Baldwin	
Mr. Schiff	

16. Motion to move the previous question. Passed 18 to 5.

AYES	NAYS
Mr. Sensenbrenner	Mr. Conyers
Mr. Gekas	Mr. Scott
Mr. Coble	Mr. Watt
Mr. Goodlatte	Ms. Baldwin
Mr. Chabot	Mr. Schiff
Mr. Barr	
Mr. Hutchinson	
Mr. Cannon	
Mr. Graham	
Mr. Bachus	
Mr. Scarborough	
Mr. Hostettler	
Mr. Green	
Mr. Keller	
Mr. Issa	
Ms. Hart	
Mr. Flake	
Mr. Nadler	

17. Motion to table the motion to reconsider the vote ordering the previous question. Passed 18 to 7.

AYES	NAYS
Mr. Sensenbrenner	Mr. Conyers
Mr. Gekas	Mr. Nadler
Mr. Coble	Mr. Scott
Mr. Smith (TX)	Mr. Watt
Mr. Goodlatte	Ms. Jackson Lee
Mr. Chabot	Ms. Baldwin
Mr. Barr	Mr. Schiff
Mr. Hutchinson	
Mr. Cannon	
Mr. Graham	
Mr. Bachus	
Mr. Scarborough	
Mr. Hostettler	
Mr. Green	
Mr. Keller	
Mr. Issa	
Ms. Hart	
Mr. Flake	

18. Motion to report favorably H.R. 333, as amended. Passed 19 to 8.

AYES	NAYS
Mr. Sensenbrenner	Mr. Conyers
Mr. Gekas	Mr. Nadler
Mr. Coble	Mr. Scott
Mr. Smith (TX)	Mr. Watt
Mr. Goodlatte	Ms. Jackson Lee
Mr. Chabot	Ms. Waters
Mr. Barr	Ms. Baldwin
Mr. Hutchinson	Mr. Schiff
Mr. Cannon	
Mr. Graham	
Mr. Bachus	
Mr. Scarborough	
Mr. Hostettler	
Mr. Green	
Mr. Keller	
Mr. Issa	
Ms. Hart	
Mr. Flake	
Mr. Boucher	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the committee reports that the findings and recommendations of the committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

The bill is intended to improve the bankruptcy system by deterring abuse, setting enhanced standards for bankruptcy professionals, and streamlining case administration.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House Rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

The estimate of the Congressional Budget Office (CBO) was not available at the time of the filing of this report. In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the committee believes that the bill will have a budget effect for fiscal year 2001 and subsequent years comparable to that projected by the CBO for H.R. 833, the Bankruptcy Reform Act of 1999, a bill substantively similar to H.R. 333 that was passed by the House during the 106th Congress, with some differences. Although H.R. 333 and H.R. 833 both authorize the extension of five existing temporary bankruptcy judgeships, H.R. 333 authorizes 23 new temporary bankruptcy judges (five more than H.R. 833). With salaries and benefits considered as mandatory costs, the committee estimates that these costs may approximate $ 14 million a year over 5 years. The committee believes that this provision is necessary to facilitate the improvements proposed by the legislation and will enhance the efficiency of the system.

As indicated, H.R. 333 is substantially similar to H.R. 833. In a letter dated May 5, 1999, the CBO prepared an initial Federal cost estimate and an assessment of H.R. 833's impact on state, local, and tribal governments.[1] In that cost estimate, the CBO stated that implementing H.R. 833 would "cost $333 million over the 2000–2004 period—$322 million in discretionary spending, subject to appropriation of the necessary funds". In addition, the CBO observed that because H.R. 833 would have decreased "receipts by about $4 million over the next 5 years," the bill would have affected direct spending and governmental receipts and pay-as-you-go procedures would apply. With regard to the Unfunded Mandates Reform Act (UMRA), the CBO noted that H.R. 833 contained an intergovernmental mandate, but that the bill's "costs would be insignificant and would not exceed the threshold established in that act ($50 million in 1996, adjusted annually for inflation)." As to new private-sector mandates (as defined in UMRA) that H.R. 833 would impose on bankruptcy attorneys, creditors, and credit and charge-card companies, CBO estimated that the costs of these mandates would exceed the $100 million (in 1996 dollars) threshold established in UMRA. "Overall," the CBO expected that "enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases."

The committee notes that H.R. 333 could result in some increased discretionary expenditures with regard to such matters integral to the reforms proposed as: a debtor financial management

[1] 145 Cong. Rec. H2656 (daily ed. May 5, 1999).

training test program; mandatory case auditing; and the compilation and publication of bankruptcy data and statistics as well as other provisions. However, costs related to some of these expenditures, such as increased auditing, are subject to appropriations and likely to be offset by enhanced collections resulting from greater protections accorded to Federal taxing authorities in Title VII of H.R. 333, as amended.

COMMITTEE JURISDICTION LETTERS

HOUSE COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, February 21, 2001.

Hon. F. JAMES SENSENBRENNER, JR., Chairman,
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR JIM: On February 14, 2001, the Committee on the Judiciary ordered reported H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001. As you know, the Committee on Financial Services was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under Rule X of the Rules of the House of Representatives over banks and banking, credit, and securities and exchanges.

Because of your willingness to consult with the Committee on Financial Services regarding this matter, your continuing support for our requested changes, and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 333. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 333 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

MICHAEL G. OXLEY, *Chairman.*

MGO/hnh

cc: The Honorable J. Dennis Hastert, Speaker
The Honorable John J. LaFalce
The Honorable Spencer Baccus
The Honorable Richard H. Baker
The Honorable Charles W. Johnson, III, Parliamentarian

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 22, 2001.

Hon. MICHAEL G. OXLEY, Chairman,
House Committee on Financial Services,
Washington, DC.

DEAR MIKE: This letter responds to your letter dated February 21, 2001, concerning H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001" which was favorably reported by the House Committee on the Judiciary on February 14, 2001.

I agree that the bill contains matters within the Financial Services Committee's jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 333 so that we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 333.

Sincerely,

F. JAMES SENSENBRENNER, JR., *Chairman.*

cc: The Honorable J. Dennis Hastert
The Honorable John Conyers, Jr.
The Honorable John J. LaFalce
The Honorable Charles W. Johnson, III

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds the authority for this legislation in Article I, section 8, clauses 3 and 4 of the Constitution.

PREEMPTION OF STATE LAW

Pursuant to section 423(e) of the Congressional Budget and Impoundment Act, the committee states that the following provisions of H.R. 333 may preempt state law to the extent described herein.

Section 219(b) provides that, notwithstanding any other provision of law, a creditor who discloses a debtor's last known address in connection with such request is not liable to the debtor or any other person by reason of making that disclosure.

Section 227 contains provisions delineating the responsibilities that a "debt relief agency" must perform with respect to an "assisted person" and specifies the procedures for their enforcement. Section 227(a), in pertinent part, states that "[n]o provision of this section, section 527, or section 528 shall . . . 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[.]"

Section 417 permits a utility to recover or set off against a security deposit provided prepetition by the debtor to the utility without notice or court order, notwithstanding any other provision of law.

Section 906 includes a number of provisions pertaining to the enforceability of certain bilateral netting contracts and clearing orga-

nization netting contracts, notwithstanding any other provision of state law.

Section 1310(a) provides that notwithstanding any other provision of law or contract, a court within the United States shall not recognize or enforce certain judgments rendered by foreign courts under specified circumstances.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1. Short Title; References; Table of Contents

The title of the bill is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001 (hereinafter the "Act").

TITLE I. NEEDS-BASED BANKRUPTCY

Section 101. Conversion

Section 101 amends section 706(c) of the Bankruptcy Code to allow a chapter 7 case to be converted to a case under chapter 12 or chapter 13 on consent of the debtor.

Section 102. Dismissal or conversion

Section 102 implements the Act's needs-based bankruptcy reforms. Subsection (a) amends section 707(b) of the Bankruptcy Code to permit a court, on its own motion, or on motion of the United States trustee, trustee, bankruptcy administrator, or party in interest, to dismiss on the basis of abuse a chapter 7 case filed by an individual debtor whose debts are primarily consumer debts. Alternatively, it permits the United States trustee, trustee, bankruptcy administrator, or party in interest to seek conversion of a chapter 7 case to a case under chapter 11 or chapter 13 on consent of the debtor. Under current law, only the court or the United States Trustee may seek dismissal of a chapter 7 case under section 707(b) for substantial abuse.

In addition, section 102(a) replaces the current law's presumption in favor of the debtor with a mandatory presumption of abuse that is triggered under certain conditions. Section 102(a) requires a court to presume that abuse exists if the amount remaining, after certain expenses and other specified amounts are deducted from the debtor's current monthly income (a defined term), when multiplied by 60, exceeds (1) 25 percent of the debtor's nonpriority unsecured claims, or $6000 (whichever is greater); or (2) $10,000, whichever is lower. Under section 102(a), the debtor's monthly expenses—exclusive of any payments for debts (unless otherwise permitted)—must be the applicable monthly amounts set forth in the Internal Revenue Service Financial Analysis Handbook as Necessary Expenses under the National and Local Standards categories and the debtor's actual monthly expenditures for items categorized as Other Necessary Expenses in the Internal Revenue Service Financial Analysis Handbook. For purposes of this provision, the expenses include those of the debtor, the debtor's dependents, and the debtor's spouse, if not otherwise a dependent.

Section 102(a) mandates that the debtor's monthly expenses include reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as identified in section 309 of the Family Violence Prevention and Services Act or other applicable law. In addition, the debtor may

deduct up to an additional 5 percent of the food and clothing expense allowances under the National Standards category, if demonstrated to be reasonable and necessary.

For purposes of determining whether the mandatory presumption of abuse applies under the needs-based test, section 102(a) permits the debtor to deduct certain other liabilities. These include the debtor's average monthly payments on account of secured debts, calculated as the total of all amounts scheduled as contractually due over the 60-month period following the filing of the bankruptcy, divided by 60 months. This amount may include any additional payments to secured creditors that a chapter 13 debtor must make to retain possession of a primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents. With respect to claims and expenses entitled to priority under section 507 of the Bankruptcy Code, section 102(a) specifies that the debtor may deduct payments for these obligations, calculated as the total amount of all priority debts, divided by 60. If applicable, the debtor may deduct the following additional expenses:

(1) the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family who is unable to pay such expenses;
(2) the actual administrative expenses (including reasonable attorneys' fees) of administering a chapter 13 plan for the district in which the debtor resides, up to 10 percent of projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees; and
(3) 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 documents these expenses and provides a detailed explanation of why they are reasonable and necessary.

The mandatory presumption of abuse may only be rebutted if (1) the debtor demonstrates special circumstances that justify any additional expense or adjustment to the debtor's current monthly income for which there is no reasonable alternative; and (2) such additional expense or income adjustment causes the debtor's current monthly income (reduced by various amounts) when multiplied by 60 to be less than the lesser of either (i) 25 percent of the debtor's nonpriority unsecured claims, or $6,000 (whichever is greater), or (ii) $10,000. The debtor must itemize and provide documentation of each additional expense or income adjustment and an explanation of the special circumstances that make such expense or income adjustment reasonable and necessary. In addition, the debtor must attest under oath to the accuracy of any information provided to demonstrate that such additional expenses or adjustments to income are required.

Section 102(a) specifies that the debtor file a statement of current monthly income and the calculations that determine whether a presumption arises under this provision as part of the schedules that the debtor must file pursuant to section 521 of the Bankruptcy

Code. The statement must also explain how each amount is calculated.

Where the mandatory presumption of abuse does not apply or has been rebutted, the court, in order to determine whether the granting of relief under chapter 7 would be an abuse of such chapter, must consider (1) whether the debtor filed the chapter 7 case in bad faith; or (2) whether the totality of circumstances of the debtor's financial situation (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection) demonstrates abuse.

Should a court grant a section 707(b) motion made by a trustee and find that the action of debtor's counsel in filing the chapter 7 case violated Federal Rule of Bankruptcy Procedure 9011, section 102(a) mandates that the court order the attorney to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees. In addition, if the court finds that the debtor's attorney violated rule 9011, the court, at a minimum, must assess an appropriate civil penalty, payable to the trustee, bankruptcy administrator, or the United States trustee.

Section 102(a) specifies that the signature of an attorney on a bankruptcy petition, pleading, or written motion constitutes a certification that the attorney has (1) performed a reasonable investigation into the circumstances giving rise to such petition, pleading or motion; and (2) determined that the document is well grounded in fact or 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 section 707(b)(1) of the Bankruptcy Code. Pursuant to section 102(a), the signature of an attorney on a bankruptcy petition constitutes a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

A court may award a debtor all reasonable costs, including reasonable attorneys' fees, incurred by the debtor in successfully contesting a section 707(b) motion brought by a party in interest (other than a trustee, United States trustee or bankruptcy administrator) if the court finds that either (1) the action of the party in filing the motion violated rule 9011 or (2) the party filed the motion solely for the purpose of coercing the debtor into waiving a right guaranteed to the debtor under the Bankruptcy Code. An exception with respect to the rule 9011 ground applies to a small business having an aggregate claim of less than $1,000. For purposes of this provision, a small business is defined as an unincorporated business, partnership, corporation, association, or organization with less than 25 full-time employees that is engaged in commercial or business activity. The number of employees of a wholly-owned subsidiary of a corporation includes the employees of the subsidiary's parent corporation and any other subsidiary corporation of the parent corporation.

Two forms of "safe harbors" are recognized under section 102(a). One provides that only a judge, United States trustee, bankruptcy administrator, or trustee may bring a motion under section 707(b) of the Bankruptcy Code if the chapter 7 debtor's income (or in a joint case, the income of debtor and the debtor's spouse) does not exceed the State median family income for a family of equal or lesser size (adjusted for larger sized families), or the State median fam-

ily income for one earner in the case of a one-person household. The second safe harbor provides that no motion under section 707(b)(2) may be filed by a judge, United States trustee, bankruptcy administrator, trustee, or other party in interest if the debtor and the debtor's spouse combined have income that does not exceed the State median family income for a family of equal or lesser size (adjusted for larger sized families), or the State median family income for one earner in the case of a one-person household.

Section 102(b) defines "current monthly income" as the average monthly income from all sources that the debtor receives (or, in a joint case, the debtor and the debtor's spouse receive), without regard to whether it is taxable income, in the 6-month period preceding the date of determination. It includes any amount paid on a regular basis by any entity (other than the debtor or, in a joint case, the debtor and the debtor's spouse) 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. It excludes Social Security Act benefits and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes.

Section 102(c) amends section 704 to require the United States trustee or bankruptcy administrator to review all materials filed by an individual chapter 7 debtor and to file with the court not later than 10 days after the date of the first meeting of creditors a statement as to whether or not the case should be presumed to be an abuse under section 707(b). The court, in turn, must provide a copy of such statement within 5 days of its filing to all creditors.

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 debtor's current monthly income is not less than the applicable State median income, such United States trustee or bankruptcy administrator must file within 30 days after the filing of the statement (described in the preceding paragraph) either a (1) motion to dismiss or convert the case under section 707(b); or (2) a statement setting forth the reasons why such a motion is not appropriate. In a case where a motion to dismiss or convert or a statement is required to be filed under section 704(b)(2), the United States trustee or bankruptcy administrator may decline to file such a motion if (1) the debtor's current monthly income (when multiplied by 12) exceeds 100 percent, but does not exceed 150 percent of the applicable State median income; and (2) after subtracting certain deductions, the debtor's remaining income when multiplied by 60 is 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.

Section 102(d) amends section 342 of the Bankruptcy Code to require the clerk to give written notice to all creditors not later than 10 days after the filing of a chapter 7 case in which the presumption of abuse applies. It is anticipated that the Judicial Conference of the United States will develop an official form to implement this provision.

Section 102(e) specifies that no provision of the Bankruptcy Code shall limit the ability of a creditor to supply information to a judge (except for information communicated ex parte, unless otherwise

permitted by applicable law), United States trustee, bankruptcy administrator, or trustee.

Section 102(f) amends section 707 of the Bankruptcy Code to provide that a court may dismiss a chapter 7 case filed by an individual debtor convicted of a crime of violence (as defined in 18 U.S.C. § 16), or a drug trafficking crime (as defined in 18 U.S.C. § 924(c)(2)) on motion of the victim, if dismissal is in the best interest of such victim. The court, however, may not dismiss a case under this provision if the debtor establishes by a preponderance of the evidence that the filing of the chapter 7 case is necessary to satisfy a domestic support obligation.

Section 102(g) amends section 1325(a) of the Bankruptcy Code to require the court to find, as a condition of confirmation, that the debtor filed the chapter 13 case in good faith.

Section 102(h) amends section 1325(b) of the Bankruptcy Code to revise the definition of disposable income. As revised, the term means current monthly income received by the debtor (exclusive of 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 for (1) the maintenance or support of the debtor or dependent of the debtor; (2) a domestic support obligation that first becomes due after the petition is filed; (3) certain charitable contributions; and (4) if the debtor is engaged in business, the payment of expenditures necessary for the continuation, preservation, and operation of such business. If the debtor's income exceeds the applicable State median income threshold, then the expenses of the debtor under this provision are determined in accordance with section 707(b)(2)(A) and (B), which specifies what monthly expenses a debtor may claim.

Section 102(i) makes a clerical amendment to the table of sections.

Section 103. Sense of Congress and study

Section 103(a) states that it is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service expense standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of the Bankruptcy Code.

Section 103(b) requires the Director of the Executive Office for United States Trustees to submit a report, not later than 2 years from the enactment date of the Act, containing findings with regard to the use of the Internal Revenue Service expense standards for determining a debtor's current monthly expenses under section 707(b) of the Bankruptcy Code and the impact that these standards have on debtors and the bankruptcy courts. The report may include recommendations for amendments to the Bankruptcy Code consistent with the Director's findings.

Section 104. Notice of alternatives

Section 104 amends section 342(b) of the Bankruptcy Code to require the clerk to give an individual with primarily consumer debts—*before* he or she files for bankruptcy relief—notice of the following:

(1) a brief description of the various forms of bankruptcy relief, including an explanation of the general purpose, benefits, and costs of proceeding under each form of relief;
(2) a brief description of the services available from credit counseling agencies;
(3) a statement explaining that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury shall be subject to fine, imprisonment, or both; and
(4) a statement explaining that all information supplied by a debtor in connection with the case is subject to examination by the Attorney General.

Section 105. Debtor financial management training test program

Section 105(a) requires the Director of the Executive Office for United States trustees to (1) consult with debtor education experts and others who operate financial management education programs; and (2) develop a financial management training curriculum and materials to teach individual debtors how to manage their personal finances better.

Section 105(b) requires the Director to select six judicial districts to test the effectiveness of such curriculum and materials for an 18-month period beginning not later than 270 days after the Act's enactment date. The curriculum and materials shall be used in these six districts as the personal financial management instructional course required by section 111 of the Bankruptcy Code, as added by the Act.

Section 105(c) requires the Director to evaluate the effectiveness of the curriculum and materials as well as to assess the effectiveness of a sample of existing consumer education programs (such as those described in the Report of the National Bankruptcy Review Commission) that are representative of consumer education programs sponsored by the credit industry, chapter 13 trustees, and consumer counseling groups. Not later than 3 months after concluding such evaluation, the Director must submit a report on the effectiveness and cost of such curriculum, materials, and programs.

Section 106. Credit counseling

Section 106(a) amends section 109 of the Bankruptcy Code to require, as a condition for eligibility to be a debtor, that an individual receive credit counseling within the 180-day period preceding the filing of a bankruptcy case by such individual. The credit counseling must be provided by an approved nonprofit budget and credit counseling agency consisting of either an individual or group briefing (which may include a briefing conducted telephonically or via the Internet) that outlines opportunities for available credit counseling and assists the individual in performing a budget analysis.

The determination by the United States trustee or bankruptcy administrator with regard to whether approved nonprofit budget and credit counseling agencies in that district are not reasonably able to provide adequate services must be reviewed annually. The United States trustee or bankruptcy administrator, however, may disapprove a nonprofit budget and credit counseling service at any time.

The mandatory credit counseling requirement does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator determines that the approved nonprofit budget and credit counseling agencies in that district are not reasonably able to provide adequate services.

In addition, this requirement does not apply if the debtor files a certification that: (1) describes exigent circumstances meriting a waiver of this requirement; (2) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain such services within the 5-day period beginning on the date the debtor made the request; and (3) is satisfactory to the court. This exemption terminates when the debtor meets the requirements for credit counseling participation, but not longer than 30 days after the case is filed, unless the court, for cause, extends this period for an additional 15 days.

Section 106(b) amends section 727(a) of the Bankruptcy Code to provide that a chapter 7 debtor's discharge must be denied if the debtor fails to complete a personal financial management instructional course after the filing of the bankruptcy case. This provision, however, does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator.

Section 106(c) amends section 1328 of the Bankruptcy Code to add a chapter 13 debtor's failure to complete an instructional course concerning personal financial management as a ground for denying a discharge, unless the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator.

Section 106(d) amends section 521 of the Bankruptcy Code to mandate that an individual debtor file with the court a certificate from the approved nonprofit budget and credit counseling agency that rendered the requisite services described under section 109(h), as added by this act. The debtor must file a copy of the repayment plan, if any, that was developed by the agency together with the certificate, which must describe the services rendered.

Section 106(e) adds a new provision to the Bankruptcy Code requiring the clerk for each district to maintain for the public's use a list of approved (1) credit counseling agencies that provide the services described in section 109(h) of the Bankruptcy Code, as added by this Act; and (2) personal financial management instructional courses. Under this provision, the United States trustee or bankruptcy administrator may only approve a credit counseling agency or personal financial management instructional course that satisfies certain specified criteria. If such agency or instruction course is approved, the approval may only be for a probationary period of up to 6 months. At the conclusion of the probationary period, the United States trustee or bankruptcy administrator may only approve such agency or instructional course for an additional 1-year period and thereafter for successive 1-year periods. Within 30 days after any final decision occurring 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.

In addition, section 106(e) provides that the United States district court may, at any time, investigate the qualifications of a credit counseling agency and request it to produce documents to ensure the agency's integrity and effectiveness. The district court may remove a credit counseling agency from the approved list that does not meet the specified qualifications. Section 106(e) prohibits a credit counseling agency from providing information as to whether an individual debtor has received or sought personal financial management instruction from such agency to a credit reporting entity.

A credit counseling agency that willfully or negligently fails to comply with any requirement under the Bankruptcy Code with respect to a debtor shall be liable to the debtor for damages in an amount equal to (1) actual damages sustained by the debtor as a result of the violation and (2) any court costs or reasonable attorneys' fees incurred to recover such damages.

Section 106(f) amends section 362 of the Bankruptcy Code in two respects. First, it provides that if a chapter 7, 11, or 13 case is dismissed due to the creation of a debt repayment plan, the presumption under section 362(c)(2) shall not apply to any subsequent bankruptcy case commenced by the debtor. Second, it directs that the court, on request of a party in interest, must issue an order under section 362(c) confirming that the automatic stay has terminated.

Section 107. Schedules of reasonable and necessary expenses

Section 107 requires the Director of the Executive Office for United States Trustees to issue schedules of reasonable and necessary administrative expenses (including reasonable attorneys' fees) relating to the administration of a chapter 13 plan for each judicial district.

TITLE II. ENHANCED CONSUMER PROTECTION

SUBTITLE A. PENALTIES FOR ABUSIVE CREDITOR PRACTICES

Section 201. Promotion of alternative dispute resolution

Section 201(a) amends section 502 of the Bankruptcy Code to permit the court, after a hearing on motion of the debtor, to reduce a wholly unsecured consumer claim by up to 20 percent if the debtor can establish by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency on behalf of the debtor. The debtor must also establish by clear and convincing evidence that the offer was made at least 60 days before the filing of the petition. In addition, the offer must have provided for payment of at least 60 percent of the amount of the claim over a period not exceeding the loan's repayment period, or a reasonable extension thereof. Further, no part of the claim under the alternative repayment schedule may be nondischargeable.

Section 201(b) amends section 547 of the Bankruptcy Code to prohibit the avoidance as a preferential transfer a payment by a

debtor to a creditor pursuant to an alternative repayment plan created by an approved credit counseling agency.

Section 202. Effect of discharge

Section 202 amends section 524 of the Bankruptcy Code in two respects. First, it makes the willful failure of a creditor to credit payments received under a confirmed chapter 11, 12, or 13 plan a violation of the discharge injunction if the creditor's action to collect and failure to credit payments caused material injury to the debtor. This provision does not apply if the plan is dismissed or in default, or where the creditor did not receive payments pursuant to the plan.

Second, section 202 amends section 524 of the Bankruptcy Code to provide that the discharge injunction does not apply to an act by a creditor having a claim secured by an interest in real property that is the debtor's principal residence if such act is (1) in the ordinary course of business between the creditor and the debtor; and (2) limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of the creditor pursuing in rem relief to enforce the underlying lien.

Section 203. Discouraging abuse of reaffirmation practices

Section 203 consists of a comprehensive overhaul of the law applicable to reaffirmation agreements. Section 203(a) mandates the provision of certain specified disclosures, which are the only disclosures required in connection with a reaffirmation agreement. These disclosures must be in written form and be made clearly and conspicuously. In addition, the disclosure statement must include certain advisories and explanations. At the election of the creditor, the disclosure statement may include a repayment schedule. If the debtor is represented by counsel, section 203(a) mandates that the attorney file a certification stating, *inter alia*, that the agreement represents a fully informed and voluntary agreement by the debtor, that the agreement does not impose an undue hardship on the debtor or any dependent of the debtor, and that the attorney advised the debtor of the legal effect and consequences of such agreement. Where the presumption of undue hardship applies, the attorney must also certify that it is his or her opinion that the debtor is able to make the payments required under the reaffirmation agreement. Further, the debtor must submit a statement setting forth the debtor's monthly income and expenditures. If the debtor is represented by counsel and the debt being reaffirmed is owed to a credit union, a modified version of this statement may be used.

Notwithstanding any other provision of the Bankruptcy Code, section 203(a) permits a creditor to (1) accept payments from a debtor before and after the filing of a reaffirmation agreement with the court; and (2) accept payments from a debtor pursuant to a reaffirmation agreement that the creditor believes in good faith to be effective. It further provides that certain specified disclosure requirements shall be satisfied if such disclosures are given in good faith.

If the amount of the scheduled payment due on the reaffirmed debt (as disclosed in the debtor's statement) is greater than the debtor's available income, it is presumed for 60 days from the date on which the reaffirmation agreement is filed with the court that

the agreement presents an undue hardship. Section 203(a) requires the court to review such presumption, which can be rebutted if the debtor identifies in writing additional sources of funds that would enable the debtor to make the required payments on the reaffirmed debt. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the reaffirmation agreement. No reaffirmation agreement may be disapproved without notice and hearing to the debtor and creditor. The hearing must be concluded before the entry of the debtor's discharge. The requirements set forth in this paragraph do not apply to reaffirmation agreements where the creditor is a credit union, as defined.

Section 203(b) requires the Attorney General to designate a U.S. attorney for each judicial district and an Federal Bureau of Investigation agent for each field office to have primary law enforcement responsibility for violations of sections 152 and 157 of title 18 of the United States Code with respect to abusive reaffirmation agreements and materially fraudulent statements in bankruptcy schedules that are intentionally false or misleading. The U.S. attorney designated under this provision has primary responsibility with respect to bankruptcy investigations under section 3057 of title 18, United States Code. The bankruptcy courts must establish procedures for referring any case in which a materially fraudulent bankruptcy schedule has been filed. The provision also makes a clerical amendment to the table of sections in title 18.

SUBTITLE B. PRIORITY CHILD SUPPORT

Section 211. Definition of domestic support obligation

Section 211 amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that accrues pre- or postpetition (including interest that accrues pursuant to applicable nonbankruptcy law) and is owed to or recoverable by a spouse, former spouse, or child of the debtor, or that child's parent or legal guardian, or a responsible relative. It also includes a debt owed to or recoverable by a governmental unit. To qualify as a domestic support obligation, the debt must be in the nature of alimony, maintenance, or support, without regard to whether such debt is expressly so designated. It must be established or subject to establishment either pre- or postpetition pursuant to a: (i) 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. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.

Section 212. Priorities for claims for domestic support obligations

Section 212 amends 507(a) of the Bankruptcy Code to make domestic support obligations 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 or filed by a governmental unit on behalf of such person payable before all other expenses and claims, including expenses of administration from the assets of a bankruptcy estate. Within this priority, allowed claims for domestic support obligations filed by a governmental unit must be paid on

the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Remaining funds may be used to pay a domestic support obligation assigned to a governmental unit (unless such obligation is assigned voluntarily by a spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or owed directly to such entity if the funds are applied and distributed in accordance with applicable nonbankruptcy law.

Section 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations

Section 213(1) amends section 1129(a) of the Bankruptcy Code to mandate the payment of certain postpetition domestic support obligations as a condition of confirmation in a chapter 11 case. Section 213(2) amends section 1208(c) of the Bankruptcy Code to provide that the failure of a chapter 12 debtor to pay a postpetition domestic support obligation constitutes cause for conversion or dismissal of the debtor's case. Section 213(3) amends section 1222(a) of the Bankruptcy Code to permit a chapter 12 debtor to propose a plan that provides for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) if all of the debtor's projected disposable income for a 5-year period is applied to make payments under the plan. Section 213(4) amends section 1222(b) of the Bankruptcy Code to permit a chapter 12 debtor, pursuant to a plan, to pay postpetition interest on claims that are nondischargeable under Section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims. Section 213(5) amends section 1225(a) of the Bankruptcy Code to require a chapter 12 debtor to be current with certain postpetition domestic support obligations as a condition of confirmation. Section 213(6) amends section 1228(a) to condition the granting of a chapter 12 discharge on the debtor's payment of certain postpetition domestic support obligations. Section 213(7) amends section 1307 of the Bankruptcy Code to add nonpayment of a postpetition domestic support obligation as a ground for conversion or dismissal of a chapter 13 case. Section 213(8) amends section 1322(a) to permit a chapter 13 debtor, pursuant to a plan, to pay less than the full amount of a claim entitled to priority under section 507(a)(1)(B) if the plan provides that all of the debtor's projected disposable income over a 5-year period will be applied to make payments under the plan. Section 213(9) amends section 1322(b) to permit a chapter 13 debtor, pursuant to a plan, to pay postpetition interest on claims that are nondischargeable under section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims. Section 213(10) amends section 1325(a) of the Bankruptcy Code to require, as a condition of confirmation, that a chapter 13 debtor pay certain postpetition domestic support obligations. Section 213(11) amends section 1328(a) of the Bankruptcy Code to condition the granting of a chapter 13 discharge on the debtor's payment of certain postpetition domestic support obligations.

Section 214. Exceptions to automatic stay in domestic support proceedings

Section 214 amends section 362(b) of the Bankruptcy Code to except from the automatic stay actions or proceedings pertaining to child custody and visitation, domestic violence, and marriage dissolution to the extent that they do not pertain to property determinations concerning property of the estate. In addition, section 214 amends section 362(b) to except from the automatic stay the withholding, suspension, or restriction of a driver's license, or a professional, occupational or recreational license under State law pursuant to section 466(a)(16) of the Social Security Act. Further, section 214 excepts from the automatic stay the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act; the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act; and the enforcement of medical obligations as specified under title IV of the Social Security Act.

Section 215. Nondischargeability of certain debts for alimony, maintenance, and support

Section 215 amends section 523(a)(5) of the Bankruptcy Code to provide that a "domestic support obligation" (as defined in section 211 of the Act) is nondischargeable. With respect to obligations that are not domestic support obligations, but incurred in connection with a divorce or separation or related action, section 215 provides that these obligations are also nondischargeable irrespective of the debtor's inability to pay such debts. In addition, section 215 amends section 523(c) of the Bankruptcy Code to delete the reference to section 523(a)(15).

Section 216. Continued liability of property

Section 216 amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provision of applicable nonbankruptcy law. It also makes a conforming amendment to section 522(f)(1)(A) of the Bankruptcy Code and corrects an erroneous statutory reference in section 522(g)(2).

Section 217. Protection of domestic support claims against preferential transfer motions

Section 217 makes a conforming amendment to section 547(c)(7) of the Bankruptcy Code, which provides that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer.

Section 218. Disposable income defined

Section 218(a) amends section 1225(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 12 case does not include payments for postpetition domestic support obligations.

Section 218(b) amends section 1325(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 13 case does not include payments for postpetition domestic support obligations.

Section 219. Collection of child support

Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to require trustees in chapter 7, 11, 12, and 13 cases to provide certain types of notices to child support claimants and governmental enforcement agencies. First, the trustee must notify the claimant in writing of the right to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act in the State where the claimant resides and include the agency's address and telephone number. The notice must also explain the claimant's right to payment under the applicable chapter of the Bankruptcy Code. Second, the trustee must provide written notice to the governmental enforcement agency of the name, address, and telephone number of the child support claimant. Third, the trustee must notify both the child support claimant and the State agency that the debtor was granted a discharge as well as supply them with the debtor's last known address, the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A), or holding a debt that is reaffirmed pursuant to section 524 of the Bankruptcy Code. If a child support claimant or State agency is not able to locate the debtor, such claimant or agency may request such information from a creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. Section 219, in addition, provides that, notwithstanding any other provision of law, a creditor who discloses a debtor's last known address in connection with such request is not liable to the debtor or any other person by reason of making that disclosure.

Section 220. Nondischargeability of certain educational benefits and loans

Section 220 amends section 523(a)(8) of the Bankruptcy Code to provide that a debt for a qualified education loan (as defined in section 221(e)(1) of the Internal Revenue Code) is nondischargeable, unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor's dependents.

SUBTITLE C. OTHER CONSUMER PROTECTIONS

Section 221. Amendments to discourage abusive bankruptcy filings

Section 221 makes a series of amendments to section 110 of the Bankruptcy Code. First, it clarifies the definition of a bankruptcy petition preparer with respect to persons under the direct supervision of an attorney. Second, it amends subsections (b)(1) and (c)(2) of section 110 to provide that if a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer must sign certain documents filed in connection with the bankruptcy case as well as state the person's name and address on such documents. Third, it requires a bankruptcy petition preparer to give the debtor written notice explaining that the preparer is not an attorney and may not practice law or give legal advice. The notice may include examples of legal advice that a preparer may not provide. The notice, which must be signed by the preparer under penalty of perjury and the debtor, is

required to be filed with any document for filing. Fourth, it requires the Supreme Court to promulgate rules or the Judicial Conference of the United States to issue guidelines for setting maximum fees. Fifth, it specifies that the bankruptcy petition preparer file a declaration certifying that the preparer complied with the notification requirements concerning the preparer's fees. Sixth, it requires the court to order the turnover of specified fees for services rendered within 12 months of the filing if such fees violate any rule or guideline. Seventh, it allows a debtor to exempt fees recovered under this provision pursuant to section 522(b) of the Bankruptcy Code. Eighth, it specifically authorizes the court to enjoin a bankruptcy petition preparer who has failed to comply with a prior order issued under section 110. Ninth, it generally revises section 110's penalty provisions and specifies that the penalties are to be paid to a special fund of the United States trustee to pay for enforcement of this provision.

Section 222. Sense of Congress

Section 222 expresses the sense of Congress that the States should develop personal finance curricula for use in elementary and secondary schools.

Section 223. Additional amendments to title 11, United States Code

Section 223 amends section 507(a) to add a tenth-level priority for claims based on death or personal injuries resulting from the debtor's operation of a motor vehicle or vessel while intoxicated.

Section 224. Protection of retirement savings in bankruptcy

Section 224(a) amends section 522 to permit a debtor to exempt certain retirement funds to the extent that those monies 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 and that have received a favorable determination pursuant to Internal Revenue Code section 7805. If the retirement monies are in a retirement fund that has not received a favorable determination, those monies are exempt if the debtor demonstrates that no prior unfavorable determination has been made by a court or the Internal Revenue Service, and the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code. If the retirement fund fails to be in substantial compliance with applicable law, the debtor may claim the retirement funds as exempt if the debtor is not materially responsible for such failure. This section also applies to certain direct transfers and rollover distributions. In addition, this provision ensures that the specified retirement funds are exempt under State as well as Federal law.

Section 224(b) amends section 362(b) of the Bankruptcy Code to except from the automatic stay the withholding of income from a debtor's wages pursuant to an agreement authorizing such withholding for the benefit of a pension, profit-sharing, stock bonus, or other employer-sponsored plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(a) to the extent that the amounts withheld are used solely to repay a loan from a plan as authorized by section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or that they are subject to Internal

Revenue Code section 72(p). The exception also applies to certain thrift savings plan loans.

Section 224(c) amends section 523(a) of the Bankruptcy Code to except from discharge any amount owed by the debtor to a pension, profit-sharing, stock bonus, or other plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) under a loan authorized under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p). The exception also pertains to a loan from a thrift savings plan made under a governmental plan pursuant to section 414(d) or a contract or account under section 403(b) of the Internal Revenue Code.

Section 224(d) amends section 1322 of the Bankruptcy Code to provide that a chapter 13 plan may not materially alter the terms of a loan owed to a pension, profit-sharing, stock bonus, or other plan established under the Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(a). In addition, it specifies that any amounts required to repay such loan shall not constitute "disposable income" under section 1325 of the Bankruptcy Code.

Section 224(e) amends section 522 of the Bankruptcy Code to impose a $1 million cap (periodically adjusted pursuant to section 104 of the Bankruptcy Code to reflect changes in the Consumer Price Index) on the value of the debtor's interest in an individual retirement account established under either section 408 or 408A of the Internal Revenue Code (other than a simplified employee pension account under section 408(k) or a simple retirement account under section 408(p) of the Internal Revenue Code) that a debtor may claim as exempt property. This limit applies without regard to amounts attributable to rollover contributions made pursuant to section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8) of the Internal Revenue Code and earnings thereon. The cap may be increased if required in the interest of justice.

Section 225. Protection of education savings in bankruptcy

Section 225(a) amends section 541 of the Bankruptcy Code to provide that funds placed not less than 365 days before the filing of the bankruptcy case in a education individual retirement account are not property of the estate if certain criteria are met. First, the designated beneficiary of such account must be a child, stepchild, grandchild or step-grandchild of the debtor for the taxable year during which funds were placed in the account. A legally adopted child or a foster child, under certain circumstances, may also qualify as a designated beneficiary. Second, such funds may not be pledged or promised to an entity in connection with any extension of credit and they may not be excess contributions (as described in section 4973(e) of the Internal Revenue Code). Third, a $5,000 cap applies to funds deposited between 720 days and 365 days before the filing date. Similar criteria apply with respect to funds used to purchase a tuition credit or certificate or to funds contributed to a qualified State tuition plan under section 529(b)(1)(A) of the Internal Revenue Code.

Section 225(b) requires a debtor to file with the court a record of any interest that the debtor has in an education individual retirement account or qualified State tuition program.

Section 226. Definitions

Section 226(a) amends section 101 of the Bankruptcy Code to add certain definitions with respect to debt relief agencies. Section 226(a)(1) defines an "assisted person" as a person whose debts consist primarily of consumer debts and whose nonexempt assets are less than $150,000. Section 226(a)(2) defines "bankruptcy assistance" as any goods or services sold or otherwise provided with the express or implied purpose of giving information, advice, or counsel; preparing documents for filing; or attending a meeting of creditors pursuant to section 341; appearing in a proceeding on behalf of a person; or providing legal representation with respect to a case or proceeding under the Bankruptcy Code. Section 226(a)(3) defines a "debt relief agency" as any person (including a bankruptcy petition preparer) who provides bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration. The definition does not include a section 501(c)(3) nonprofit organization, depository institution, or Federal credit union which provides assistance with respect to restructuring debts. In addition, the definition does not apply to an author, publisher, distributor, or seller of works subject to copyright protection under title 17 of the United States Code when acting in such capacity.

Section 226(b) amends section 104(B)(1) of the Bankruptcy Code to permit the monetary amount set forth in the definition of an "assisted person" to be automatically adjusted to reflect the change in the Consumer Price Index.

Section 227. Restrictions on debt relief agencies

Section 227 creates a new provision in the Bankruptcy Code to prohibit a debt relief agency from engaging in certain activities. First, section 227 bars the agency from failing to perform any service that it informed an assisted person would be provided. Second, this provision prohibits a debt relief agency from advising an assisted person to make an untrue or misleading statement. Third, it prohibits a debt relief agency from misrepresenting the services it provides and the benefits that an assisted person may receive as a result of bankruptcy. Fourth, section 227 bans a debt relief agency from advising an assisted person or prospective assisted person to incur additional debt in contemplation of filing for bankruptcy relief or for the purpose of paying fees for services rendered by an attorney or petition preparer in connection with the bankruptcy case. Any waiver by an assisted person of the protections under this provision are unenforceable, except against a debt relief agency.

In addition, section 227 imposes penalties for the violation of section 526, 527 or 528 of the Bankruptcy Code (as enacted by this Act). First, any contract between a debt relief agency and an assisted person that does not comply with these provisions is void and may not be enforced by any State or Federal court or by any person, except an assisted person. Second, a debt relief agency is liable to an assisted person, under certain circumstances, for any fees or charges paid by such person to the agency, actual damages, and reasonable attorneys' fees and costs. A chief law enforcement officer of a State having reason to believe that a person has violated or is violating section 526 may seek to have such violation enjoined and recover actual damages arising from such violation.

Third, section 227 provides that the United States district court has concurrent jurisdiction of certain actions under section 526. Fourth, section 227 provides that sections 526, 527 and 528 preempt inconsistent State law. In addition, it provides that these provisions do not limit or curtail the authority of a Federal court, a State, or a subdivision or instrumentality of a State, to determine and enforce qualifications for the practice of law before the Federal court or under the laws of that State.

Section 228. Disclosures

Section 228 mandates that a debt relief agency provide certain written notices to an assisted person. These include the notice required under section 342(b)(1), as amended by this Act, as well as a notice advising that: (1) all information the assisted person provides in connection with the case must be complete, accurate and truthful; (2) all assets and liabilities must be completely and accurately disclosed in the documents filed to commence the case, including the replacement value of each asset (if required) after reasonable inquiry to establish such value; (3) current monthly income, monthly expenses and, in a chapter 13 case, disposable income must be stated after reasonable inquiry; and (4) information an assisted person provides may be audited and that the failure to provide such information may result in dismissal of the case or other sanction including, in some instances, criminal sanctions. In addition, the agency must supply certain specified advisories and explanations regarding the bankruptcy process. Further, this provision requires the agency to advise an assisted person (to the extent permitted under nonbankruptcy law) concerning asset valuation, the calculation of disposable income, and the determination of exempt property.

Section 229. Requirements for debt relief agencies

Section 229 requires a debt relief agency—not later than five business days after the first date on which it provides any bankruptcy assistance services to an assisted person (but prior to such assisted person's petition being filed)—to execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide, the basis on which fees will be charged for such services, and the terms of payment. The assisted person must be given a copy of the fully executed and completed contract in a form the person can retain. The debt relief agency must include certain specified mandatory statements in any advertisement of bankruptcy assistance services or regarding the benefits of bankruptcy that is directed to the general public whether through the general media, seminars, specific mailings, telephonic or electronic messages, or otherwise.

Section 230. GAO study

Section 230 directs the Comptroller General of the United States to conduct a study of and to report on the feasibility, efficacy and cost of requiring a trustee to supply certain specified information about a debtor's bankruptcy case to the Office of Child Support Enforcement for the purpose of determining whether a debtor has outstanding child support obligations.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Section 301. Reinforcement of the fresh start

Section 301 makes a clarifying amendment to section 523(a)(17) of the Bankruptcy Code concerning the dischargeability of court fees incurred by prisoners. Section 523(a)(17) was added to the Bankruptcy Code by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 [1] to except from discharge the filing fees and related costs and expenses assessed by a court in a civil case or appeal. Because of a drafting error, however, this provision might be construed to apply to filing fees, costs or expenses incurred by any debtor, not solely by those who are prisoners. The amendment eliminates the ambiguity and makes other conforming changes to narrow its application in accordance with its original intent.

Section 302. Discouraging bad faith repeat filings

Section 302(a) amends section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding 1-year period. The provision does not apply to a case refiled under a chapter other than chapter 7 after dismissal of the prior chapter 7 case pursuant to section 707(b) of the Bankruptcy Code. Upon motion of a party in interest, the court may continue the stay after notice and a hearing completed prior to the expiration of the 30-day period if such party demonstrates that the latter case was filed in good faith as to the creditors who are stayed by the filing. For purposes of this provision, a case is presumptively not filed in good faith as to all creditors if:

(1) more than one bankruptcy case under chapter 7, 11 or 13 was previously filed by the debtor within the preceding 1-year period;
(2) the prior chapter 7, 11, or 13 case of the debtor was dismissed within the preceding year for the debtor's failure to (a) file or amend without substantial excuse a document required under the Bankruptcy Code or the court, (b) provide adequate protection ordered by the court, or (c) perform the terms of a confirmed plan; or
(3) there has been no substantial change in the debtor's financial or personal affairs since the dismissal of the prior case, or there is no reason to conclude that the pending case will conclude either with a discharge (if a chapter 7 case) or confirmation (if a chapter 11 or 13 case).

In addition, a case is presumptively deemed filed not in good faith as to any creditor who obtained relief from the automatic stay in the prior case or sought such relief in the prior case and such action was pending at the time of the prior case's dismissal. The presumption may be rebutted by clear and convincing evidence. A similar presumption applies if two or more bankruptcy cases were pending in the 1-year preceding the filing of the pending case.

[1] PUB. L. NO. 104–134, Section 804(b) (1996).

Section 303. Curbing abusive filings

Section 303(a) amends section 362(d) of the Bankruptcy Code to add a new ground for relief from the automatic stay. It provides that cause for relief from the automatic stay may be established for a creditor whose claim is secured by an interest in real estate, if the court finds that the filing of the bankruptcy case was part of a scheme to delay, hinder and defraud creditors that involved either (a) a transfer of all or part of an ownership interest in real property without such creditor's consent or without court approval; or (b) multiple bankruptcy filings affecting the real property. If recorded in compliance with applicable State law governing notice of an interest in or a lien on real property, an order entered under this provision is binding in any other bankruptcy case for 2 years from the date of entry of such order. A debtor in a subsequent case may move for relief based upon changed circumstances or for good cause shown after notice and a hearing. Section 303(a) further provides that any Federal, State or local governmental unit that accepts a notice of interest or a lien in real property, must accept a certified copy of an order entered under this provision.

Section 303(b) amends section 362(b) of the Bankruptcy Code to except from the automatic stay an act to enforce any lien against or security interest in real property within 2 years following the entry of an order entered under section 362(d)(4). A debtor, in a subsequent case, may move for relief from such order based upon changed circumstances or for other good cause shown after notice and a hearing. Section 303(b) also provides that the automatic stay does not apply in a case where the debtor (a) is ineligible to be a debtor in a bankruptcy case pursuant to section 109(g) of the Bankruptcy Code; or (b) filed the bankruptcy case in violation of an order issued in a prior bankruptcy case prohibiting the debtor from being a debtor in a subsequent bankruptcy case.

Section 304. Debtor retention of personal property security

Section 304(1) amends section 521(a) of the Bankruptcy Code to provide that an individual who is a chapter 7 debtor may not retain possession of personal property securing, in whole or in part, a purchase money security interest unless the debtor, within 45 days after the first meeting of creditors, enters into a reaffirmation agreement with the creditor, or redeems the property. If the debtor fails to so act within the prescribed period, the property is not subject to the automatic stay and is no longer property of the estate. An exception applies if the court: (a) determines on motion of the trustee filed before the expiration of the 45-day period that the property has consequential value or would benefit the bankruptcy estate; (b) orders adequate protection of the creditor's interest; and (c) directs the debtor to deliver any collateral in the debtor's possession.

Section 304(2) amends section 722 to clarify that a chapter 7 debtor must pay the redemption value in a lump sum payment at the time of redemption.

Section 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral

Section 305(1) amends section 362 of the Bankruptcy Code to terminate the automatic stay with respect to personal property of the

estate or of the debtor in a chapter 7, 11, or 13 case that secures a claim (in whole or in part) or is subject to an unexpired lease if the debtor fails to:

(1) file timely a statement of intention as required by section 521(a)(2) of the Bankruptcy Code with respect to such property;
(2) indicate in such statement whether the property will be surrendered or retained, and if retained, whether the debtor will redeem the property or reaffirm the debt, or assume an unexpired lease, if the trustee does not; and
(3) undertake timely the actions specified in such statement of intention, unless the statement specifies reaffirmation and the creditor refuses to enter into the reaffirmation agreement on the original contract terms.

In addition to terminating the automatic stay, this provision renders such property no longer property of the estate. An exception pertains where the court determines, on the motion of the trustee made prior to the expiration of the applicable time period under section 521(a)(2), and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders adequate protection of the creditor's interest, and directs the debtor to deliver any collateral in the debtor's possession.

Section 305(2) amends section 521 of the Bankruptcy Code to make the requirement to file a statement of intention applicable to all secured debts, not just secured consumer debts. In addition, it requires the debtor to effectuate his or her stated intention within 30 days from the first date set for the meeting of creditors. If the debtor fails to timely undertake certain specified actions with respect to property that a lessor or bailor owns and has leased, rented or bailed to the debtor, or in which a creditor has a security interest (not otherwise avoidable under section 522(f), 544, 545, 547, 548 or 549 of the Bankruptcy Code), then nothing in the Bankruptcy Code shall prevent or limit the operation of a provision in a lease or agreement that places the debtor in default by reason of the debtor's bankruptcy or insolvency.

Section 306. Giving secured creditors fair treatment in chapter 13

Section 306(a) amends section 1325(a)(5)(B)(i) of the Bankruptcy Code to require—as a condition of confirmation—that a chapter 13 plan provide that a secured creditor retain its lien until the earlier of when the underlying debt is paid or the debtor receives a discharge. If the case is dismissed or converted prior to completion of the plan, the secured creditor is entitled to retain its lien to the extent recognized under applicable nonbankruptcy law.

Section 306(b) amends section 1325(a) of the Bankruptcy Code to provide that section 506 of the Code does not apply to a debt incurred within the 5-year period preceding the filing of the bankruptcy case if the debt is secured by a purchase money security interest in a motor vehicle acquired for the personal use of the debtor. Where the collateral consists of any other type of property having value, section 306(b) provides that section 506 of the Bankruptcy Code does not apply if the debt was incurred during the 1-year period preceding the filing of the bankruptcy case.

Section 306(c)(1) adds to section 101 of the Bankruptcy Code a definition of the term, "debtor's principal residence," which it de-

fines as a residential structure (including incidental property) whether or not such structure is attached to real property. The definition includes an individual condominium or cooperative unit as well as a mobile or manufactured home, and a trailer. Section 306(c)(2) defines "incidental property" as property commonly conveyed with a principal residence in the area where the residence is located. The term includes all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, and insurance proceeds. Further, the term includes all replacements and additions.

Section 307. Domiciliary requirements for exemptions

Section 307 amends 522(b)(2)(A) of the Bankruptcy Code to extend the time that a debtor must be domiciled in a State before he or she may claim that State's exemptions. If the debtor's domicile was not located in a single State for the 730-day period, then the State where the debtor was domiciled in the 180-day period preceding the 730-day period (or the longer portion of such 180-day period) controls.

Section 308. Residency requirements for homestead exemption

Section 308 amends section 522 of the Bankruptcy Code to reduce the value of a debtor's interest in the following property that may be claimed as exempt under certain circumstances: (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. Where nonexempt property is converted to the above-specified exempt property within the 7-year period preceding the filing of the bankruptcy case, the exemption must be reduced to the extent such value was acquired with the intent to hinder, delay or defraud a creditor.

Section 309. Protection secured creditors in chapter 13 cases

Section 309(a) amends section 348(f)(1) of the Bankruptcy Code to specify that valuations of property and allowed secured claims in a chapter 13 case only apply if the case is subsequently converted to one under chapter 11 or 12. If the chapter 13 case is converted to one under chapter 7, then the creditor holding security as of the petition date shall continue to be secured unless its claim was paid in full as of the conversion date. In addition, unless a prebankruptcy default has been fully cured at the time of conversion, then the default in any bankruptcy proceeding shall have the effect given under applicable nonbankruptcy law.

Section 309(b) amends section 365 of the Bankruptcy Code to provide that if a lease of personal property is rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the automatic stay under section 362 is terminated. With regard to a chapter 7 case of an individual debtor, the debtor may notify the creditor in writing of his or her desire to assume the lease. Upon being so notified, the creditor may, at its option, inform the debtor that it is willing to have the lease assumed and condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days after such notice the debtor notifies the lessor in writing that the lease is assumed,

the debtor (not the bankruptcy estate) assumes the liability under the lease. Section 309(b) provides that the automatic stay of section 362 and the discharge injunction of section 524 are not violated if the creditor notifies the debtor and negotiates a cure under section 365(p)(2) (as codified by this Act).

In an individual chapter 11 or 13 case where the debtor is the lessee with respect to personal property and the lease is not assumed in the confirmed plan, the lease is deemed rejected as of the conclusion of the confirmation hearing. If the lease is rejected, the automatic stay under section 362 as well as the chapter 13 codebtor stay under section 1301 are automatically terminated with respect to such property.

Section 309(c)(1) amends section 1325(a)(5)(B) of the Bankruptcy Code to require that periodic payments pursuant to a chapter 13 plan with respect to a secured claim be made in equal monthly installments and that the amount of such payments shall not be less than the amount sufficient to provide adequate protection to the holder of such claim.

Section 309(c)(2) amends section 1326(a) of the Bankruptcy Code to require a chapter 13 debtor to commence making payments within 30 days after the filing of the plan or the order for relief, whichever is earlier. The amount of such payment must be the amount proposed in the plan, scheduled in a personal property lease for that portion of the obligation that becomes due postpetition (which amount shall reduce the payment required to be made to such lessor pursuant to the plan), and 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 (which amount shall reduce the payment required to be made to such secured creditor pursuant to the plan). Payments made pursuant to a plan must be retained by the chapter 13 trustee until confirmation or denial of confirmation. Section 309(c)(2) provides that if the plan is confirmed, the trustee must distribute payments received from the debtor as soon as practicable in accordance with the plan. If the plan is not confirmed, the trustee must return to the debtor payments not yet due and owing to creditors. Pending confirmation and subject to section 363, the court, after notice and a hearing, may modify the payments required under this provision. Section 309(c)(2) requires the debtor, within 60 days following the filing of the bankruptcy case, to provide reasonable evidence of any required insurance coverage with respect to the use or ownership of leased personal property or property securing, in whole or in part, a purchase money security interest.

Section 310. Limitation on luxury goods

Section 310 amends section 523(a)(2)(C) of the Bankruptcy Code to establish a presumption that consumer debts owed to a single creditor and aggregating more than $250 for luxury goods or services incurred by an individual debtor within 90 days before the order for relief are nondischargeable. With respect to cash advances aggregating more than $750 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 70 days prepetition, section 310 establishes a presumption that these debts are nondischargeable. 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. In addition, "an extension of consumer credit under an open-end credit plan" has the same meaning as it has under the Consumer Credit Protection Act.

Section 311. Automatic stay

Section 311 amends section 362(b) of the Bankruptcy Code to except the following proceedings from the automatic stay:

(1) the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor resides as a tenant under a rental agreement;
(2) the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law; and
(3) an eviction action based on endangerment to property or person, or the use of illegal drugs.

Section 311 also excepts from the automatic stay a transfer that is not avoidable under section 544 and that is not avoidable under section 549 of the Bankruptcy Code. This amendment responds to a 1997 Ninth Circuit case,[2] in which two purchase money lenders (without knowledge that the debtor had recently filed an undisclosed chapter 11 case that was later converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors. Specifically, it amends the definition of "transfer" to include the "creation of a lien." This amendment gives expression to a widely held understanding that a transfer includes the creation of a lien.

Section 312. Extension of period between bankruptcy discharges

Section 312(1) amends section 727(a)(8) of the Bankruptcy Code to extend the period before which a chapter 7 debtor may receive a subsequent chapter 7 discharge from six to 8 years. Section 312(2) amends section 1328 to prohibit the issuance of a discharge in a subsequent chapter 13 case if the debtor received a discharge

[2] *Thompson* v. *Margen* (*In re* McConville), 110 F.3d 47 (9th Cir. 1997). The bankruptcy trustee sought to avoid the lien created by the lenders' deed of trust by asserting that the deed was an unauthorized, postpetition transfer under section 549(a) of the Bankruptcy Code. The lenders claimed that the voluntary transfer to them was a transfer of real property to good faith purchasers for value, which thereby excepted it, under section 549(c) of the Bankruptcy Code, from avoidance. The bankruptcy court held that: the postpetition recordation of the lenders' deed of trust was without authorization under the Bankruptcy Code or by the court and was therefore avoidable under section 549(a) and that the lenders did not qualify under the section 549(c) exception as good faith purchasers of real property for value. The District Court subsequently affirmed the bankruptcy court's ruling granting the trustee the authority to avoid the lenders' lien. *McConville* v. *David Margen and Lawton Associates* (*In re McConville*), No. C 94–3308, 1994 U.S. Dist. LEXIS 18095 (N.D. Cal. Dec. 14, 1994). On appeal, the lower court's decision in *McConville* was initially affirmed. *Thompson* v. *Margen* (*In re McConville*), 84 F.3d 340 (9th Cir. 1996). The Ninth Circuit, however, subsequently issued an amended opinion, also affirming the lower court, *Thompson* v. *Margen* (*In re McConville*), 97 F.3d 316 (9th Cir. 1996), and finally issued an opinion withdrawing its prior opinion and deciding the case on other grounds. It held that by obtaining secured credit from the lenders after filing but before the appointment of a trustee, the debtors violated their fiduciary responsibility to their creditors. *Thompson* v. *Margen* (*In re McConville*), 110 F.3d 47 (9th Cir. 1997).

in a prior bankruptcy case within 5 years preceding the filing of the subsequent chapter 13 case.

Section 313. Definition of household goods and antiques

Section 313(a) amends section 522(f) of the Bankruptcy Code to codify a modified version of the Federal Trade Commission's definition of "household goods" for purposes of the avoidance of a nonpossessory, nonpurchase money lien in such property. Section 313(b) requires the Director of the Executive Office for United States Trustees to prepare a report containing findings with respect to the use of this definition under section 522(f)(4). The report may include recommendations for amendments to section 522(f)(4).

Section 314. Debt incurred to pay nondischargeable debts

Section 314(a) amends section 523(a) of the Bankruptcy Code to make a debt incurred to pay a nondischargeable tax owed to a governmental unit (other than a tax owed to the United States) nondischargeable as well.

Section 314(b) amends section 1328(a) of the Bankruptcy Code to make the following additional debts nondischargeable in a chapter 13 case:

(1) debts for money, property, services, or extensions of credit obtained through fraud or by a false statement in writing under section 523(a)(2)(A) and (B) of the Bankruptcy Code;
(2) consumer debts owed to a single creditor that aggregate to more than $250 for luxury goods or services incurred by an individual debtor within 90 days before the filing of the bankruptcy case, and cash advances aggregating more than $750 that are extensions of consumer credit obtained by a debtor under an open-end credit plan within 70 days before the order for relief under section 523(a)(2)(C) (as amended by this Act);
(3) pursuant to section 523(a)(3) of the Bankruptcy Code, debts that require timely request for a dischargeability determination, if the creditor lacks notice or does not have actual knowledge of the case in time to make such request;
(4) debts resulting from fraud or defalcation by the debtor acting as a fiduciary under section 523(a)(4) of the Bankruptcy Code;
(5) debts for restitution or damages, awarded in a civil action against the debtor as a result of willful or malicious conduct by the debtor that caused personal injury to an individual or the death of an individual.

Section 315. Giving creditors fair notice in chapters 7 and 13 cases

Section 315(a) amends section 342 of the Bankruptcy Code in several respects. First, it deletes the provision specifying that the failure of a notice to include certain information required to be given by a debtor to a creditor does not invalidate the notice's legal effect. Second, it mandates that a debtor send any notice required under the Bankruptcy Code to the address specified by the creditor and to include on such notice the account number, if within 90 days prior to the date that the debtor filed for bankruptcy relief the creditor sent at least two communications to the debtor specifying such account number and address. If the creditor would be in viola-

tion of applicable nonbankruptcy law by sending any such communication during this time period, then the debtor must send the notice to the address provided by the creditor stated in the last two communications containing the creditor's address and such notice shall include the current account number. Third, it permits a creditor in a chapter 7 or 13 case of an individual debtor to file with the court and serve on the debtor the address to be used to notify such creditor in that case. Five days after receipt of such notice, the court or debtor must use the address so specified for noticing such creditor. Fourth, section 315(a) specifies that if an entity files a notice with the court stating an address to be used generally in chapter 7 and chapter 13 cases, this address must be used by the court for such cases within 30 days following the filing of such notice. Fifth, it provides that any notice shall not be effective until it has been brought to the creditor's attention. If the creditor has designated an entity to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that these notices will be delivered to such entity, a notice will not be deemed to have been received by the creditor until it has been received by such entity. Sixth, it prohibits the imposition of any sanction for violation of the automatic stay or for the failure to comply with the Bankruptcy Code's turnover provisions in sections 542 and 543 if a creditor has not received proper notice.

Section 315(b)(1) amends section 521 to require the debtor to file a certificate executed by the debtor's attorney or bankruptcy petition preparer stating that the attorney or preparer supplied the debtor with the notice required under section 342(b) (as amended by this Act). If the debtor is *pro se* and did not use the services of a bankruptcy petition preparer, then the debtor must sign a certificate stating that he or she obtained and read such notice. In addition, the debtor must file:

(1) copies of all payment advices or other evidence of payment from any employer within 60 days preceding the bankruptcy filing;

(2) a statement of the amount of monthly net income, itemized to show how such amount is calculated; and

(3) a statement disclosing any reasonably anticipated increase in income or expenditures in the 12-month period following the date of filing.

Upon request of a creditor, section 315(b)(2) requires the court to make the petition, schedules, and statement of financial affairs of an individual who is a chapter 7 or chapter 13 debtor available to such creditor. In addition, it requires the debtor to provide either a copy of his or her tax return or transcript (at the election of the debtor) for the latest taxable period prior to the filing of the bankruptcy case 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. The debtor's failure to comply requires dismissal of the case unless the debtor demonstrates that such failure was due to circumstances beyond the debtor's control. If a creditor has requested a copy of the tax return or transcript, the debtor must provide such document to the creditor at the time the debtor supplies the return or transcript to the trustee. Should the debtor fail to comply with this requirement, the case must be dismissed, unless the debtor demonstrates that such failure is due to circumstances beyond the debtor's control. A creditor in a chap-

ter 13 case may, at any time, file a notice with the court requesting a copy of the plan. The court must supply a copy of the chapter 13 plan at a reasonable cost not later than 5 days after such request.

At the time filed with the taxing authority, an individual debtor in a case under chapter 7, 11 or 13 must file copies of tax returns (including any schedules or attachments) with the court at the request of any party in interest during the pendency of the case. This requirement pertains to all tax returns (including any schedules or attachments) that were not filed for the 3-year period preceding the date on which the order for relief was entered. In addition, the debtor must file copies of any amendments to such tax returns.

In a chapter 13 case, the debtor must file a statement, under penalty of perjury, of income and expenditures in the preceding tax year and monthly income showing how the amounts were calculated. The statement must be filed 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. Thereafter, the statement must be filed on or before the date that is 45 days before the anniversary date of the plan's confirmation, until the case is closed. The statement must disclose the amount and sources of the debtor's income, the identity of any persons responsible with the debtor for the support of the debtor's dependents, the identity of any persons who contributed to the debtor's household expenses, and the amount of any such contributions.

Section 315(b)(2) mandates that the tax returns, amendments thereto, and the statement of income and expenditures of an individual who is a chapter 7 or chapter 13 debtor be made available to the United States trustee or bankruptcy administrator, the trustee, and any party in interest for inspection and copying, subject to procedures established by the Director of the Administrative Office for United States Courts within 180 days from the Act's enactment date. The procedures must safeguard the confidentiality of any tax information required under this provision and include restrictions on creditor access to such information. In addition, the Director must, within 1 year and 180 days from the Act's enactment date, prepare and submit to the Congress a report that assesses the effectiveness of such procedures and, if appropriate, includes recommendations for legislation to further protect the confidentiality of such tax information and to impose penalties for its improper use.

If requested by the United States trustee or trustee, the debtor must provide a document establishing the debtor's identity, which may include a driver's license, passport, or other document containing a photograph of the debtor, and such other personal identifying information relating to the debtor.

Section 316. Dismissal for failure to timely file schedules or provide required information

Section 316 amends section 521 of the Bankruptcy Code to provide that if an individual debtor in a voluntary chapter 7 or chapter 13 case fails to file all of the information required under section 521(a)(1) within 45 days of the date on which the case is filed, the case must be automatically dismissed, effective on the 46th day. The 45-day period may be extended for an additional 45-day period providing the debtor requests such extension prior to the expiration

of the original 45-day period and the court finds justification for such extension. Upon request of a party in interest, the court must enter an order of dismissal within 5 days of such request.

Section 317. Adequate time to prepare for hearing on confirmation of the plan

Section 317 amends section 1324 of the Bankruptcy Code to require the chapter 13 confirmation hearing to be held not earlier than 20 days following the first date set for the meeting of creditors and not later than 45 days from this date.

Section 318. Chapter 13 plans to have a 5-year duration in certain cases

Section 318(1) amends section 1322(d) to specify that a chapter 13 plan may not provide for payments over a period that is longer than 5 years if the current monthly income of the debtor and the debtor's spouse (when multiplied by 12) is not less than the applicable State median family income last reported by the Census Bureau for a family of equal or lesser size. For a household of one person, the income threshold is the applicable State median family income for one earner. Section 318(1) adjusts the income threshold for households with more than four individuals. If the income of the debtor and the debtor's spouse fall below this threshold, then the duration of the plan may not be longer than 3 years, unless the court, for cause, approves a longer period up to 5 years. Section 318(2), (3), and (4) make conforming amendments to section 1325(b) and 1329(c) of the Bankruptcy Code.

Section 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure

Section 319 expresses a sense of the Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure be modified to require that all signed and unsigned documents, including schedules, supplied to the court or the trustee by a debtor 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 well grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Section 320. Prompt relief from stay in individual cases

Section 320 amends section 362(e) of the Bankruptcy Code to terminate the automatic stay in a chapter 7, 11 or 13 case of an individual debtor within 60 days following a request for relief from the stay, unless the bankruptcy court renders a final decision prior to the expiration of the 60-day time period, such period is extended pursuant to agreement of all parties in interest, or a specific extension of time is required for good cause as described in findings made by the court.

Section 321. Chapter 11 cases filed by individuals

Section 321(a)(1) creates a new provision under chapter 11 of the Bankruptcy Code specifying that property of the estate of an individual debtor includes, in addition to that identified in section 541 of the Bankruptcy Code, all property of the kind described in section 541 that the debtor acquires after 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). In addition, it includes earnings from services performed by the debtor after commencement of the case, but before the case is closed, dismissed or converted to a case under chapter 7, 12 or 13. Except as provided in section 1104 of the Bankruptcy Code or the order confirming a chapter 11 plan, section 321(a) provides that the debtor remains in possession of all property of the estate.

Section 321(b) amends section 1123 to require the chapter 11 plan of an individual debtor to provide for the payment to creditors of all or such portion of the debtor's earnings from personal services performed after commencement of the case or other future income that is necessary for the plan's execution.

Section 321(c) amends section 1129(a) to include an additional requirement for confirmation in a chapter 11 case of an individual debtor upon objection to confirmation by a holder of an allowed unsecured claim. In such instance, the value of property to be distributed under the plan (1) on account of such claim, as of the plan's effective date, must not be less than the amount of such claim; or (2) is not less than the debtor's projected disposable income (as 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 plan's term, whichever is longer. Section 321(c) also amends section 1129(b)(2)(B)(ii) of the Bankruptcy Code to provide that an individual chapter 11 debtor may retain property included in the estate under section 1115 (as codified by the Act), subject to section 1129(a)(14).

Section 321(d)(1) amends section 1141(d) to provide that debts under section 523 of the Bankruptcy Code are nondischargeable in a chapter 11 case. Section 321(d)(2) provides that in the chapter 11 case of an individual debtor, the debtor is not discharged until all plan payments have been made. The court may grant a hardship discharge if the value of property actually distributed under the plan—as of the plan's effective date—is not less than the amount that would have been available for distribution if the case was liquidated under chapter 7 on such date, and modification of the plan is not practicable.

Section 321(e) amends section 1127 to permit a plan in a chapter 11 case of an individual debtor to be modified postconfirmation for the purpose of increasing or reducing the amount of payments, extending or reducing the time period for such payments, or altering the amount of distribution to a creditor whose claim is provided for by the plan. Such modification may be made at any time on request of the debtor, trustee, United States trustee, or holder of an allowed unsecured claim, if the plan has not been substantially consummated. The provision specifies that sections 1121 through 1129 apply to such modification. In addition, it provides that the modified plan shall become the confirmed plan only if: (a) there has been disclosure pursuant to section 1125 (as the court directs); (b) notice and a hearing; and (c) such modification is approved.

Section 322. Limitation

Section 322(a) amends section 522 of the Bankruptcy Code to impose an aggregate monetary limitation of $100,000, subject to sections 544 and 548, on the value of property that the debtor may

claim as exempt under State or local law pursuant to section 522(b)(3)(A) under certain circumstances. The monetary cap applies if the debtor acquired such property within the 2-year period preceding the filing of the petition and the property consists of any of the following: (a) real or personal property of the debtor or that a dependent of the debtor uses as a residence; (b) an interest in a cooperative that owns property, which the debtor or the debtor's dependent uses as a residence; or (c) a burial plot for the debtor or the debtor's dependent. This limitation does not apply to a principal residence claimed as exempt by a family farmer. In addition, the limitation does not apply to any interest transferred from a debtor's principal residence (which was acquired prior to the beginning of the 2-year period) to the debtor's current principal residence, if both the previous and current residences are located in the same State.

Section 322(b) makes the monetary limitation set forth in section 322(a) subject to automatic adjustment pursuant to section 104 of the Bankruptcy Code.

Section 323. Excluding employee benefit plan participant contributions and other property from the estate

Section 323(a) amends section 541(b) of the Bankruptcy Code to exclude as property of the estate funds withheld or received by an employer from its employees' wages for payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions do not constitute disposable income as defined in section 1325(b)(2) of the Bankruptcy Code. Section 323(a) also excludes as property of the estate funds withheld by an employer from the wages of its employees for payment as contributions to health insurance plans regulated by State law.

Section 323(b) specifies that the amendments made by this provision do not apply to bankruptcy cases commenced prior to the expiration of the 180-day period beginning on the Act's enactment date.

Section 324. Exclusive jurisdiction in matters involving bankruptcy professionals

Section 324 amends section 1334 of title 28 of the United State Code to give a district court exclusive jurisdiction of all claims or causes of action involving the construction of section 327 of the Bankruptcy Code and rules relating to disclosure requirements under such provision.

Section 325. United States Trustee Program filing fee increase

Section 325(a) amends section 1930(a) of title 28 of the United States Code to increase the filing fees for chapter 7 and chapter 13 cases respectively to $160 and $150. Subsections 325(b) and (c) amend section 589a of title 28 of the United States Code and section 406(b) of the Judiciary Appropriations Act of 1990 to increase the percentage of the fees collected under section 1930 of title 28 of the United States Code that are paid to the United States Trustee System Fund.

Section 326. Sharing of compensation

Section 326 amends section 504 of the Bankruptcy Code to create a limited exception to the prohibition against fee sharing. The pro-

vision allows the sharing of compensation with bona fide public service attorney referral programs that operate in accordance with non-federal law regulating attorney referral services and with professional responsibility rules applicable to attorney acceptance of referrals.

Section 327. Fair valuation of collateral

Section 327 amends section 506(a) to provide that the value of an allowed claim secured by personal property that is an asset in an individual debtor's chapter 7 or chapter 13 case is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time its value is determined.

Section 328. Defaults based on nonmonetary obligations

Section 328(a)(1) amends section 365(b) to provide that a trustee does not have to cure a default that is a breach of a provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform a nonmonetary obligation under an unexpired lease of real property, if it is impossible for the trustee to cure the default by performing such nonmonetary act at and after the time of assumption. If the default arises from a failure to operate in accordance with a nonresidential real property lease, the default must be cured by performance at and after the time of assumption in accordance with the lease. Pecuniary losses resulting from such default must be compensated pursuant to section 365(b)(1). In addition, section 328(a)(1) amends section 365(b)(2)(D) to clarify that it applies to penalty provisions.

Section 328(a)(2) through (4) make technical revisions to section 365(c), (d) and (f) by deleting language that is no longer effective pursuant to the Rail Safety Enforcement and Review Act.[3]

Section 328(b) amends section 1124(2)(A) of the Bankruptcy Code to clarify that a claim is not impaired if section 365(b)(2) (as amended by this Act) expressly does not require a default with respect to such claim to be cured. In addition, it provides that any claim or interest that arises from the failure to perform a nonmonetary obligation (other than a default arising from the failure to operate a nonresidential real property lease subject to section 365(b)(1)(A)), is impaired unless the holder of such claim or interest (other than the debtor or an insider) is compensated for any actual pecuniary loss incurred by the holder as a result of such failure.

TITLE IV. GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

SUBTITLE A. GENERAL BUSINESS BANKRUPTCY PROVISIONS

Section 401. Adequate protection for investors

Section 401(a) amends section 101 of the Bankruptcy Code to define "securities self regulatory organization" as a securities association or national securities exchange registered with the Securities and Exchange Commission.

[3] Pub. L. No. 102–365.

Section 401(b) amends section 362 of the Bankruptcy Code to except from the automatic stay certain enforcement actions by a securities self regulatory organization.

Section 402. Meetings of creditors and equity security holders

Section 402 amends section 341 of the Bankruptcy Code to permit a court, on request of a party in interest and after notice and a hearing, to order the United States trustee to not convene a meeting of creditors or equity security holders if a chapter 11 debtor has filed a plan for which the debtor solicited acceptances prior to the commencement of the case.

Section 403. Protection of refinance of security interest

Section 403 amends section 547(e)(2) of the Bankruptcy Code to increase the perfection period from 10 to 30 days for the purpose of determining whether such transfer is an avoidable preferential transfer.

Section 404. Executory contracts and unexpired leases

Section 404(a) amends section 365(d)(4) of the Bankruptcy Code to establish more finite deadlines by which an unexpired lease of nonresidential real property must be assumed or rejected. It provides that such lease shall be deemed rejected if the trustee fails to assume it by the earlier of 120 days after the date of the order for relief or the date on which an order of confirmation is entered. The court may extend this time period for an additional 90 days on motion of the trustee or lessor for cause. If such extension is granted, the court may permit a subsequent extension only upon the lessor's written consent.

Section 404(b) amends section 365(f)(1) to make a trustee's authority to assign an executory contract or unexpired lease subject to section 365(b), amended by the Act.

Section 405. Creditors and equity security holders committees

Section 405(a) amends section 1102(a)(2) to permit, after notice and a hearing, a bankruptcy court, on its own motion or on motion of a party in interest, to order a change in a committee's membership to ensure adequate representation of parties in a case. In addition, it specifies that the court may direct the United States trustee to increase the membership of a committee for the purpose of including a small business concern if the court determines that such creditor's claim is of the kind represented by the committee and that, in the aggregate, is disproportionately large when compared to the creditor's annual gross revenue.

Section 405(b) requires the committee to allow creditors having claims of the kind represented by the committee access to information. In addition, the committee must solicit and receive comments from these creditors and, pursuant to court order, make additional reports or disclosures available to them.

Section 406. Amendment to section 546 of title 11, United States Code

Section 406(1) corrects an erroneous subsection designation in section 546 of the Bankruptcy Code. Section 406(2) amends section 546 to provide that a trustee may not avoid a warehouse lien for

storage, transportation, or other costs incidental to the storage and handling of goods. In addition, it specifies that this prohibition must be applied in a manner consistent with any applicable State statute that is similar to section 7–209 of the Uniform Commercial Code.

Section 407. Amendments to section 330(a) of title 11, United States Code

Section 407 amends section 330(a)(3) of the Bankruptcy Code to clarify that this provision applies to examiners, chapter 11 trustees, and professional persons. This section also amends section 330(a) to add a provision that requires a court, in determining the amount of reasonable compensation to award to a trustee, to treat such compensation as a commission pursuant to section 326 of the Bankruptcy Code.

Section 408. Postpetition disclosure and solicitation

Section 408 amends section 1125 of the Bankruptcy Code to permit an acceptance or rejection of a chapter 11 plan to be solicited from the holder of a claim or interest if the holder was solicited before the commencement of the case in a manner that complied with applicable nonbankruptcy law.

Section 409. Preferences

Section 409(1) amends section 547(c)(2) of the Bankruptcy Code to provide that a trustee may not avoid a transfer to the extent the transfer was in payment of a debt incurred by the debtor in the ordinary course of the business or financial affairs of the debtor and the transferee and such transfer was either made (1) in the ordinary course of the debtor's financial affairs or business, or (2) in accordance with ordinary business terms. Present law requires the recipient of a preferential transfer to establish both of these grounds in order to sustain a defense to a preferential transfer proceeding. In a case that does not have primarily consumer debts, section 409 provides that a transfer may not be avoided if the aggregate amount of all property constituting or affected by the transfer is less than $5,000.

Section 410. Venue of certain proceedings

Section 410 amends section 1409(b) of title 28 of the United States Code to provide that a preferential transfer action in the amount of $10,000 or less must be filed in the district where the defendant resides. This amount is presently fixed at $1,000.

Section 411. Period for filing plan under chapter 11

Section 411 amends section 1121(d) of the Bankruptcy Code to mandate that a chapter 11 debtor's exclusive period for filing a plan may not be extended beyond a date that is 18 months after the order for relief. In addition, it provides that the debtor's exclusive period for obtaining acceptances of the plan may not be extended beyond 20 months after the order for relief.

Section 412. Fees arising from certain ownership interests

Section 412 amends section 523(a)(16) of the Bankruptcy Code to broaden the protections accorded to community associations with

respect to fees or assessments arising from the debtor's interest in a condominium, cooperative or homeowners' association. Irrespective of whether or not the debtor physically occupies such property, any fees or assessments that accrue during the period the debtor or the trustee has a legal, equitable, or possessory ownership interest in such property are nondischargeable.

Section 413. Creditor representation at first meeting of creditors

Section 413 amends section 341(c) of the Bankruptcy Code to permit a creditor holding a consumer debt or any representative of such creditor to appear and participate at the meeting of creditors in chapter 7 and chapter 13 cases either alone or in conjunction with an attorney. In addition, the provision clarifies that it cannot be construed to require a creditor to be represented by counsel at any meeting of creditors.

Section 414. Definition of disinterested person

Section 414 amends section 101(14) of the Bankruptcy Code to eliminate the requirement that an investment banker be a disinterested person.

Section 415. Factors for compensation of professional persons

Section 415 amends section 330(a)(3) of the Bankruptcy Code to permit the court to consider, in awarding compensation, whether the person is board certified or otherwise has demonstrated skill and experience in the practice of bankruptcy law.

Section 416. Appointment of elected trustee

Section 416 refines existing law by clarifying the procedure for the election of a private trustee in a chapter 11 case. Section 1104(b) of the Bankruptcy Code permits creditors to elect an eligible, disinterested person to serve as the trustee in the case, provided certain conditions are met. Section 416 adds a provision to section 1104(b) requiring the United States trustee to file a report certifying the election of a chapter 11 trustee. Upon the filing of the report, the elected trustee is deemed to be selected and appointed for purposes of section 1104 and the service of any prior trustee appointed in the case is terminated. Section 416 also clarifies that the court shall resolve any dispute arising out of a chapter 11 trustee election.

Section 417. Utility service

Section 417 amends section 366 of the Bankruptcy Code to provide that assurance of payment, for purposes of this provision, includes a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other form of security that is mutually agreed upon by the debtor or trustee and the utility. It also specifies that an administrative expense priority does not constitute an assurance of payment.

With respect to chapter 11 cases, section 417 permits a utility to refuse or discontinue service if it does not receive adequate assurance of payment within 30 days of the filing of the petition that is satisfactory to the utility. The court, upon request of a party in interest, may modify the amount of this payment after notice and a hearing. In determining the adequacy of such payment, section

417 prevents a court from taking into consideration (1) the absence of security before the case was filed; (2) the debtor's timely payment of utility service charges before the case was filed; or (3) the availability of an administrative expense priority. Notwithstanding any other provision of law, section 417 permits a utility to recover or set off against a security deposit provided prepetition by the debtor to the utility without notice or court order.

Section 418. Bankruptcy fees

Section 418 amends section 1930 of title 28 of the United States Code to permit a district court or a bankruptcy court, pursuant to procedures prescribed by the Judicial Conference of the United States, to waive the chapter 7 filing fee for an individual and certain other fees under subsections (b) and (c) of section 1930 if such individual's income is less than 150 percent of the official poverty level (as defined by the Office of Management and Budget) and the individual is unable to pay such fee in installments. Section 418 also clarifies that section 1930, as amended, does not prevent a district or bankruptcy court from waiving other fees for creditors and debtors, if in accordance with Judicial Conference policy.

Section 419. More complete information regarding assets of the estate

Section 419 requires the Advisory Committee on Bankruptcy Rules, after consideration of the views of the Director of the Executive Office for United States Trustees, to propose official rules and forms directing chapter 11 debtors to disclose information concerning the value, operations, and profitability of any closely held corporation, partnership, or other entity in which the debtor holds a substantial or controlling interest. This provision is intended to ensure that the debtor's interest in any of these entities is used for the payment of allowed claims against the debtor.

SUBTITLE B. SMALL BUSINESS BANKRUPTCY PROVISIONS

Section 431. Flexible rules for disclosure statement and plan

Section 431 is intended to streamline the disclosure statement process and to provide for more flexibility. Section 431(1) amends section 1125(a)(1) of the Bankruptcy Code to require a bankruptcy court, in determining whether a disclosure statement supplies adequate information, to consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing such additional information.

With regard to a small business case, section 431(2) amends section 1125(f) to provide that if the plan itself supplies adequate information, a separate disclosure statement may not be required. In addition, it provides that the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28 of the United States Code. Further, section 431(2) provides that the court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing, and allow the debtor to solicit acceptances of the plan based on such disclosure statement. The hearing on the disclosure statement may be combined with the confirmation hearing.

Section 432. Definitions

Section 432 amends section 101 of the Bankruptcy Code to define a "small business case" as a chapter 11 case in which the debtor is a small business debtor. This provision, in turn, defines a "small business debtor" as a person (including affiliates that are also debtors, but excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) having noncontingent, liquidated secured and unsecured debts of less than $3 million in the aggregate (excluding debts owed to affiliates or insiders of the debtor) as of the commencement of the case. This definition applies only in a case where the United States trustee has not appointed a creditors' committee 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. The definition does not apply to any member of a group of affiliated debtors that has aggregate noncontingent, liquidated secured and unsecured debts in excess of $3 million (excluding debts owed to one or more affiliates or insiders).

Section 433. Standard form disclosure statement and plan

Section 433 requires the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States to propose for adoption standard form disclosure statements and plans for small business debtors. The provision directs that the forms be designed to achieve a practical balance between the needs of the court, case administrators, and other parties in interest to have reasonably complete information as well as the small business debtor's needs for economy and simplicity.

Section 434. Uniform national reporting requirements

Section 434(a) adds a new provision to the Bankruptcy Code imposing additional reporting requirements for small business debtors. It requires a small business debtor to file periodic financial reports and other documents containing the following information with respect to the debtor's business operations: (a) profitability; (b) reasonable approximations of projected cash receipts and disbursements; (c) comparisons of actual cash receipts and disbursements with projections in prior reports; (d) whether the debtor is complying with postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure; and (5) whether the debtor is timely filing tax returns, paying taxes and other administrative expenses when due, and making other required government filings. In addition, the debtor must report on such other matters that are in the best interests of the debtor and the creditors and in the public interest.

If the debtor is not in compliance with any postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, or is not filing tax returns, paying taxes and other administrative expenses when due, or making other required government filings, the debtor must report: (a) what the failures are; (b) how they will be cured; (c) the cost of their cure; and (d) when they will be cured.

Section 434(b) specifies that the effective date of this provision is 60 days after the date on which the rules required under this provision are promulgated.

Section 435. Uniform reporting rules and forms for small business cases

Section 435(a) mandates that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States propose official rules and forms with respect to the periodic financial reports and other information that a small business debtor must file concerning its profitability, cash receipts and disbursements, filing of its tax returns, and payment of its taxes and other administrative expenses.

Section 435(b) requires the rules and forms to achieve a practical balance between the need for reasonably complete information by the bankruptcy court, United States trustee, creditors and other parties in interest; and the small business debtor's interest in having such forms be easy and inexpensive to complete. The forms should also be designed to help the small business debtor to understand its financial condition and plan its future.

Section 436. Duties in small business cases

Section 436 adds a provision to chapter 11 intended to implement greater administrative controls over such cases. The provision requires a chapter 11 trustee or debtor to:

(1) file with a voluntary petition (or in an involuntary case, within 7 days from the date of the order for relief) the debtor's most recent financial statements (including a balance sheet, statement of operations, cash flow statement, and Federal income tax return) or a statement explaining why such information is not available;
(2) attend, through its senior management personnel and counsel, meetings scheduled by the bankruptcy court or the United States trustee (including the initial debtor interview and meeting of creditors pursuant to section 341 of the Bankruptcy Code), unless the court waives this requirement after notice and a hearing upon a finding of extraordinary and compelling circumstances;
(3) timely file all requisite schedules and the statement of financial affairs, unless the court, after notice and a hearing, grants an extension of up to 30 days from the order of 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) maintain insurance that is customary and appropriate for the industry, subject to section 363(c)(2);
(6) timely file tax returns and make other required government filings;
(7) timely pay all administrative expense taxes (except for certain contested claims), subject to section 363(c)(2); and
(8) permit the United States trustee to inspect the debtor's business premises, books, and records at reasonable hours after appropriate prior written notice, unless notice is waived by the debtor.

Section 437. Plan filing and confirmation deadlines

Section 437 amends section 1121(e) of the Bankruptcy Code with respect to the period of time within which a small business debtor must file and confirm a plan of reorganization. It provides that a small business debtor's exclusive period to file a plan is 180 days from the date of the order for relief, unless the period is extended after notice and a hearing, or the court, for cause, orders otherwise. It further provides that a small business debtor must file a plan and any disclosure statement not later than 300 days after the order for relief. These time periods may be extended only if (a) the debtor, after providing notice to parties in interest, 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 granting such extension is signed before the expiration of the existing deadline.

Section 438. Plan confirmation deadline

Section 438 amends section 1129 of the Bankruptcy Code to require that a plan in a small business case be confirmed not later than 175 days from the date of the order for relief, unless this period is extended pursuant to section 1121(e)(3) (as added by section 437 of the Act).

Section 439. Duties of the United States trustee

Section 439 amends section 586(a) of title 28 of the United States Code to require the United States trustee to perform the following additional duties with respect to small business debtors:

(1) conduct an initial debtor interview before the meeting of creditors for the purpose of (a) investigating the debtor's viability, (b) inquiring about the debtor's business plan, (c) explaining the debtor's obligation to file monthly operating reports, (d) attempting to obtain an agreed scheduling order setting various time frames (such as the date for filing a plan and effecting confirmation), and (e) informing the debtor of other obligations;
(2) if determined to be appropriate and advisable, inspect the debtor's business premises for the purpose of reviewing the debtor's books and records and verifying that the debtor has filed its tax returns;
(3) review and monitor diligently the debtor's activities to determine as promptly as possible whether the debtor will be unable to confirm a plan; and
(4) promptly apply to the court for relief in any case in which the United States trustee finds material grounds for dismissal or conversion of the case.

Section 440. Scheduling conferences

Section 440 amends section 105(d) to mandate that a bankruptcy court hold status conferences as necessary to further the expeditious and economical resolution of a bankruptcy case.

Section 441. Serial filer provisions

Section 441(1) amends section 362 of the Bankruptcy Code to provide that a court may award only actual damages for a violation of the automatic stay committed by an entity in the good faith belief that subsection (h) of section 362 (as added by this Act) applies to the debtor.

Section 441(2) adds a new subsection to section 362 of the Bankruptcy Code specifying that the automatic stay does not apply where the chapter 11 debtor:

(1) is a debtor in a small business case pending at the time the petition is filed;
(2) was a debtor in a small business case dismissed for any reason pursuant to an order that became final in the 2-year period ending on the date of the order for relief entered in the pending case;
(3) was a debtor in small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered in the pending case; or
(4) is an entity that has succeeded to substantially all of the assets or business of a small business debtor as described above.

An exception to this provision applies to a chapter 11 case that is commenced involuntarily and involves no collusion between the debtor and the petitioning creditors. Also, it does not apply if the debtor proves by a preponderance of the evidence that (a) the filing of the subsequent case resulted from circumstances beyond the debtor's control and which were not foreseeable at the time the prior case was filed; and (b) it is more likely than not that the court will confirm a feasible plan of reorganization (but not a liquidating plan) within a reasonable time.

Section 442. Expanded grounds for dismissal or conversion and appointment of trustee

Section 442(a) amends section 1112(b) of the Bankruptcy Code to mandate that the court convert or dismiss a chapter 11 case or appoint a trustee (whichever is in the best interests of creditors and the estate) if the movant establishes cause. An exception applies if: (a) the debtor or a party in interest objects and establishes by a preponderance of the evidence that a plan having a reasonable possibility of being confirmed will be filed within a reasonable period of time; and (b) the grounds include an act or omission for which there exists a reasonable justification for such act or omission and that will be cured within a reasonable period of time. The court must commence the hearing on a section 1112(b) motion within 30 days of its filing and decide the motion not later than 15 days after commencement of the hearing unless the movant expressly consents to a continuance for a specified period of time or compelling circumstances prevent the court from meeting these time limits.

The term "cause" under section 1112(b), as amended by this provision, includes the following:

(1) substantial or continuing loss to or diminution of the estate;
(2) gross mismanagement of the estate;

(3) failure to maintain appropriate insurance that poses a material risk to the estate or the public;
(4) unauthorized use of cash collateral that is harmful to one or more creditors;
(5) failure to comply with a court order;
(6) repeated failure to timely satisfy any filing or reporting requirement under the Bankruptcy Code or applicable rule;
(7) failure to attend the section 341 meeting of creditors or an examination pursuant to rule 2004 of the Federal Rules of Bankruptcy Procedure;
(8) failure to timely provide information or to attend meetings reasonably requested by the United States trustee or bankruptcy administrator;
(9) failure to timely pay postpetition taxes or file tax returns due postpetition;
(10) failure to file a disclosure statement or to confirm a plan within the time fixed by the Bankruptcy Code or pursuant to court order;
(11) failure to pay any requisite fees or charges under chapter 123 of title 28 of the United States Code;
(12) revocation of a confirmation order;
(13) inability to effectuate substantial consummation of a confirmed plan;
(14) material default by the debtor with respect to a confirmed plan;
(15) termination of a plan by reason of the occurrence of a condition specified in the plan; and
(16) the debtor's failure to pay any domestic support obligation that first becomes payable postpetition.

Section 442(a) requires the court to commence the hearing under section 1112(b) within 30 days of the filing of the motion and specifies that the court must decide the motion within 15 days after commencement of the hearing, unless the movant consents to a longer period or compelling circumstances prevent the court from meeting the specified time limits.

Section 442(b) creates additional grounds for the appointment of a chapter 11 trustee under section 1104(a). It provides that should the bankruptcy court determine cause exists to convert or dismiss a chapter 11 case, it may appoint a trustee or examiner if in the best interests of creditors and the bankruptcy estate.

Section 443. Study of operation of title 11, United States Code, with respect to small businesses

Section 443 directs the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, to conduct a study to determine:

(1) the internal and external factors that cause small businesses (particularly sole proprietorships) to seek bankruptcy relief and the factors that cause small businesses to successfully complete their chapter 11 cases; and
(2) how the bankruptcy laws may be made more effective and efficient in assisting small business to remain viable.

Section 444. Payment of interest

Section 444(1) amends section 362(d)(3) of the Bankruptcy Code to require a court to grant relief from the automatic stay within 30 days after it determines that a single asset real estate debtor is subject to this provision. Section 444(2) amends section 362(d)(3)(B) to specify that relief from the automatic stay shall be granted unless the single asset real estate debtor has commenced making monthly payments to each creditor secured by the debtor's real property (other than a claim secured by a judgment lien or unmatured statutory lien) in an amount equal to the interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate. It allows a debtor in its sole discretion to make the requisite interest payments out of rents or other proceeds generated by the real property.

Section 445. Priority of administrative expenses

Section 445 amends section 503(b) of the Bankruptcy Code to add a new administrative expense priority for a nonresidential real property lease that is assumed under section 365 and then subsequently rejected. The amount of the priority is the sum of all monetary obligations due under the lease (excluding penalties and obligations arising from or relating to a failure to operate) for the 2-year period following the rejection date or actual 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 sums due for the balance of the term of the lease is treated as a claim under section 502(b)(6) of the Bankruptcy Code.

TITLE V. MUNICIPAL BANKRUPTCY PROVISIONS

Section 501. Petition and proceedings related to petition

Section 501 amends sections 921(d) and 301 of the Bankruptcy Code to clarify that the court must enter the order for relief in a chapter 9 case.

Section 502. Applicability of other sections to chapter 9

Section 502 amends section 901 of the Bankruptcy Code to make the following sections applicable to chapter 9 cases:

(1) section 555 (contractual right to liquidate, terminate or accelerate a securities contract);
(2) section 556 (contractual right to liquidate, terminate or accelerate a commodities or forward contract);
(3) section 559 (contractual right to liquidate, terminate or accelerate a repurchase agreement);
(4) section 560 (contractual right to liquidate, terminate or accelerate a swap agreement);
(5) section 561 (contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts); and
(6) section 562 (damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreement).

TITLE VI. BANKRUPTCY DATA

Section 601. Improved bankruptcy statistics

Section 601 amends chapter 6 of title 28 of the United States Code to require the clerk for each district to collect certain statistics for chapter 7, 11, and 13 cases in a standardized form prescribed by the Director of the Administrative Office of the United States Courts and to make this information available to the public. In addition, section 601 requires the Director to prepare an annual report and analysis for Congress concerning the information collected. The statistics must be itemized by chapter of the Bankruptcy Code and be presented in the aggregate for each district. The specific categories of information that must be gathered include the following:

(1) scheduled total assets and liabilities by category;
(2) the debtors' current monthly income, average income, and average expenses;
(3) the aggregate amount of debts discharged during the reporting period based on the difference between the total amount of scheduled debts and by categories that are predominantly nondischargeable;
(4) the average time between the filing of the bankruptcy case and the closing of the case;
(5) the number of cases in which reaffirmation agreements were filed, the total number of reaffirmation agreements filed, the number of cases in which the debtor was *pro se* and a reaffirmation agreement was filed, and the number of cases in which the reaffirmation agreement was approved by the court;
(6) for chapter 13 cases, information on the number of (a) orders determining the value of secured property in an amount less than the amount of the secured claim, (b) final orders that determined the value of property securing a claim, (c) cases dismissed, (d) cases dismissed for failure to make payments under the plan, (e) cases refiled after dismissal, (f) cases in which the plan was completed (separately itemized with respect to the number of modifications made before completion of the plan, and (g) cases in which the debtor had previously sought bankruptcy relief within the 6 years preceding the filing of the present case;
(7) the number of cases in which creditors were fined for misconduct and the amount of any punitive damages awarded for creditor misconduct; and
(8) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against a debtor's counsel and the damages awarded under this rule.

Section 601 provides that the amendments in this provision take effect 18 months after the date of enactment of this Act.

Section 602. Uniform rules for the collection of bankruptcy data

Section 602 amends chapter 39 of title 28 of the United States Code to add a provision requiring the Attorney General to promulgate rules mandating the establishment of uniform forms for final reports in chapter 7, 12 and 13 cases and periodic reports in chap-

ter 11 cases. It also specifies that these reports be designed to facilitate compilation of data and to provide maximum public access by physical inspection at one or more central filing locations and by electronic access through the Internet or other appropriate media. The information should enable an evaluation of the efficiency and practicality of the Federal bankruptcy system. In issuing rules, the Attorney General must consider: (a) the reasonable needs of the public for information about the Federal bankruptcy system; (b) the economy, simplicity, and lack of undue burden on persons obligated to file the reports; and (c) appropriate privacy concerns and safeguards. Section 602 provides that final reports by trustees in chapter 7, 12, and 13 cases include the following information:

(1) the length of time the case was pending;
(2) assets abandoned;
(3) assets exempted;
(4) receipts and disbursements of the estate;
(5) administrative expenses, including those associated with section 707(b) of the Bankruptcy Code, and the actual costs of administering chapter 13 cases;
(6) claims asserted;
(7) claims allowed; and
(8) distributions to claimants and claims discharged without payment.

With regard to chapter 11 cases, section 602 provides that periodic reports include the following information regarding:

(1) the standard industry classification for businesses conducted by the debtor, as published by the Department of Commerce;
(2) the length of time that the case was pending;
(3) the number of full-time employees as of the date of the order for relief and at the end of each reporting period;
(4) cash receipts, cash disbursements, and profitability of the debtor for the most recent period and cumulatively from the date of the order for relief;
(5) the debtor's compliance with the Bankruptcy Code, including whether tax returns have been filed and taxes have been paid;
(6) professional fees approved by the court for the most recent period and cumulatively from the date of the order for relief; and
(7) plans filed and confirmed, including the aggregate recoveries of holders by class and as a percentage of total claims of an allowed class.

Section 603. Audit procedures

Section 603(a)(1) requires the Attorney General (for judicial districts served by United States trustees) and the Judicial Conference of the United States (for judicial districts served by bankruptcy administrators) to establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules and other information filed by debtors pursuant to sections 111, 521 and 1322 of the Bankruptcy Code. Section 603(a)(1) requires the audits to be conducted in accordance with generally accepted auditing stand-

ards and performed by independent certified public accountants or independent licensed public accountants. It permits the Attorney General and the Judicial Conference to develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

Section 603(a)(2) requires these procedures to:

(1) establish a method of selecting appropriate qualified contractors to perform these audits;
(2) establish a method of randomly selecting cases for audit, and that a minimum of at least one case out of every 250 cases be selected for audit;
(3) require audits in cases where the schedules of income and expenses reflect greater than average variances from the statistical norm for the district if they occur by reason of higher income or higher expenses than the statistical norm in which the schedules were filed; and
(4) require the aggregate results of such audits, including the percentage of cases by district in which a material misstatement of income or expenditures is reported, to be made available to the public on an annual basis.

Section 603(b) amends section 586 of title 28 of the United States Code to require the United States trustee to submit reports as directed by the Attorney General, including the results of audits performed under section 603(a). In addition, it authorizes the United States trustee to contract with auditors to perform the audits specified in this provision. Further, it requires the report of each audit to be filed with the court and transmitted to the United States trustee. The report must specify material misstatements of income, expenditures or assets. In a case where a material misstatement has been reported, the clerk must provide notice of such misstatement to creditors and the United States trustee must report it to the United States Attorney, if appropriate, for possible criminal prosecution. If advisable, the United States trustee must also take appropriate action, such as revoking the debtor's discharge.

Section 603(c) amends section 521 of the Bankruptcy Code to make it a duty of the debtor to cooperate with an auditor.

Section 603(d) amends section 727 of the Bankruptcy Code to add, as a ground for revocation of a chapter 7 discharge the debtor's failure to: (a) satisfactorily explain a material misstatement discovered as the result of an audit pursuant to this provision; or (b) make available for inspection all necessary documents or property belonging to the debtor that are requested in connection with such audit.

Section 603(e) provides that the amendments made by this provision take effect 18 months after the Act's enactment date.

Section 604. Sense of Congress regarding availability of bankruptcy data

Section 604 expresses a sense of Congress that it is a national policy of the United States that all data collected by bankruptcy clerks in electronic form (to the extent such data relates to public records pursuant to section 107 of the Bankruptcy Code) should be made available to the public in a useable electronic form in bulk,

subject to appropriate privacy concerns and safeguards as determined by the Judicial Conference of the United States. It also states that a uniform bankruptcy data system should be established that uses a single set of data definitions and forms to collect such data and that data for any particular bankruptcy case should be aggregated in electronic format.

TITLE VII—BANKRUPTCY TAX PROVISIONS

Section 701. Treatment of certain tax liens

Section 701(a) makes several amendments to section 724 of the Bankruptcy Code to provide greater protection for holders of *ad valorem* tax liens on real or personal property of the estate. Many school boards obtain liens on real property to ensure collection of unpaid *ad valorem* taxes. Under current law, local governments are sometimes unable to collect these taxes despite the presence of a lien because they may be subordinated to certain claims and expenses as a result of section 724. Section 701(a) is intended to protect the holders of these tax liens from, among other things, erosion of their claims' status by expenses incurred under chapter 11 of the Bankruptcy Code. Pursuant to section 701(a), subordination of *ad valorem* tax liens is still possible under section 724(b), but limited to the payment of: (a) claims incurred under chapter 7 for wages, salaries, or commissions (but not expenses incurred under chapter 11); (b) claims for wages, salaries, and commissions entitled to priority under section 507(a)(4); and (c)claims for contributions to employee benefit plans entitled to priority under section 507(a)(5). Before a tax lien on real or personal property may be subordinated pursuant to section 724, the chapter 7 trustee must exhaust all other unencumbered estate assets and, consistent with section 506, recover reasonably necessary costs and expenses of preserving or disposing of such property.

Section 701(b) amends section 505(a)(2) of the Bankruptcy Code to prevent a bankruptcy court from determining the amount or legality of an *ad valorem* tax on real or personal property if the applicable period for contesting or redetermining the amount of the claim under nonbankruptcy law has expired.

Section 702. Treatment of fuel tax claims

Section 702 amends section 501 of the Bankruptcy Code to simplify the process for filing of claims by States for certain fuel taxes. Rather than requiring all States to file a claim for these taxes (as is the case under current law), section 702 permits the designated "base jurisdiction" under the International Fuel Tax Agreement to file a claim on behalf of all States, which would then be allowed as a single claim.

Section 703. Notice of request for a determination of taxes

Under current law, debtors may request that the governmental unit determine administrative tax liabilities in order to receive a discharge of those liabilities. There are no requirements as to the content or form of such notice to the government. Section 703 amends section 505(b) of the Bankruptcy Code to require bankruptcy court clerks to maintain a list of addresses designated by governmental units for service of section 505 requests. In addition,

the list may also include additional information concerning filing requires so specified by such governmental units. If a governmental entity does not designate an address and provide that address to the bankruptcy court clerk, any request made under section 505(b) of the Bankruptcy Code may be served at the address of the appropriate taxing authority of that governmental unit.

Section 704. Rate of interest on tax claims

Under current law, there is no uniform rate of interest applicable to tax claims. As a result, the bankruptcy courts have used varying standards to determine the applicable rate. Section 704 amends the Bankruptcy Code to add section 511 for the purpose of simplifying the interest rate calculation. It provides that for all tax claims (federal, State, and local), including administrative expense taxes, the interest rate shall be determined in accordance with applicable nonbankruptcy law. With respect to taxes paid under a confirmed plan, the rate of interest is determined as of the calendar month in which the plan is confirmed.

Section 705. Priority of tax claims

Under current law, a tax claim is entitled to be treated as a priority claim if it arises within certain specified time periods. In the case of income taxes, a priority arises, among other time periods, if the tax return was due within 3 years of the filing of the bankruptcy petition or if the assessment of the tax was made within 240 days of the filing of the petition. The 240-day period is tolled during the time that an offer in compromise is pending (plus 30 days). Though the statute is silent, most courts have also held that the 3-year and 240-day time periods are tolled during the pendency of a previous bankruptcy case. Section 705 amends section 507(a)(8) of the Bankruptcy Code to codify the rule tolling priority periods during the pendency of a previous bankruptcy case during that 240-day period together with an additional 90 days. It also includes tolling provisions to adjust for the collection due process rights provided by the Internal Revenue Service Restructuring and Reform Act of 1998. During any period in which the government is prohibited from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken against the debtor, the priority is tolled, plus 90 days. Also, during any time in which there was a stay of proceedings in a prior bankruptcy case or collection of an income tax was precluded by a confirmed bankruptcy plan, the priority is tolled, plus 90 days.

Section 706. Priority property taxes incurred

Under current law, many provisions of the Bankruptcy Code are keyed to the word "assessed." While this term has an accepted meaning in the Federal system, it is not used in many State and local statutes and has created some confusion. To eliminate this problem with respect to real property taxes, section 706 amends section 507(a)(8)(B) of the Bankruptcy Code by replacing the word "assessed" with "incurred".

Section 707. No discharge of fraudulent taxes in chapter 13

Under current law, a debtor's ability to discharge tax debts varies depending on whether the debtor is in chapter 7 or chapter 13.

Under chapter 7, taxes from a return due within 3 years of the petition date, taxes assessed within 240 days, or taxes related to an unfiled return or false return are not dischargeable. Chapter 13, on the other hand, allows these obligations to be discharged. Section 707 amends section 1328(a)(2) to prohibit the discharge of tax claims described in section 523(a)(1)(B) and (C) as well as claims for a tax required to be collected or withheld and for which the debtor is liable in whatever capacity pursuant to section 507(a)(8)(C).

Section 708. No discharge of fraudulent taxes in chapter 11

Under current law, the confirmation of a chapter 11 plan discharges the debtor from most debts. Section 708 amends section 1141(d) of the Bankruptcy Code to except from discharge in a corporate chapter 11 case a debt described in section 523(a)(2) of the Bankruptcy Code (e.g., debts for money, property or services obtain by false pretenses, false representation or actual fraud, other than a statement respecting the debtor's or an insider's financial condition). In addition, a tax or customs duty with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or defeat such tax is rendered nondischargeable in a chapter 11 case of a corporate debtor.

Section 709. Stay of tax proceedings limited to prepetition taxes

Under current law, the filing of a petition for relief under the Bankruptcy Code activates an automatic stay that enjoins the commencement or continuation of a case in the Federal tax court. This rule was arguably extended in *Halpern* v. *Commissioner*, 96 T.C. 895 (1991), which held that the tax court did not have jurisdiction to hear a case involving a postpetition year. To address this issue, section 709 amends section 362(a)(8) of the Bankruptcy Code to specify that the automatic stay is limited to an individual debtor's prepetition taxes (taxes incurred before entering bankruptcy). The amendment clarifies that the automatic stay does not apply to an individual debtor's postpetition taxes. In addition, section 709 allows the bankruptcy court to determine whether the automatic stay applies to the postpetition tax liabilities of a corporate debtor.

Section 710. Periodic payment of taxes in chapter 11 cases

Section 710 amends section 1129(a)(9) of the Bankruptcy Code to provide that the allowed amount of priority tax claims (as of the plan's effective date) must be paid in regular cash installments within 5 years from the entry of the order for relief. The manner of payment may not be less favorable than that accorded the most favored nonpriority unsecured class of claims under section 1122(b).

Section 711. Avoidance of statutory liens prohibited

The Internal Revenue Code gives special protections to certain purchasers of securities and motor vehicles notwithstanding the existence of a filed tax lien. Section 711 amends section 545(2) of the Bankruptcy Code to prevent trustees from using these special protections to avoid an otherwise valid lien. Specifically, it prevents the avoidance of unperfected liens against a bona fide purchaser,

if the purchaser qualifies as such under section 6323 of the Internal Revenue Code or a similar provision under State or local law.

Section 712. Payment of taxes in the conduct of business

Although current law generally requires trustees and receivers to pay taxes in the ordinary course of the debtor's business, the payment of administrative expenses must first be authorized by the court. Section 712(a) amends section 960 of title 28 of the United States Code to clarify that postpetition taxes in the ordinary course of business must be paid on or before when such tax is due under applicable nonbankruptcy law, with certain exceptions. This requirement does not apply if the obligation is a property tax secured by a lien against property that is abandoned under section 554 within a reasonable time after the lien attaches. In addition, the requirement does not pertain where the payment is excused under the Bankruptcy Code. With respect to chapter 7 cases, section 712(a) provides that the payment of a tax may be deferred until final distribution pursuant to section 726 if the tax was not incurred by a chapter 7 trustee or the court, prior to the due date of the tax, finds that the estate has insufficient funds to pay all administrative expenses in full.

Section 712(b) amends section 503(b)(1)(B)(i) of the Bankruptcy Code to clarify that this provision applies to secured as well as unsecured tax claims, including property taxes based on liability that is *in rem, in personam* or both.

Section 712(c) amends section 503(b)(1) to exempt a governmental unit from the requirement to file a request for payment of an administrative expense.

Section 712(d)(1) amends section 506(b) to provide that to the extent that an allowed claim is oversecured, the holder is entitled to interest and any reasonable fees, costs, or charges provided for under State law. Section 712(d)(2), in turn, amends section 506(c) to permit a trustee to recover from a secured creditor the payment of all *ad valorem* property taxes.

Section 713. Tardily filed priority tax claims

Section 713 amends section 726(a)(1) of the Bankruptcy Code to require a tax claim to be filed either before the trustee commences distribution or 10 days following the mailing to creditors of the summary of the trustee's final report, whichever is earlier, in order for the claim to be entitled to distribution as an unsecured claim.

Section 714. Income tax returns prepared by tax authorities

Section 714 amends section 523(a) of the Bankruptcy Code to provide that a return filed on behalf of a taxpayer who has provided information sufficient to complete a return constitutes filing a return (and the debt can be discharged), but that a return filed on behalf of a taxpayer based on information the Secretary obtains through testimony or otherwise does not constitute filing a return (and the debt cannot be discharged).

Section 715. Discharge of the estate's liability for unpaid taxes

Under the Bankruptcy Code, a debtor may request a prompt audit to determine postpetition tax liabilities. If the government does not make a determination or request an extension of time to

audit, then the debtor's determination of taxes will be final. Several court cases have held that while this protects the debtor and the trustee, it does not necessarily protect the estate. Section 715 amends section 505(b) of the Bankruptcy Code to clarify that the estate is also protected if the government does not request an audit of the debtor's tax returns. Therefore, if the government does not make a determination of the debtor's postpetition tax liabilities or request extension of time to audit, then the estate's liability for unpaid taxes is discharged.

Section 716. Requirement to file tax returns to confirm chapter 13 plans

Under current law, a debtor may enjoy the benefits of chapter 13 even if delinquent in the filing of tax returns. In response to this problem, section 716(a) amends section 1325(a) of the Bankruptcy Code to require a chapter 13 debtor file all applicable Federal, State, and local tax returns as a condition of confirmation pursuant to section 1308, as added by section 716(b).

Section 716(b) adds a new provision to chapter 13 requiring a chapter 13 debtor to be current on the filing of tax returns for the 4-year period preceding the filing of the case. If the returns are not filed by the date on which the meeting of creditors is first scheduled, the trustee may hold open that meeting for a reasonable period of time to allow the debtor to file any unfiled returns. The additional period of time may not extend beyond 120 days after the date of the meeting of the creditors or beyond the date on which the return is due under the last automatic extension of time for filing. The debtor, however, may obtain an extension of time from the court if the debtor demonstrates by a preponderance of the evidence that the failure to file was attributable to circumstances beyond the debtor's control.

Section 716(c) amends section 1307 of the Bankruptcy Code to provide that if a chapter 13 debtor fails to file a tax return as required by section 1308, the court must dismiss the case or convert it to one under chapter 7 (whichever is in the best interests of creditors and the estate) on request of a party in interest or the United States trustee after notice and a hearing.

Section 716(d) amends section 502(b)(9) of the Bankruptcy Code to provide that in a chapter 13 case, a governmental unit's tax claim based on a return filed under section 1308 shall be deemed to be timely filed if the claim is filed within 60 days from the date on which such return is filed.

Section 716(e) states the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should propose for adoption official rules with respect an objection by a governmental unit to confirmation of a chapter 13 plan when such claim pertains to a tax return filed pursuant section 1308.

Section 717. Standards for tax disclosure

Before a chapter 11 plan may be submitted to creditors and stockholders for a vote, the plan proponent must file a disclosure statement that provides adequate information to holders of claims and interests so they can make a decision as to whether or not to vote in favor of the plan. As the tax consequences of a plan can

have a significant impact on the debtor's reorganization prospects, section 717 amends section 1125(a) of the Bankruptcy Code to require that a chapter 11 disclosure statement discuss the plan's potential material Federal tax consequences to the debtor and to a hypothetical investor that is representative of the claimants and interest holders in the case.

Section 718. Setoff of tax refunds

Under current law, the filing of a bankruptcy petition automatically stays the setoff of a prepetition tax refund against a prepetition tax obligation unless the bankruptcy court approves the setoff. Interest and penalties that may continue to accrue may also be nondischargeable pursuant to section 523(a)(1) of the Bankruptcy Code and cause individual debtors undue hardship. Section 718 amends section 362(b) of the Bankruptcy Code to create an exception to the automatic stay whereby such setoff could occur without court order unless it would not be permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax liability. In that circumstance, the governmental authority may hold the refund pending resolution of the action, unless the court, on motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection pursuant to section 361.

Section 719. Special provisions related to the treatment of State and local taxes

Section 719 conforms State and local income tax administrative issues to the Internal Revenue Code. For example, under Federal law, a bankruptcy petitioner filing on March 5 has two tax years—January 1 to March 4, and March 5 to December 31. Under the Bankruptcy Code, however, State and local tax years are divided differently—January 1 to March 5, and March 6 to December 31. Section 719 requires the States to follow the Federal convention.

It conforms State and local tax administration to the Internal Revenue Code in the following areas: division of tax liabilities and responsibilities between the estate and the debtor, tax consequences with respect to partnerships and transfers of property, and the taxable period of a debtor. Section 719 does not conform State and local tax rates to Federal tax rates.

Section 720. Dismissal for failure to timely file tax returns

Under existing law, there is no definitive rule with respect to whether a bankruptcy court may dismiss a bankruptcy case if the debtor fails to file returns for taxes incurred postpetition. Section 720 amends section 521 of the Bankruptcy Code to allow a taxing authority to request that the court dismiss or convert a bankruptcy case if the debtor fails to file a postpetition tax return or obtain an extension. If the debtor does not file the required return or obtain the extension within 90 days from the time of the request by the taxing authority to file the return, the court must convert or dismiss the case, whichever is in the best interest of creditors and the estate.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

Title VIII of H.R. 833 adds a new chapter to the Bankruptcy Code for transnational bankruptcy cases. This incorporates the Model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to transnational insolvency cases. Title VIII is intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of cross-border insolvencies, which protects the interests of creditors and other interested parties, including the debtor. In addition, it serves to protect and maximize the value of the debtor's assets.

Section 801. Amendment to add chapter 15 to title 11, United States Code

Section 801 introduces chapter 15 to the Bankruptcy Code, which is the Model Law on Cross-Border Insolvency ("Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") at its Thirtieth Session on May 12–30, 1997.[4] Cases brought under chapter 15 are intended to be ancillary to cases brought in a debtor's home country, unless a full United States bankruptcy case is brought under another chapter. Even if a full case is brought, the court may decide under section 305 to stay or dismiss the United States case under the other chapter and limit the United States' role to an ancillary case under this chapter.[5] If the full case is not dismissed, it will be subject to the provisions of this chapter governing cooperation, communication and coordination with the foreign courts and representatives. In any case, an order granting recognition is required as a prerequisite to the use of sections 301 and 303 by a foreign representative.

Section 1501. Purpose and scope of application

Section 1501 combines the Preamble to the Model Law (subsection (1)) with its article 1 (subsections (2) and (3))[6]. It largely follows the language of the Model Law and fills in blanks with appropriate United States references. However, it adds in subsection (3) an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions at UNCITRAL recognized that some such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.[7]

The reference to section 109(e) essentially defines "consumer debtors" for purposes of the exclusion by incorporating the debt limitations of that section, but not its requirement of regular income. The exclusion adds a requirement that the debtor or debtor couple be citizens or long-term legal residents of the United States.

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[4] The text of the Model Law and the Report of UNCITRAL on its adoption are found at U.N. G.A., 52d Sess., Supp. No. 17 (A/52/17) ("Report"). That Report and the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997) ("Guide"), which was discussed in the negotiations leading to the Model Law and published by UNCITRAL as an aid to enacting countries, should be consulted for guidance as to the meaning and purpose of its provisions. The development of the provisions in the negotiations at UNCITRAL, in which the United States was an active participant, is recounted in the interim reports of the Working Group that are cited in the Report.

[5] See section 1529 and commentary.

[6] Guide at 16–19.

[7] See *id.* at 18, ¶60; 19 ¶66.

This ensures that residents of other countries will not be able to manipulate this exclusion to avoid recognition of foreign proceedings in their home countries or elsewhere.

The first exclusion in subsection (c) constitutes, for the United States, the exclusion provided in article 1, subsection (2), of the Model Law.[8] Foreign representatives of foreign proceedings which are excluded from the scope of chapter 15 may seek comity from courts other than the bankruptcy court since the limitations of section 1509(b)(2) and (3) would not apply to them.

The reference to section 109(b) interpolates into chapter 15 the entities governed by specialized insolvency regimes under United States law which are currently excluded from liquidation proceedings under title 11. Section 1501 contains an exception to the section 109(b) exclusions so that foreign proceedings of foreign insurance companies are eligible for recognition and relief under chapter 15 as they had been under section 304. However, section 1501(d) has the effect of leaving to State regulation any deposit, escrow, trust fund or the like posted by a foreign insurer under State law.

Section 1502. Definitions

"Debtor" is given a special definition for this chapter. That definition does not come from the Model Law but is necessary to eliminate the need to refer repeatedly to "the same debtor as in the foreign proceeding." With certain exceptions, the term "person" used in the Model Law has been replaced with "entity," which is defined broadly in section 101(15) to include natural persons and various legal entities, thus matching the intended breadth of the term "person" in the Model Law. The exceptions include contexts in which a natural person is intended and those in which the Model Law language already refers to both persons and entities other than persons. The definition of "trustee" for this chapter ensures that debtors in possession and debtors, as well as trustees, are included in the term.[9]

The definition of "within the territorial jurisdiction of the United States" in subsection (7) is not taken from the Model Law. It has been added because the United States, like some other countries, asserts insolvency jurisdiction over property outside its territorial limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to refer only to property within the territory of the enacting State. In addition, a definition of "recognition" supplements the Model Law definitions and merely simplifies drafting of various other sections of chapter 15.

Two key definitions of "foreign proceeding" and "foreign representative," are found in sections 101(23) and (24), which have been amended consistent with Model Law article 2.[10] The definitions of "establishment," "foreign court," "foreign main proceeding," and "foreign non-main proceeding" have been taken from Model Law article 2, with only minor language variations necessary to comport with United States terminology. Additionally, defined

[8] *Id.* at 17.
[9] See section 1505.
[10] Guide at 19–21, ¶¶ 67–68.

terms have been placed in alphabetical order.[11] In order to be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.[12]

Section 1503. International obligations of the United States

This section is taken exactly from the Model Law with only minor adaptations of terminology.[13] Although this section makes an international obligation prevail over chapter 15, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the international obligation addresses a subject matter less directly related than the Model Law to a case before the court.

Section 1504. Commencement of ancillary case

Article 4 of the Model Law is designed for designation of the competent court which will exercise jurisdiction under the Model Law. In United States law, section 1334(a) of title 28 gives exclusive jurisdiction to the district courts in a "case" under this title.[14] Therefore, since the competent court has been determined in title 28, this section instead provides that a petition for recognition commences a "case," an approach that also invokes a number of other useful procedural provisions. In addition, a new subsection (P) to section 157 of title 28 makes cases under this chapter part of the core jurisdiction of bankruptcy courts when referred to them by the district courts, thus completing the designation of the competent court. Finally, the particular bankruptcy court that will rule on the petition is determined pursuant to a revised section 1410 of title 28 governing venue and transfer.[15]

The title "ancillary" in this section and in the title of this chapter emphasizes the United States policy in favor of a general rule that countries other than the home country of the debtor, where a main proceeding would be brought, should usually act through ancillary proceedings in aid of the main proceedings, in preference to a system of full bankruptcies (often called "secondary" proceedings) in each State where assets are found. Under the Model Law, notwithstanding the recognition of a foreign main proceeding, full bankruptcy cases are permitted in each country (see sections 1528 and 1529). In the United States, the court will have the power to suspend or dismiss such cases where appropriate under section 305.

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[11] See Guide at 19, (Model Law) 21 ¶75 (concerning establishment); 21 ¶74 (concerning foreign court); 21 ¶¶72, 73 and 75 (concerning foreign main and non-main proceedings).

[12] See *id.* at 21, ¶75.

[13] See *id.* at 22, Art. 3.

[14] See *id.* at 23, Art. 4.

[15] New section 1410 of title 28 provides as follows:

> 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 or enforcement of judgment 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.

Section 1505. Authorization to act in a foreign country

The language in this section varies from the wording of article 5 of the Model Law as necessary to comport with United States law and terminology. The slight alteration to the language in the last sentence is meant to emphasize that the identification of the trustee or other entity entitled to act is under United States law, while the scope of actions that may be taken by the trustee or other entity under foreign law is limited by the foreign law.[16]

The related amendment to section 586(a)(3) of title 28 makes acting pursuant to authorization under this section an additional power of a trustee or debtor in possession. While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That requirement is a change from the language of the Model Law, but one that is purely internal to United States law.[17] Its main purpose is to ensure that the court has knowledge and control of possibly expensive activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority and supervision. This requirement means that the first-day orders in reorganization cases should include authorization to act under this section where appropriate.

This section also contemplates the designation of an examiner or other natural person to act for the estate in one or more foreign countries where appropriate. One instance might be a case in which the designated person had a special expertise relevant to that assignment. Another might be where the foreign court would be more comfortable with a designated person than with an entity like a debtor in possession. Either are to be recognized under the Model Law.[18]

Section 1506. Public policy exception

This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word "manifestly" in international usage restricts the public policy exception to the most fundamental policies of the United States.[19]

Section 1507. Additional assistance

Subsection (1) follows the language of Model Law article 7.[20] Subsection (2) makes the authority for *additional* relief (beyond that permitted under sections 1519–1521, below) subject to the conditions for relief heretofore specified in United States law under section 304, which is repealed. This section is intended to permit the further development of international cooperation begun under section 304, but is not to be the basis for denying or limiting relief otherwise available under this chapter. The additional assistance is made conditional upon the court's consideration of the factors set forth in the current subsection 304(c) in a context of a reasonable balancing of interests following current case law. The references to

[16] See Guide at 24.
[17] See *id.* at 24, Art. 5.
[18] See *id.* at 23–24, ¶82.
[19] See *id.* at 25.
[20] *Id.* at 26.

"estate" in section 304 have been changed to refer to the debtor's property, because many foreign systems do not create an estate in insolvency proceedings of the sort recognized under this chapter. Although the case law construing section 304 makes it clear that comity is the central consideration, its physical placement as one of six factors in subsection (c) of section 304 is misleading, since those factors are essentially elements of the grounds for granting comity. Therefore, in subsection (2) of this section, comity is raised to the introductory language to make it clear that it is the central concept to be addressed.[21]

Section 1508. Interpretation

This provision follows conceptually Model Law article 8 and is a standard one in recent UNCITRAL treaties and model laws. Language changes were made to express the concepts more clearly in United States vernacular.[22] Interpretation of this chapter on a uniform basis will be aided by reference to the Guide and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well. Uniform interpretation will also be aided by reference to CLOUT, the UNCITRAL Case Law On Uniform Texts, which is a service of UNCITRAL. CLOUT receives reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not only are these sources persuasive, but they are important to the crucial goal of uniformity of interpretation. To the extent that the United States courts rely on these sources, their decisions will more likely be regarded as persuasive elsewhere.

Section 1509. Right of direct access

This section implements the purpose of article 9 of the Model Law, enabling a foreign representative to commence a case under this chapter by filing a petition directly with the court without preliminary formalities that may delay or prevent relief. It varies the language to fit United States procedural requirements and it imposes recognition of the foreign proceeding as a condition to further rights and duties of the foreign representative. If recognition is granted, the foreign representative will have full capacity under United States law (subsection (b)(1)), may request such relief in a State or Federal court other than the bankruptcy court (subsection (b)(2)), and may be granted comity or cooperation by such non-bankruptcy court (subsection (b)(3) and (c)). Subsections (b)(2), (b)(3), and (c) make it clear that chapter 15 is intended to be the exclusive door to ancillary assistance to foreign proceedings. The goal is to concentrate control of these questions in one court. That goal is important in a Federal system like that of the United States with many different courts, State and Federal, that may have pending actions involving the debtor or the debtor's property. This section, therefore, completes for the United States the work of article 4 of the Model Law ("competent court") as well as article 9.[23]

Although a petition under current section 304 is the proper method for achieving deference by a United States court to a for-

[21] *Id.*
[22] *Id.* at 26, ¶91.
[23] See *id.* at 23, Art. 4, ¶¶79–83; 27 Art. 9, ¶93.

eign insolvency under present law, some cases in State and Federal courts under current law have granted comity suspension or dismissal of cases involving foreign proceedings without requiring a section 304 petition or even referring to the requirements of that section. Even if the result is correct in a particular case, the procedure is undesirable, because there is room for abuse of comity. Parties would be free to avoid the requirements of this chapter and the expert scrutiny of the bankruptcy court by applying directly to a State or Federal court unfamiliar with the statutory requirements. Such an application could be made after denial of a petition under this chapter. This section concentrates the recognition and deference process in one United States court, ensures against abuse, and empowers a court that will be fully informed of the current status of all foreign proceedings involving the debtor.[24]

Subsection (d) has been added to ensure that a foreign representative cannot seek relief in courts in the United States after being denied recognition by the court under this chapter. Subsection (e) makes activities in the United States by a foreign representative subject to applicable United States law, just as 28 U.S.C. section 959 does for a domestic trustee in bankruptcy.[25] Subsection (f) provides a limited exception to the prior recognition requirement so that collection of a claim which is property of the debtor, for example an account receivable, by a foreign representative may proceed without commencement of a case or recognition under this chapter.

Section 1510. Limited jurisdiction

Section 1510, article 10 of the Model Law, is modeled on section 306 of the Bankruptcy Code. Although the language referring to conditional relief in section 306 is not included, the court has the power under section 1522 to attach appropriate conditions to any relief it may grant. Nevertheless, the authority in section 1522 is not intended to permit the imposition of jurisdiction over the foreign representative beyond the boundaries of the case under this chapter and any related actions the foreign representative may take, such as commencing a case under another chapter of this title.

Section 1511. Commencement of case under section 301 or 303

This section follows the intent of article 11 of the Model Law, but adds language that conforms to United States law or that is otherwise necessary in the United States given its many bankruptcy court districts and the importance of full information and coordination among them.[26] Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.[27] Subsection 1(a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, if the foreign proceeding that has been recognized is a main proceeding.

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[24] See *id.* at 27, Art. 9; 34–35, Art. 15 and ¶¶116–119; 39–40, Art. 18, ¶¶133–134; see also sections 1515(3), 1518.
[25] *Id.* at 27, ¶93.
[26] See *id.* at 28, Art. 11.
[27] *Id.* at 38, ¶¶97–99.

Section 1512. Participation of a foreign representative in a case under this title

This section follows article 12 of the Model Law with a slight alteration to tie into United States procedural terminology.[28] The effect of this section is to make the recognized foreign representative a party in interest in any pending or later commenced United States bankruptcy case.[29] Throughout this chapter, the word "case" has been substituted for the word "proceeding" in the Model Law when referring to cases under the United States Bankruptcy Code, to conform to United States usage.

Section 1513. Access of foreign creditors to a case under this title

This section mandates nondiscriminatory or "national" treatment for foreign creditors, except as provided in subsection (b) and section 1514. It follows the intent of Model Law article 13, but the language required alteration to fit into the Bankruptcy Code.[30] The law as to priority for foreign claims that fit within a class given priority treatment under section 507 (for example, foreign employees or spouses) is unsettled. This section permits the continued development of case law on that subject and its general principle of national treatment should be an important factor to be considered. At a minimum, under this section, foreign claims must receive the treatment given to general unsecured claims without priority, unless they are in a class of claims in which domestic creditors would also be subordinated.[31] The Model Law allows for an exception to the policy of nondiscrimination as to foreign revenue and other public law claims.[32] Such claims (such as tax and Social Security claims) have been denied enforcement in the United States traditionally, inside and outside of bankruptcy. The Bankruptcy Code is silent on this point, so the rule is purely a matter of traditional case law. It is not clear if this policy should be maintained or modified, so this section leaves it to developing case law. It also allows the Department of the Treasury to negotiate reciprocal arrangements with our tax treaty partners in this regard, although it does not mandate any restriction of the evolution of case law pending such negotiations.

Section 1514. Notification of foreign creditors concerning a case under title 11

This section ensures that foreign creditors receive proper notice of cases in the United States.[33] As a "foreign creditor" is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure ("Rules") should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide for additional time for such creditors to file proofs of claim where appropriate and must provide for the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims must be asserted, because

[28] *Id.* at 29, Art. 12.
[29] *Id.* at 29, ¶¶ 10–102.
[30] *Id.* at 30, ¶ 103.
[31] See *id.* at 30, ¶ 104.
[32] See *id.* at 31, ¶ 105.
[33] See Model Law, Art. 14; Guide at 31–32, ¶¶ 106–109.

in many countries such claims are not affected by an insolvency proceeding and need not be filed.[34] Of course, if a foreign creditor has made an appropriate request for notice, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the reference to "a reasonable time period" in Model Law article 14(3)(a).[35] It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time periods and bar dates so that foreign creditors have a reasonable time within which to receive notice or take an action.

Section 1515. Application for recognition of a foreign proceeding

This section follows article 15 of the Model Law with minor changes.[36] The rules will require amendment to provide forms for some or all of the documents mentioned in this section, to make necessary additions to rules 1000 and 2002 to facilitate appropriate notices of the hearing on the petition for recognition, and to require filing of lists of creditors and other interested persons who should receive notices. Throughout the Model Law, the question of notice procedure is left to the law of the enacting State.[37]

Section 1516. Presumptions concerning recognition

This section follows article 16 of the Model Law with minor changes.[38] Although sections 1515 and 1516 are designed to make recognition as simple and expedient as possible, the court may hear proof on any element stated. The ultimate burden as to each element is on the foreign representative, although the court is entitled to shift the burden to the extent indicated in section 1516. The word "proof" in subsection (3) has been changed to "evidence" to make it clearer using United States terminology that the ultimate burden is on the foreign representative.[39] "Registered office" is the term used in the Model Law to refer to the place of incorporation or the equivalent for an entity that is not a natural person.[40] The presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof where there is no serious controversy.

Section 1517. Order granting recognition

This section closely follows article 17 of the Model Law, with a few exceptions.[41] The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition. Reciprocity was specifically suggested as a requirement for recognition on more than one occasion in the negotiations that resulted in the Model Law. It was rejected by overwhelming consensus each time. The United States

[34] Guide at 33, ¶111.
[35] *Id.* at 31, Art. 14(3)(a).
[36] *Id.* at 33.
[37] See *id.* at 36, ¶121.
[38] *Id.* at 36
[39] *Id.* at 36, Art. 16(3).
[40] *Id.*
[41] *Id.* at 37.

was one of the leading countries opposing the inclusion of a reciprocity requirement.[42] In this regard, the Model Law conforms to section 304, which has no such requirement.

The drafters of the Model Law understood that only a main proceeding or a non-main proceeding meeting the standards of section 1502 (that is, one brought where the debtor has an establishment) were entitled to recognition under this section. The Model Law has been slightly modified to make this point clear by referring to the section 1502 definition of main and non-main proceedings, as well as to the general definition of a foreign proceeding in section 101(23). Naturally, a petition under section 1515 must show that proceeding is a main or a qualifying non-main proceeding in order to win recognition under this section.

Consistent with the position of various civil law representatives in the drafting of the Model Law, recognition creates a status with the effects set forth in section 1520, so those effects are not viewed as orders to be modified, as are orders granting relief under sections 1519 and 1521. Subsection (4) states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition (found in section 1520 and including an automatic stay) are subject to modification under section 362(d), made applicable by section 1520(2), which permits relief from the automatic stay of section 1520 for cause.

Paragraph 1(d) of section 17 of the Model Law has been omitted as an unnecessary requirement for United States purposes, because a petition submitted to the wrong court will be dismissed or transferred under other provisions of United States law.[43] The reference to section 350 refers to the routine closing of a case that has been completed and will invoke requirements including a final report from the foreign representative in such form as the rules may provide or a court may order.[44]

Section 1518. Subsequent information

This section follows the Model Law, except to eliminate the word "same" which is rendered unnecessary by the definition of "debtor" in section 1502 and to provide for a formal document to be filed with the court.[45] Judges in several jurisdictions, including the United States, have reported a need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This section will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statute. The section leaves to the rules the form of the required notice and related questions of notice to parties in interest, the time for filing, and the like.

Section 1519. Relief may be granted upon petition for recognition of a foreign proceeding

This section generally follows article 19 of the Model Law.[46] The bankruptcy court will have jurisdiction to grant emergency relief

[42] Report of the working group on Insolvency Law on the work of its Twentieth Session (Vienna, 7–18 October 1996), at 6, ¶¶ 16–20.
[43] Guide at 37, Art. 17(1)(d).
[44] *Id.*
[45] *Id.* at 39–40, ¶¶ 133, 134.
[46] *Id.* at 40.

under rule 7065 pending a hearing on the petition for recognition. This section does not expand or reduce the scope of section 105 as determined by cases under section 105 nor does it modify the sweep of sections 555 to 560. Subsection (d) precludes injunctive relief against police and regulatory action under section 1519, leaving section 105 as the only avenue to such relief. Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence. Subsection (f) was added to complement amendments to the Bankruptcy Code provisions dealing with financial contracts.

Section 1520. Effects of recognition of a foreign main proceeding

In general, this chapter sets forth all the relief that is available as a matter of right based upon recognition hereunder, although additional assistance may be provided under section 1507 and this chapter have no effect on any relief currently available under section 105. The stay created by article 20 of the Model Law is imported to chapter 15 from existing provisions of the Code. Subsection (a)(1) combines subsections 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections and additional restrictions as well.[47]

Subsections (a)(2) and (4) apply the Bankruptcy Code sections that impose the restrictions called for by subsection 1(c) of the Model Law. In both cases, the provisions are broader and more complete than those contemplated by the Model Law, but include all the restraints the Model Law provisions would impose.[48] As the foreign proceeding may or may not create an "estate" similar to that created in cases under this title, the restraints are applicable to actions against the debtor under section 362(a) and with respect to the property of the debtor under the remaining sections. The only property covered by this section is property within the territorial jurisdiction of the United States as defined in section 1502. To achieve effects on property of the debtor which is not within the territorial jurisdiction of the United States, the foreign representative would have to commence a case under another chapter of this title.

By applying sections 361 and 362, subsection (a) makes applicable the United States exceptions and limitations to the restraints imposed on creditors, debtors, and other in a case under this title, as stated in article 20(2) of the Model Law.[49] It also introduces the concept of adequate protection provided in sections 362 and 363. These exceptions and limitations include those set forth in sections 362(b), (c) and (d). As one result, the court has the power to terminate the stay pursuant to section 362(d), for cause, including a failure of adequate protection.[50]

Subsection (a)(2), by its reference to sections 363 and 552 adds to the powers of a foreign representative of a foreign main proceeding an automatic right to operate the debtor's business and exercise the power of a trustee under sections 363 and 542, unless the court orders otherwise. A foreign representative of a foreign main proceeding may need to continue a business operation to

[47] *Id.* at 42, Art. 20 1(a), (b).
[48] *Id.* at 42, 45.
[49] *Id.* at 42, Art. 20(2); 44, ¶¶ 148, 150.
[50] *Id.* at 42, Art. 20(3); 44–45, ¶¶ 151 152.

maintain value and granting that authority automatically will eliminate the risk of delay. If the court is uncomfortable about this authority in a particular situation it can "order otherwise" as part of the order granting recognition.

Two special exceptions to the automatic stay are embodied in subsections (b) and (c). To preserve a claim in certain foreign countries, it may be necessary to commence an action. Subsection (b) permits the commencement of such an action, but would not allow for its further prosecution. Subsection (c) provides that there is no stay of the commencement of a full United States bankruptcy case. This essentially provides an escape hatch through which any entity, including the foreign representative, can flee into a full case. The full case, however, will remain subject to subchapters IV and V on cooperation and coordination of proceedings and to section 305 providing for stay or dismissal. Section 108 of the Bankruptcy Code provides the tolling protection intended by Model Law article 20(3), so no exception is necessary as to claims that might be extinguished under United States law.[51]

Section 1521. Relief that may be granted upon recognition of a foreign proceeding

This section follows article 21 of the Model Law, with detailed changes to fit United States law.[52] The exceptions in subsection (a)(7) relate to avoiding powers. The foreign representative's status as to such powers is governed by section 1523 below. The avoiding power in section 549 and the exceptions to that power are covered by section 1520(a)(2). The word "adequately" in the Model Law, articles 21(2) and 22(1), has been changed to "sufficiently" in sections 1521(b) and 1522(a) to avoid confusion with a very specialized legal term in United States bankruptcy, "adequate protection."[53] Subsection (c) is designed to limit relief to assets having some direct connection with a non-main proceeding, for example where they were part of an operating division in the jurisdiction of the nonmain proceeding when they were fraudulently conveyed and then brought to the United States.[54] Subsections (d), (e) and (f) are identical to those same subsections of section 1519. This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 nor does it modify the sweep of sections 555 through 560.

Section 1522. Protection of creditors and other interested persons

This section follows article 22 of the Model Law with changes for United States usage and references to relevant Bankruptcy Code sections.[55] It gives the bankruptcy court broad latitude to mold relief to circumstances, including appropriate responses if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors. For response to a showing that the conditions necessary to recognition did not actually exist or have ceased to exist, see section 1517. Concerning the change of "adequately" in the Model Law to "sufficiently" in this section, see section 1521.

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[51] *Id.*
[52] *Id.* at 45–46, Art. 21.
[53] *Id.* at 46, Art. 21(2); 47, Art. 22(1).
[54] See *id.* at 46–47, ¶¶ 158, 160.
[55] *Id.* at 47.

Subsection (d) is new and simply makes clear that an examiner appointed in a case under chapter 15 shall be subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of this title.

Section 1523. Actions to avoid acts detrimental to creditors

This section follows article 23 of the Model Law, with wording to fit it within procedure under this title.[56] It confers standing on a recognized foreign representative to assert an avoidance action but only in a pending case under another chapter of this title. The Model Law is not clear about whether it would grant standing in a recognized foreign proceeding if no full case were pending. This limitation reflects concerns raised by the United States delegation during the UNCITRAL debates that a simple grant of standing to bring avoidance actions neglects to address very difficult choice of law and forum issues. This limited grant of standing in section 1523 does not create or establish any legal right of avoidance nor does it create or imply any legal rules with respect to the choice of applicable law as to the avoidance of any transfer of obligation.[57] The courts will determine the nature and extent of any such action and what national law may be applicable to such action.

Section 1524. Intervention by a foreign representative

The wording is the same as the Model Law, except for a few clarifying words.[58] This section gives the foreign representative whose foreign proceeding has been recognized the right to intervene in United States cases, State or Federal, where the debtor is a party. Recognition being an act under Federal bankruptcy law, it must take effect in State as well as Federal courts. This section does not require substituting the foreign representative for the debtor, although that result may be appropriate in some circumstances.

Section 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

The wording is almost exactly that of the Model Law.[59] The right of courts to communicate with other courts in worldwide insolvency cases is of central importance. This section authorizes courts to do so. This right must be exercised, however, with due regard to the rights of the parties. Guidelines for such communications are left to the Federal rules of bankruptcy procedure.

Section 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

This section follows the Model Law almost exactly.[60] The language in Model Law article 26 concerning the trustee's function was eliminated as unnecessary because always implied under United States law. The section authorizes the trustee, including a debtor in possession, to cooperate with other proceedings. Subsection (3) is not taken from the Model Law but is added so that

[56] *Id.* at 48–49.
[57] See *id.* at 49, ¶166.
[58] *Id.* at 49.
[59] *Id.* at 50.
[60] *Id.* at 51.

any examiner appointed under this chapter will be designated by the United States trustee and will be bonded.

Section 1527. Forms of cooperation

This section follows the Model Law exactly.[61] United States bankruptcy courts have already engaged in most of the forms of cooperation mentioned here, but they now have explicit statutory authorization for acts like the approval of protocols of the sort used in cases.[62]

Section 1528. Commencement of a case under title 11 after recognition of a foreign main proceeding

This section follows the Model Law, with specifics of United States law replacing the general clause at the end to cover assets normally included within the jurisdiction of the United States courts in bankruptcy cases, except where assets are subject to the jurisdiction of another recognized proceeding.[63] In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the United States. Here that jurisdiction is limited where those assets are controlled by another recognized proceeding, if it is a main proceeding.

The court may use section 305 of this title to dismiss, stay, or limit a case as necessary to promote cooperation and coordination in a cross-border case. In addition, although the jurisdictional limitation applies only to United States bankruptcy cases commenced after recognition of a foreign proceeding, the court has ample authority under the next section and section 305 to exercise its discretion to dismiss, stay, or limit a United States case filed after a petition for recognition of a foreign main proceeding has been filed but before it has been approved, if recognition is ultimately granted.

Section 1529. Coordination of a case under title 11 and a foreign proceeding

This section follows the Model Law almost exactly, but subsection (4) adds a reference to section 305 to make it clear the bankruptcy court may continue to use that section, as under present law, to dismiss or suspend a United States case as part of coordination and cooperation with foreign proceedings.[64] This provision is consistent with United States policy to act ancillary to a foreign main proceeding whenever possible.

Section 1530. Coordination of more than one foreign proceeding

This section follows exactly article 30 of the Model Law.[65] It ensures that a foreign main proceeding will be given primacy in the United States, consistent with the overall approach of the United States favoring assistance to foreign main proceedings.

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[61] Guide at 51, 53.
[62] See e.g., *Gitlin* v. *Societe Generale*, Barclays Bank (*In re Maxwell Communication Corp.*), 93 F.2d 1036 (2d Cir. 1996).
[63] Guide at 54–55.
[64] *Id.* at 55–56.
[65] *Id.* at 57.

Section 1531. Presumption of insolvency based on recognition of a foreign main proceeding

This section follows the Model Law exactly, inserting a reference to the standard for an involuntary case under this title.[66] Where an insolvency proceeding has begun in the home country of the debtor, and in the absence of contrary evidence, the foreign representative should not have to make a new showing that the debtor is in the sort of financial distress requiring a collective judicial remedy. The word "proof" here means "presumption." The presumption does not arise for any purpose outside this section.

Section 1532. Rule of payment in concurrent proceeding

This section follows the Model Law exactly and is very similar to prior section 508(a), which is repealed. The Model Law language is somewhat clearer and broader than the equivalent language of prior section 508(a).[67]

Section 802. Other amendments to titles 11 and 28, United States Code

Section 802(a) amends section 103 of the Bankruptcy Code to clarify the provisions of the Code that apply to chapter 15 and to specify which portions of chapter 15 apply in cases under other chapters of title 11. Section 802(b) amends the Bankruptcy Code's definitions of foreign proceeding and foreign representative in section 101. The new definitions are nearly identical to those contained in the Model Law but add to the phrase "under a law relating to insolvency" the words "or debt adjustment." This addition emphasizes that the scope of the Model Law and chapter 15 is not limited to proceedings involving only debtors which are technically insolvent, but broadly includes all proceedings involving debtors in severe financial distress, so long as those proceedings also meet the other criteria of section 101(24).[68]

Section 802(c) amends section 157(b)(2) of title 28 to provide that proceedings under chapter 15 will be core proceedings while other amendments to title 28 provide that the United States trustee's standing extends to cases under chapter 15 and that the United States trustee's duties include acting in chapter 15 cases. Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapter 15 and section 305, the situation is different in a case commenced under chapter 15. There the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

Section 802(d) amends section 109 of the Bankruptcy Code to permit recognition of foreign proceedings involving foreign insurance companies and involving foreign banks which do not have a branch or agency in the United States (as defined in 12 U.S.C. § 3101). While a foreign bank not subject to United States regulation will be eligible for chapter 15 as a consequence of the amendment to section 109, section 303 prohibits the commencement of a

[66] *Id.* at 58.
[67] *Id.* at 59.
[68] *Id.* at 51–52, 71.

full involuntary case against such a foreign bank unless the bank is a debtor in a foreign proceeding.

While section 304 is repealed and replaced by chapter 15, access to the jurisprudence which developed under section 304 is preserved in the context of new section 1507. On deciding whether to grant the Additional Assistance contemplated by section 1507, the court must consider the same factors that had been imposed by former section 304. The venue provisions for cases ancillary to foreign proceedings have been amended to provide a hierarchy of choices beginning with principal place of business in the United States, if any. If there is no principal place of business in the United States, but there is litigation against a debtor, then the district in which the litigation is pending would be the appropriate venue. In any other case, venue must be determined with reference to the interests of justice and the convenience of the parties.

TITLE IX—FINANCIAL CONTRACT PROVISIONS [69]

Section 901. Treatment of certain agreements by conservators or receivers of insured depository institutions

Subsections (a) through (f) amend the Federal Deposit Insurance Act's (FDIA) definitions of "qualified financial contract" (QFC), "securities contract," "commodity contract," "forward contract," "repurchase agreement" and "swap agreement" to make them consistent with the definitions in the Bankruptcy Code, as amended by this Act.

Subsection (b) amends the definition of "securities contract" to encompass options on securities and margin loans. The inclusion of "margin loans" in the definition is intended to encompass only those loans commonly known in the securities industry as "margin loans" and does not include other loans utilizing securities as collateral, however documented. Subsection (b) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase or sale or a participation may constitute a "securities contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract."

Subsection (e) amends the definition of a "repurchase agreement" to codify the substance of the Federal Deposit Insurance Corporation's (FDIC) 1995 regulation defining repurchase agreement to include those on qualified foreign government securities.[70] The term "qualified foreign government securities" is defined to include those that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). Subsection (e) reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. Any risk presented by this modification is addressed by limiting it to those issued or guaranteed by OECD member States. Subsection (e), like subsection (b) for "securities contracts," specifies that repurchase

[69] Title IX is substantively very similar to H.R. 1161, the Financial Contract Netting Improvement Act of 1999, a bill that was introduced in the 106th Congress. Accordingly, the text explaining title IX is derived from the report accompanying this bill. See H.R. Rep. No. 106–834, Pt.1 (2000).

[70] See 12 C.F.R. ' 360.5.

obligations under a participation in a commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain 1 year or less after such transfer would constitute a "repurchase agreement."

Subsection (f) amends the definition of "swap agreement" to include 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, spread, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a 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 a weather option." This amendment would achieve contractual netting across economically similar over-the-counter products that can be terminated and closed out on a mark-to-market basis.

Traditional commercial and lending arrangements, or other nonfinancial market transactions, such as commercial, residential or consumer loans, cannot be treated as "swaps" under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as "swap agreements." In addition, these definitions apply only for purposes of the FDIA and the Bankruptcy Code. These definitions, and the characterization of a certain transaction as a "swap agreement," are not intended to effect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

Subsection (g) amends the FDIA by adding a definition for "transfer," which is a key term used in the FDIA, to ensure that it is broadly construed to encompass dispositions of property or interests in property. The definition tracks that in section 101 of the Bankruptcy Code.

Subsection (h) makes clarifying technical changes to conform the receivership and conservatorship provisions of the FDIA. This subsection (h) also clarifies that the FDIA expressly protects rights under security agreements, arrangements or other credit enhancement related to one or more qualified financial contracts (QFCs). An example of a security arrangement is a right of set off, and examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Subsection (i) clarifies that no provision of Federal or State law relating to the avoidance of preferential or fraudulent transfers (including the anti-preference provision of the National Bank Act) can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution in conservatorship or receivership, absent actual fraudulent intent on the part of the transferee.

Section 902. Authority of the corporation with respect to failed and failing institutions

Section 203 provides that no provision of law, including the Federal Deposit Insurance Corporation Improvement Act (FDICIA), shall be construed to limit the power of the FDIC to transfer or to repudiate any QFC in accordance with its powers under the FDIA. As discussed below, there has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or to repudiate QFCs of an insolvent financial institution. Section 902, as well as other provisions in the Act, clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFCs.

In addition, section 902 denies enforcement to "walkaway" clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, 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 non-defaulting party.

Section 903. Amendments relating to transfers of qualified financial contracts

Subsection (a) amends the FDIA to expand the transfer authority of the FDIC to permit transfers of QFCs to "financial institutions" as defined in FDICIA or in regulations. This provision allows the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings. The new FDIA provision specifies that when the FDIC transfers QFCs that are subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FDIC flexibility in resolving QFCs subject to the rules of a clearing organization, while preserving the ability of such organizations to enforce appropriate risk reducing membership requirements. The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. person if, following the transfer, the contractual rights of the parties would be enforceable substantially to the same extent as under the FDIA.

Subsection (b) amends the notification requirements following a transfer of the QFCs of a failed depository institution to require the FDIC to notify any party to a transferred QFC of such transfer by 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer by the FDIC acting as a conservator. This amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1989.

Subsection (c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment

of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly resolution of the insured depository institution. The amendment also prohibits the enforcement of rights of termination or liquidation that are based solely on the "financial condition" of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be stayed if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a QFC permitting termination of the QFC based solely on a downgraded credit rating of a party will not be enforceable in an FDIC receivership or conservatorship because the provision is based solely on the financial condition of the depository institution in default. However, any payment, delivery or other performance-based default, or breach of a representation or covenant putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation of any QFC by a conservator or receiver. The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Finally, the amendment permits the FDIC to transfer QFCs of a failed depository institution to a bridge bank or a depository institution organized by the FDIC for which a conservator is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption transaction between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive such transfers under FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Section 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts

Section 904 limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC's transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to "cherry-pick" or otherwise treat independently all the QFCs between a depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk.

Section 905. Clarifying amendment relating to master agreements

Section 905 states that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA. This provision ensures that cross-product netting pursuant to a master agreement will be enforceable under the FDIA. Cross-product netting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties. Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant. Similar Bankruptcy Code clarifications to recognize cross-product netting both under a master agreement and in the absence of a master agreement are described below.

Section 906. Federal Deposit Insurance Corporation Improvement Act of 1991.

Subsection (a)(1) amends the definition of "clearing organization" to include clearinghouses that are subject to exemptions pursuant to orders of the SEC or the CFTC.

The FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. However, the current netting provisions of FDICIA limit this protection to "financial institutions," which include depository institutions. Subsection (a)(2) amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks (including the foreign bank and its branches or agencies as a combined group, or only the foreign bank parent of a branch or agency). The Federal Reserve Board already has by regulation included certain foreign banks in the definition of a "financial institution" for purposes of FDICIA and the latter change will statutorily extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements.

Subsection (a)(3) amends FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered "members" of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Subsection (a)(4) amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require that the netting agreement must be governed by the law of the United States or a State to receive the protections of FDICIA. However, many of these agreements, particularly netting arrangements covering positions taken in foreign exchange dealings, are governed by the laws of a foreign coun-

try. This subsection broadens the definition of "netting contract" to include those agreements governed by foreign law, and preserves the FDICIA requirement that a netting contract is not invalid under or precluded by Federal law.

Subsections (b) and (c) establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members. First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA or (ii) the appointment of a receiver for such institution under the FDIA, if such receiver transfers or repudiates QFCs in accordance with the FDIA and gives notice of a transfer by 5:00 p.m. on the business day following the appointment of a receiver. This change is made to confirm the FDIC's flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the terms of the FDIA. This modification also provides important legal certainty regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear. The second exception provides that FDICIA does not override a stay order under the Securities Investor Protection Act (SIPA) with respect to foreclosure on securities (but not cash) collateral of a debtor (section 911 makes a conforming change to SIPA). There is also an exception relating to insolvent commodity brokers. Subsection (a)(5) adds a new definition of "payment" to FDICIA.

Subsections (b) and (c) also clarify that a security agreement or other credit enhancement related to a netting contract is enforceable to the same extent as the underlying netting contract.

Subsection (d) adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks or uninsured Federal branches or agencies that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with uninsured national banks or uninsured Federal branches or agencies will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for an uninsured national bank or uninsured Federal branch or agency to those provisions that address QFCs in section 1821(e)(8), (9), (10), and (11) of title 12 of the United States Code.

While the amendment would apply the same rules to uninsured national banks and Federal branches and agencies that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the National Bank Act, or other statutory provisions with respect to receiverships of insured national banks or Federal branches.

Section 907. Bankruptcy Code amendments

Subsection (a)(1) amends the Bankruptcy Code definitions of "repurchase agreement" and "swap agreement" to conform them with

the amendments to the FDIA contained in subsections (e) and (f) of section 901. In connection with the definition of "repurchase agreement," the term "qualified foreign government securities" is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. Any risk presented by this modification is addressed by limiting it to those obligating or guaranteed by OECD member States. Subsection (a)(1) specifies that repurchase obligations under a participation in an commercial mortgage loan do not make the participation agreement a "repurchase agreement." Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute a "repurchase agreement." However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain 1 year or less after such transfer would constitute a "repurchase agreement." The amendments to the definition of "repurchase agreement" are not intended to affect the interpretation of the definition of "securities contract."

The definition of "swap agreement," in conjunction with the addition of "spot foreign exchange transactions" that was added to the definition in 1994, will achieve contractual netting across economically similar over-the-counter products that can be terminated and closed out on a mark-to-market basis. The definition of "swap agreement" originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. For that reason, the phrase "or any other similar agreement" was included in the definition. To clarify this, subsection (a)(1) expands the definition of "swap agreement" to include any agreement or transaction similar to any other agreement or transaction referred to in subsection (a)(1) that is presently, or in the future becomes, regularly entered into in the swap market and 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. However, traditional commercial and lending arrangements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as "swaps" under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as "swap agreements." Subsection (a)(1) specifies that this definition of swap agreement applies only for purposes of the Bankruptcy Code and is inapplicable to the other statutes, rules and regulations enumerated in that section. The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definitions of "forward contract," "commodity contract" and "repurchase agreement." An example of a se-

curity arrangement is a right of setoff; examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements.

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of "securities contract" and "commodity contract," respectively, to conform them to the definitions in the FDIA, and also to include any security agreements or arrangements or other credit enhancements related to one or more such contracts. Subsection (a)(2), like the amendments to the FDIA, amends the definition of "securities contract" to encompass options on securities and margin loans. The inclusion of "margin loans" in the definition is intended to encompass only those loans commonly known in the securities industry as "margin loans" and does not include other loans utilizing securities as collateral, however documented. Subsection (a)(2) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute "securities contracts." While a contract for the purchase or sale or a participation may constitute a "securities contract," the purchase, sale or repurchase obligation embedded in a participation agreement does not make that agreement a "securities contract."

Subsection (b) amends the Bankruptcy Code definition of "forward contract merchant" and also adds a new definition of "financial participant" to limit the potential impact of insolvencies upon other major market participants. These definitions will allow such market participants to close-out and net agreements with insolvent entities under sections 362(b)(6), 546, 548, 555, and 556 even if the creditor could not qualify as, for example, a commodity broker. The new subsection preserves the limitations of the right to close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code's counter party limitations. However, where the counter party has transactions with a total gross dollar value of at least $1 billion in notional principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100 million (aggregated across counter parties) in one or more agreements or transactions on any day during the previous 15-month period, the new subsection and corresponding amendments would permit it to exercise netting rights irrespective of its inability otherwise to satisfy those counter party limitations. This change will help prevent systemic impacts upon the markets from a single failure.

Subsection (c) adds to the Bankruptcy Code new definitions for the terms "master netting agreement" and "master netting agreement participant." The definition of "master netting agreement" is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such an agreement may be used (i) to document a wide variety of securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements or (ii) as an umbrella agreement for separate master agreements between the same parties, each of which is used to document a discrete type of transaction. The definition includes security agreements or arrangements or other credit enhancements related to one or more such agreements and clarifies that a master netting agreement will be treated as such even if it documents transactions that are not within the enumerated categories of qualifying transactions (but the provisions of the Bank-

ruptcy Code relating to master netting agreements and the other categories of transactions will not apply to such other transactions). A "master netting agreement participant" is any entity that is a party to an outstanding master netting agreement with a debtor before the filing of a bankruptcy petition.

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swap agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the relevant definitions include related security agreements, the reference to "setoff" in this provisions, as well as in section 362(b)(6) and (7) of the Bankruptcy Code, are intended to refer also to rights to foreclose on, and to set off against, obligations to return collateral securing swap agreements, master netting arrangements, repurchase agreements, securities contracts, commodity contracts, or forward contracts. Collateral may be pledged to cover the cost of replacing the defaulted transactions in the relevant market, as well as other costs and expenses incurred or estimated to be incurred for the purpose of hedging or reducing the risks arising out of such termination. Enforcement of these agreements and arrangements is consistent with the policy goal of minimizing systemic risk.

Subsection (d) also clarifies that the provisions protecting setoff and foreclosure in relation to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements free from the automatic stay apply to collateral pledged by the debtor that is under the control of the creditor but that cannot technically be "held by" the creditor, such as receivables and book-entry securities, and to collateral that has been repledged by the creditor.

Subsection (e) amends section 546 of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud. This section of the Act also clarifies the limitations on a trustee's power to avoid transfers made under swap agreements.

Subsection (f) amends section 548(d) of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud. This amendment provides the same protections for transfers made under, or in connection with, master netting agreements as currently is provided for margin payments and settlement payments received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities clearing agencies, repo participants, and swap participants under sections 546 and 548(d).

Subsections (g), (h), (i), and (j) clarify that the provisions of the Bankruptcy Code that protect (i) rights of liquidation under securities contracts, commodity contracts, forward contracts and repurchase agreements also protect rights of termination or acceleration

under such contracts, and (ii) rights to terminate under swap agreements also protect rights of liquidation and acceleration.

Subsection (k) adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a securities exchange or clearing organization, (ii) under common law, law merchant or (iii) by reason of normal business practice. This is consistent with the current treatment of rights under swap agreements pursuant to section 560 of the Bankruptcy Code. With respect to sections 555, 556, 559, 560 and 561 of the Bankruptcy Code, it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements with the bankrupt or insolvent party. The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded in subsections 362(b)(6), (b)(7), (b)(17) and (b)(32). For example, cross-product netting will be protected from the automatic stay under section 561 even in the absence of a master netting agreement. Sections 561(b)(2) and (3) limit the exercise of contractual rights to net or to offset obligations where one leg of the obligations sought to be netted relates to commodity contracts. Under subsection (b)(2), netting or offset is not permitted if the obligations are not mutual. This means, for example, that proprietary obligations cannot be netted or offset against obligations held for, or on behalf of, some other party. Even if the obligations are mutual, under subsection (b)(3) netting or offset is not permitted in a commodity broker bankruptcy if the party seeking to net or to offset has no positive net equity in the commodity account at the debtor. Subsections (b)(2) and (b)(3) limit the depletion of assets available for distribution to customers of commodity brokers. This is consistent with the principle of subchapter IV of chapter 7 of the Bankruptcy Code, which gives priority to customer claims in the bankruptcy of a commodity broker.

Under this provision, the termination, liquidation or acceleration rights of a master netting agreement participant are subject to limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a securities contract or repurchase agreement is documented under a master netting agreement, a party's termination, liquidation and acceleration rights would be subject to the provisions of the Bankruptcy Code relating to orders authorized under the provisions of SIPA or any statute administered by the Section In addition, the netting rights of a party to a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights. Similarly, a waiver by a bank or a counter party of netting or set off rights in connection with QFCs would be enforceable under the FDIA.

Subsection (l) clarifies that, with respect to municipal bankruptcies, all the provisions of the Bankruptcy Code relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements

(which by their terms are intended to apply in all cases and proceedings under the Bankruptcy Code) will apply in a chapter 9 case. Although sections 555, 556, 559, and 560 provide that they apply in any case or proceeding under the Bankruptcy Code, this subsection makes a technical amendment in chapter 9 to clarify the applicability of these provisions.

Subsection (m) clarifies that the provisions of the Bankruptcy Code related to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements apply in a section 304 proceeding ancillary to a foreign insolvency proceeding.

Subsections (n) and (o) amend those provisions in the Bankruptcy Code concerning the liquidation of commodity brokers and stockbrokers. Subchapter III of chapter 7 of the Bankruptcy Code details specific rules for the liquidation of stockbrokers. Subchapter IV of chapter 7 of the Bankruptcy Code and regulations of the CFTC detail specific rules for the liquidation of commodity brokers. These authorities are designed to protect customers and customer property of an insolvent stockbroker or commodity broker.

Subsections (n) and (o) clarify the rights of parties to commodity contracts, securities contracts, forward contracts, swap agreements, repurchase agreements and master netting agreements with an insolvent commodity broker or stockbroker. They ensure that noncustomers will not defeat the priority scheme of subchapter III or IV priority by gaining access to assets held in segregated customer accounts. The subsections also clarify that the exercise of termination and netting rights will not otherwise affect customer property or distributions by the trustee of the insolvent commodity broker or stockbroker after the exercise of such rights.

Subsection (p) amends section 553 of the Bankruptcy Code to clarify that the acquisition by a creditor of setoff rights in connection with swap agreements, repurchase agreements, securities contracts, forward contracts, commodity contracts and master netting agreements cannot be avoided as a preference. This subsection also adds setoff of the kinds described in sections 555, 556, 559, 560, and 561 of the Bankruptcy Code to the types of set off excepted from section 553(b).

Section 908. Recordkeeping requirements

Section 908 amends section 11(e)(8) of the FDIA to explicitly authorize the FDIC, in consultation with appropriate Federal banking agencies, to prescribe regulations on recordkeeping with respect to QFCs. Adequate recordkeeping for such transactions is essential to effective risk management and to the reduction of systemic risk permitted by the orderly resolution of depository institutions utilizing QFCs.

Section 909. Exemptions from contemporaneous execution requirement

Section 909 amends section 13(e)(2) of the FDIA to provide that an agreement for the collateralization of governmental deposits, bankruptcy estate funds, Federal Reserve Bank or Federal Home Loan Bank extensions of credit or one or more QFCs shall not be deemed invalid solely because such agreement was not entered into contemporaneously with the acquisition of the collateral or because

of pledges, delivery or substitution of the collateral made in accordance with such agreement. The amendment codifies portions of policy statements issued by the FDIC regarding the application of section 13(e), which codifies the "*Oench Duhme*" doctrine. With respect to QFCs, this codification recognizes that QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market values of the collateralized transactions. The codification of only portions of the existing FDIC policy statements on these and related issues should not give rise to any negative implication regarding the continued validity of these policy statements.

Section 910. Damage measure

Section 910 adds a new section 562 to the Bankruptcy Code providing that damages under any swap agreement, securities contract, forward contract, commodity contract, repurchase agreement or master netting agreement be calculated as of the earlier of (i) the date of rejection of such agreement by a trustee or (ii) the date of liquidation, termination or acceleration of such contract or agreement. New section 562 provides important legal certainty and makes the Bankruptcy Code consistent with the current provisions related to the timing of the calculation of damages under QFCs in the FDIA.

Section 911. SIPC stay

Section 911 amends SIPA to provide that an order or decree issued pursuant to SIPA shall not operate as a stay of any right of liquidation, termination, acceleration, offset or netting under one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement (a corresponding amendment to FDICIA is made by the Act). A creditor that was stayed in exercising rights against securities collateral would be entitled to post-insolvency interest to the extent of the collateral.

Section 912. Asset-backed securitizations

Section 912 amends section 541 of the Bankruptcy Code to provide that certain assets transferred to an eligible entity in connection with an asset-backed securitization generally will not be included within the bankruptcy estate of the debtor. This provision recognizes that a valid transfer of such assets to an "eligible entity," generally eliminates the debtor's legal or equitable interests in those assets. Accordingly, subject to the avoidance powers in section 548(a), the transfer will be treated as a sale of those assets not subject to avoidance.

Section 913. Effective date; application of amendments

Section 913(a) provides that title IX become effective on the Act's date of enactment. Section 913(b) provides that the amendments made by the Act shall not apply with respect to cases commenced,

or to conservator and receiver appointments made before the date of enactment.

TITLE X—PROTECTION OF FAMILY FARMERS

Section 1001. Permanent reenactment of chapter 12

Section 1001(a) reenacts chapter 12 of the Bankruptcy Code and provides that such reenactment takes effect on July 1, 2000. Section 1001(b) makes a conforming amendment to section 302 of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986.

Section 1002. Debt limit increase

Section 1002 amends section 104(b) of the Bankruptcy Code to provide for annual or biannual adjustments of the debt limit for family farmers beginning on April 1, 2004.

Section 1003. Certain claims owed to governmental units

Section 1003(a) amends section 1222(a) of the Bankruptcy Code to require a chapter 12 plan provide for payment in full of all claims entitled to priority under section 507, unless the claim is owed to a governmental unit arising from the sale or exchange of any farm asset. If the claim falls within this exception, it is treated as an unsecured claim and the underlying debt is treated the same if the debtor receives a discharge or the holder of a claim agrees to a different treatment of that claim. Section 1003(b) amends section 1231(b) of the Bankruptcy Code to have it apply to any governmental unit.

TITLE XI—HEATH CARE AND EMPLOYEE BENEFITS

Section 1101. Definitions

Section 1101(a) amends section 101 of the Bankruptcy Code to add a definition of the term "health care business." A health care business is defined as any public or private entity (without regard as to whether the entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for certain specified purposes. Section 1101(b) amends section 101 of the Bankruptcy Code to define "patient" and "patient records." Section 1101(c) clarifies that the amendments implemented by section 1101(a) are not intended to affect the interpretation of section 109(b) of the Bankruptcy Code concerning an entity's eligibility to be a chapter 7 debtor.

Section 1102. Disposal of patient records

Section 1102 adds a provision to chapter 3 of the Bankruptcy Code specifying requirements for the disposal of patient records in a chapter 7, 9, or 11 case of a health care business where the trustee lacks sufficient funds to pay for the storage of such records in accordance with applicable Federal or State law. The requirements chiefly consist of providing notice to the affected patients and specifying the method of disposal for unclaimed records. These requirements are intended to protect the privacy and confidentiality of a patient's medical records when they are in the custody of a health care business in bankruptcy.

Section 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses

Section 1103 amends section 503(b) of the Bankruptcy Code to provide that the actual, necessary costs and expenses of closing a health care business (including the disposal of patient records or transferral of patients) incurred by a trustee, Federal agency, or a department or agency of a State are allowed administrative expenses.

With respect to a nonresidential real property lease previously assumed under section 365 and then subsequently rejected, section 1103 amends section 503(b) to provide that the sum of all monetary obligations due (excluding those arising from or related to a failure to operate or penalty provisions) for the 2-year period following the later of the rejection date or date of actual turnover of the premises (without reduction or setoff for any reason, except for sums actually received or to be received from a nondebtor) are allowed administrative expenses under section 503(b) of the Bankruptcy Code. The claim for remaining sums due for the balance of the lease's term shall be treated as a claim under section 502(b)(6).

Section 1104. Appointment of ombudsman to act as patient advocate

Section 1104(a) adds a provision to chapter 3 of the Bankruptcy Code requiring the court to order the appointment of an ombudsman within 30 days after the commencement of a chapter 7, 9 or 11 case by a health care provider, unless the court finds that such appointment is not necessary for the protection of patients under the specific facts of the case. Section 1104(a) requires the ombudsman to be a disinterested person. Pursuant to this provision, the ombudsman is responsible for monitoring the quality of patient care and to represent the interests of the patients. Within 60 days after his or her appointment, the ombudsman must report to the court at a hearing or in writing on the quality of patient care at the health care business. Subsequent reports are due not less frequently than every 60 days thereafter. If the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised, the ombudsman must immediately notify the court by motion or written report (on notice to appropriate parties in interest). Section 1104(a) specifies that the ombudsman must maintain any information he or she obtains relating to patients as confidential. The ombudsman may not review confidential patient records unless the court provides prior approval, with restrictions to protect the confidentiality of such records.

Section 1104(b) amends section 330(a)(1) of the Bankruptcy Code to authorize the payment of reasonable compensation to an ombudsman.

Section 1105. Debtor in possession; duty of trustee to transfer patients

Section 1105 amends section 704 of the Bankruptcy Code to require a chapter 7 trustee, chapter 11 trustee, or a chapter 11 debtor in possession to use all reasonable and best efforts to transfer patients from a health care business that is being closed to an appropriate health care business. The transferee health care business should be in the vicinity of the transferor health care business, pro-

vide the patient with services that are substantially similar to those provided by the transferor health care business, and maintain a reasonable quality of care.

Section 1106. Exclusion from program participation not subject to automatic stay

Section 1106 amends section 362(b) of the Bankruptcy Code to except from the automatic stay the exclusion by the Secretary of Health and Human Services of a debtor from participation in the Medicare program or other specified Federal health care programs.

TITLE XII—TECHNICAL AMENDMENTS

Section 1201. Definitions

Section 1201 amends the definitions contained in section 101 of the Bankruptcy Code. Paragraphs (1), (2), (4), and (7) of section 1201 make technical changes to section 101 to convert each definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (3) of section 1101 makes necessary and conforming amendments to cross references to the newly redesignated definitions.

Paragraph (5) of section 1201 concerns single asset real estate debtors. A single asset real estate chapter 11 case presents special concerns. As the name implies, the principal asset in this type of case consists of some form of real estate, such as undeveloped land. Typically, the form of ownership of a single asset real estate debtor is a corporation or limited partnership. The largest creditor in a single asset real estate case is typically the secured lender who advanced the funds to the debtor to acquire the real property. Often, a single asset real estate debtor resorts to filing for bankruptcy relief for the sole purpose of staying an impending foreclosure proceeding or sale commenced by the secured lender. Foreclosure actions are filed when the debtor lacks sufficient cash flow to service the debt and maintain the property. Taxing authorities may also have liens against the property. Based on the nature of its principal asset, a single asset real estate debtor often has few, if any, unsecured creditors. If unsecured creditors exist, they may have only nominal claims against the single asset real estate debtor. Depending on the nature and ownership of any business operating on the debtor's real property, the debtor may have few, if any, employees. Accordingly, there may be little interest on behalf of unsecured creditors in a single asset real estate case to serve on a creditors' committee.

In 1994, the Bankruptcy Code was amended to accord special treatment for a single asset real estate debtor. It defined this type of debtor as a bankruptcy estate comprised of a single piece of real property or project, other than residential real property with fewer than four residential units. The property or project must generate substantially all of the debtor's gross income. A debtor that conducts substantial business on the property beyond that relating to its operation is excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor could not have noncontingent, liquidated secured

debts in excess of $4 million.[71] Subparagraph (5)(A) amends the definition of "single asset real estate" to exclude family farmers from this definition. Paragraph (5)(B) amends section 101(51B) of the Bankruptcy Code to eliminate the $4 million debt limitation on single asset real estate. The present $4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. As a result of this amendment, creditors in more cases will be able to obtain the expedited relief from the automatic stay which is made available under section 362(d)(3) of the Bankruptcy Code.

Paragraph (6) of section 1201, together with section 1214, respond to a 1997 Ninth Circuit case,[72] in which two purchase money lenders (without knowledge that the debtor had recently filed an undisclosed chapter 11 case that was subsequently converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors. Specifically, it amends the definition of "transfer" in section 101(54) of the Bankruptcy Code to include the "creation of a lien." This amendment gives expression to a widely held understanding since the enactment of the Bankruptcy Reform Act of 1978,[73] that is, a transfer includes the creation of a lien.

Section 1202. Adjustment of dollar amounts

Section 1202 corrects an omission in section 104(b) of the Bankruptcy Code to include a reference to section 522(f)(3).

Section 1203. Extension of time

Section 1203 makes a technical amendment to correct a reference error described in amendment notes contained in the United States Code. As specified in the amendment note relating to subsection (c)(2) of section 108 of the Bankruptcy Code, the amendment made by section 257(b)(2)(B) of Public Law 99–554 could not be executed as stated.

Section 1204. Technical amendments

Section 1204 makes technical amendments to sections 109(b)(2) (to strike an statutory cross reference), 541(b)(2) (to add "or" to the

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[71] See 11 U.S.C. § 101(51B).

[72] *Thompson* v. *Margen* (*In re McConville*), 110 F.3d 47 (9th Cir.), *cert. denied* 522 U.S. 966 (1997). The bankruptcy trustee sought to avoid the lien created by the lenders' deed of trust by asserting that the deed was an unauthorized, postpetition transfer under section 549(a) of the Bankruptcy Code. The lenders claimed that the voluntary transfer to them was a transfer of real property to good faith purchasers for value, which was thereby excepted it, under section 549(c) of the Bankruptcy Code, from avoidance. The bankruptcy court held that the postpetition recordation of the lenders' deed of trust was without authorization under the Bankruptcy Code or by the court and was therefore avoidable under section 549(a), and that the lenders did not qualify under the section 549(c) exception as good faith purchasers of real property for value. The District Court subsequently affirmed the bankruptcy court's ruling granting the trustee the authority to avoid the lenders' lien. *In re McConville*, D.C. No. CV 94 03308 FMS (N.D. Cal.1994). On appeal, the lower court's decision in *McConville* was initially affirmed. The Ninth Circuit, however, subsequently issued an amended opinion, also affirming the lower court, and finally issued an opinion withdrawing its prior opinion and deciding the case on other grounds. It held that by obtaining secured credit from the lenders, after filing but before the appointment of a trustee, the debtors violated their fiduciary responsibility to their creditors.

[73] Pub. L. No. 95–598, 92 Stat. 2549 (1978).

end of this provision), and 522(b)(1) (to replace "product" with "products").

Section 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

Section 1205 amends section 110(j)(4) of the Bankruptcy Code to change the reference to attorneys from the singular possessive to the plural possessive.

Section 1206. Limitation on compensation of professional persons

Section 328(a) of the Bankruptcy Code provides that a trustee or a creditors' and equity security holders' committee may, with court approval, obtain the services of a professional person on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, or on a contingent fee basis. Section 1206 amends section 328(a) to include compensation "on a fixed or percentage fee basis" in addition to the other specified forms of reimbursement.

Section 1207. Effect of conversion

Section 1207 makes a technical correction in section 348(f)(2) of the Bankruptcy Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate.

Section 1208. Allowance of administrative expenses

Section 1208 amends section 503(b)(4) of the Bankruptcy Code to limit the types of compensable professional services rendered by an attorney or accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors' or equity security holders' committees are not recoverable, but expenses incurred for such professional services incurred by such committees themselves would be.

Section 1209. Exceptions to discharge

Section 1209 of the bill amends section 523(a) of the Bankruptcy Code to correct a technical error in the placement of paragraph (15), which was added to section 523 by section 304(e)(1) of the Bankruptcy Reform Act of 1994. This provision also amends section 523(a)(9), which makes nondischargeable any debt resulting from death or personal injury arising from the debtor's unlawful operation of a motor vehicle while intoxicated, to add "watercraft, or aircraft" after "motor vehicle." Neither additional term should be defined or included as a "motor vehicle" in section 523(a)(9) and each is intended to comprise unpowered as well as motor-powered craft. Congress previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor's interest in a fresh start, and here clarifies that the policy applies not only on land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated watercraft and aircraft operators preferred treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug related boat and plane accidents the same rights accorded to automobile accident victims under current law.

Finally, this section amends corrects a grammatical error in section 523(e).

Section 1210. Effect of discharge

Section 1210 makes technical amendments to correct errors in section 524(a)(3) of the Bankruptcy Code caused by section 257(o)(2) of Public Law 99–554 and section 501(d)(14)(A) of Public Law 103–394.[74]

Section 1211. Protection against discriminatory treatment

Section 1211 conforms a reference to its antecedent reference in section 525(c) of the Bankruptcy Code. The omission of "student" before "grant" in the second place it appears in section 525(c) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be denied because of a prior bankruptcy if the lending institution was in the business of making student loans. Section 1211 is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant's bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

Section 1212. Property of the estate

Production payments are royalties tied to the production of a certain volume or value of oil or gas, determined without regard to production costs. They typically would be paid by an oil or gas operator to the owner of the underlying property on which the oil or gas is found. Under section 541(b)(4)(B)(ii) of the Bankruptcy Code, added by the Bankruptcy Reform Act of 1994, production payments are generally excluded from the debtor's estate, provided they could be included only by virtue of section 542 of the Bankruptcy Code, which relates generally to the obligation of those holding property which belongs in the estate to turn it over to the trustee. Section 1212 adds to this proviso a reference to section 365 of the Bankruptcy Code, which authorizes the trustee to assume or reject an executory contract or unexpired lease. It thereby clarifies the original Congressional intent to generally exclude production payments from the debtor's estate.

Section 1213. Preferences

Section 547 of the Bankruptcy Code authorizes a trustee to avoid a preferential payment made to a creditor by a debtor within 90 days of filing, whether the creditor is an insider or an outsider. Because of the concern that a corporate insider (such as an officer or directors who is a creditor of his or her own corporation has an unfair advantage over outside creditors, section 547 also authorizes a trustee to avoid a preferential payment made to an insider creditor between 90 days and 1 year before filing. Several recent cases, including *DePrizio*,[75] allowed the trustee to "reach-back" and avoid a

[74] For a description of these errors, see the appropriate footnote and amendment notes in the United States Code.

[75] *Levit* v. *Ingersoll Rand Fin. Corp.*, 874 F.2d 1186 (7th Cir. 1989); see, e.g., *Ray* v. *City Bank and Trust Co.* (*In re C–L Cartage Co.*), 899 F.2d 1490 (6th Cir. 1990); *Manufacturers Hanover Leasing Corp.* v. *Lowrey* (*In re Robinson Bros. Drilling, Inc.*), 892 F.2d 850 (10th Cir. 1989).

transfer to a noninsider creditor which fell within the 90-day to 1-year time frame if an insider benefitted from the transfer in some way. This had the effect of discouraging lenders from obtaining loan guarantees, lest transfers to the lender be vulnerable to recapture by reason of the debtor's insider relationship with the loan guarantor. Section 202 of the Bankruptcy Reform Act of 1994 addressed the *DePrizio* problem by inserting a new section 550(c) into the Bankruptcy Code to prevent avoidance or recovery from a noninsider creditor during the 90-day to 1-year period even though the transfer to the noninsider benefitted an insider creditor. The 1994 amendments, however, failed to make a corresponding amendment to section 547, which deals with the avoidance of preferential transfers. As a result, a trustee could still utilize section 547 to avoid a preferential lien given to a noninsider bank, more than 90 days but less than 1 year before bankruptcy, if the transfer benefitted an insider guarantor of the debtor's debt. Accordingly, section 1213 makes a perfecting amendment to section 547 to provide that if the trustee avoids a transfer given by the debtor to a noninsider for the benefit of an insider creditor between 90 days and 1 year before filing, that avoidance is valid only with respect to the insider creditor. Thus both the previous amendment to section 550 and the perfecting amendment to section 547 protect the noninsider from the avoiding powers of the trustee exercised with respect to transfers made during the 90-day to 1 year pre-filing period.

Section 1214. Postpetition transactions

Section 1214 amends section 549(c) of the Bankruptcy Code to clarify its application to an interest in real property. This amendment should be construed in conjunction with section 1201 of the Act.

Section 1215. Disposition of property of the estate

Section 1215 of the bill amends section 726(b) of the Bankruptcy Code to strike an erroneous reference to a nonexistent section.[76]

Section 1216. General provisions

Section 1216 amends section 901(a) of the Bankruptcy Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11 of the United States Code.

Section 1217. Abandonment of railroad line

Section 1217 amends section 1170(e)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104–88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code.

[76] For a description of the error, see the appropriate footnote and amendment notes in the United States Code.

Section 1218. Contents of plan

Section 1218 amends section 1172(c)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104–88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code.

Section 1219. Discharge under chapter 12

Section 1219 amends section 1228 of the Bankruptcy Code, dealing with discharge under chapter 12, to correct erroneous references.

Section 1220. Bankruptcy cases and proceedings

Section 1220 amends section 1334(d) of title 28 of the United States Code to correct erroneous references.[77]

Section 1221. Knowing disregard of bankruptcy law or rule

This section amends section 156(a) of title 18 of the United States Code to make stylistic changes and correct a reference to the Bankruptcy Code.

Section 1222. Transfers made by nonprofit charitable corporations

Section 1222 amends section 363(d) of the Bankruptcy Code to restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust. First, the use, sell or lease must be in accordance with applicable nonbankruptcy law and to the extent it is not inconsistent with any relief granted under certain specified provisions of section 362 of the Bankruptcy Code concerning the applicability of the automatic stay. Second, section 1222 imposes similar restrictions with regard to plan confirmation requirements for chapter 11 cases. Third, it amends section 541 of the Bankruptcy Code to provide that any property of a bankruptcy estate in which the debtor is a nonprofit corporation (as described in certain provisions of the Internal Revenue Code) may not be transferred to an entity that is not a corporation, but only under the same conditions that would apply if the debtor was not in bankruptcy. The amendments made by this section apply to cases pending on the date of enactment or to cases filed after such date. Section 1222 provides that a court may not confirm a plan without considering whether this provision would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor postpetition. Nothing in this provision may be construed to require the court 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.

Section 1223. Protection of valid purchase money security interests

Section 1223 extends the applicable perfection period for a security interest in property of the debtor in section 547(c)(3)(B) of the Bankruptcy Code from 20 to 30 days.

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[77] For a description of the errors, see the appropriate footnote and amendment notes in the United States Code.

Section 1224. Bankruptcy judgeships

The substantial increase in bankruptcy case filings clearly creates a need for additional bankruptcy judgeships. In the 105th Congress, the House responded to this need by passing H.R. 1596, which would have created additional permanent and temporary bankruptcy judgeships and extended an existing temporary position. Section 1224 generally incorporates H.R. 1596 as it passed the House with provisions extending five existing temporary judgeships.

Section 1225. Compensating trustees

Section 1225 amends section 1326 of the Bankruptcy Code to provide that if a chapter 7 trustee has been allowed compensation as a result of the conversion or dismissal of the debtor's prior case pursuant to section 707(b) and some portion of that compensation remains unpaid, the amount of any such unpaid compensation must be repaid in the debtor's subsequent chapter 13 case. This payment must be prorated over the term of the plan and paid on a monthly basis. The amount of the monthly payment may not to exceed the greater of $25 or 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 of the plan.

Section 1226. Amendment to section 362 of title 11, United States Code

Section 1226 amends section 362(b) of the Bankruptcy Code to except from the automatic stay the creation or perfection of a statutory lien for an *ad valorem* property tax or for a special tax or special assessment on real property (whether or not *ad valorem*) that is imposed by a governmental unit, if such tax or assessment becomes due after the filing of the petition.

Section 1227. Judicial education

Section 1227 requires the Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, to develop materials and conduct training as may be useful to the courts in implementing this Act, including the needs-based reforms under section 707(b) (as amended by this Act) and amendments pertaining to reaffirmation agreements.

Section 1228. Reclamation

Section 1228(a) amends section 546 of the Bankruptcy Code to provide that the rights of a trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods to reclaim goods sold in the ordinary course of business to the debtor if (1) the debtor received these goods while insolvent, and (2) written demand for reclamation of the goods is made not later than 45 days after their receipt by the debtor or within 20 days after the commencement of the bankruptcy case. This provision specifies, however, that it is subject to sections 546(d) and 507(c) as well as the prior rights of holders of security interests in such goods or the proceeds thereof. If the seller fails to provide the notice described in this provision, such seller may still assert the rights specified in section 503(b)(7).

Section 1228(b) amends section 503(b) to provide that the value of any goods received by a debtor not later than 20 days after the

commencement of a bankruptcy case in which the goods have been sold to the debtor in the ordinary course of the debtor's business is an allowed administrative expense.

Section 1229. Providing requested tax documents to the court

Section 1229(a) provides that the court may not grant a discharge to an individual in a case under chapter 7 unless requested tax documents have been provided to the court. Section 1229(b) similarly provides that the court may not confirm a chapter 11 or 13 plan unless requested tax documents have been filed with the court. Section 1229(c) directs the court to 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 debtor under chapter 7, 11 or 13. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

Section 1230. Encouraging creditworthiness

Section 1230(a) expresses the sense of the Congress that lenders may sometimes offer credit to consumers indiscriminately and that resulting consumer debt may be a major contributing factor leading to consumer insolvency.

Section 1230(b) directs the Board of Governors of the Federal Reserve System (Board) to study certain consumer credit industry solicitation and credit granting practices as well as the effect of such practices on consumer debt and insolvency. The specified practices involve the solicitation and extension of credit on an indiscriminate basis that encourages consumers to accumulate additional debt and where the lender fails to ensure that the consumer borrower is capable of repaying the debt.

Section 1230(c) requires the study described in subsection (b) to be prepared within 12 months from the date of the Act's enactment. This provision authorizes the Board to issue regulations requiring additional disclosures to consumers and permits it to undertake any other actions consistent with its statutory authority, which are necessary to ensure responsible industry practices and to prevent resulting consumer debt and insolvency.

Section 1231. Property no longer subject to redemption

Section 1231 amends section 541(b) of the Bankruptcy Code to provide that, under certain circumstances, an interest of the debtor in tangible personal property (other than securities, or written or printed evidences of indebtedness or title) that the debtor pledged or sold as collateral for a loan or advance of money given by a person licensed under law to make such loan or advance is not property of the estate. Subject to subchapter III of chapter 5 of the Bankruptcy Code, the provision applies where (a) the 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 the Bankruptcy Code.

Section 1232. Trustees

Section 1232 establishes a series of procedural protections for chapter 7 and chapter 13 trustees concerning final agency decisions relating to trustee appointments and future case assignments. Section 1232(a) amends section 586(d) of title 28 of the United States Code to allow a chapter 7 or chapter 13 trustee to obtain judicial review of such decisions by commencing an action in the United States district court after the trustee exhausts all available administrative remedies. Unless the trustee elects an administrative hearing on the record, the trustee is deemed to have exhausted all administrative remedies under this provision if the agency fails to make a final agency decision within 90 days after the trustee requests an administrative remedy. Section 1232(a) requires the Attorney General to promulgate procedures to implement this provision. It further provides that the agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

Section 1232(b) amends section 586(e) of title 28 of the United States Code to permit a chapter 13 trustee to obtain judicial review of certain final agency actions relating to claims for actual, necessary expenses under section 586(e). The trustee may commence an action in the United States district court where the trustee resides. The agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency. It directs the Attorney General to prescribe procedures to implement this provision.

Section 1233. Bankruptcy forms

Section 1233 amends section 2075 of title 28 of the United States Code to require the bankruptcy rules promulgated under this provision to prescribe a form for the statement specified under section 707(b)(2)(C) of the Bankruptcy Code and to provide general rules on the content of such statement.

Section 1234. Expedited appeals of bankruptcy cases to courts of appeals

Currently, appeals from decisions rendered by the bankruptcy court are either heard by the district court or a bankruptcy appellate panel. In addition to the time and cost factors attendant to the present appellate system, decisions rendered by a district court as an appellate court are not binding and lack *stare decisis* value.

To address these problems, section 1234(a) amends section 158(d) of title 28 of the United States Code to deem a judgment, decision, order, or decree of a bankruptcy judge to be a judgment, decision, order, or decree of the district court entered 31 days after an appeal of such judgment, decision, order or decree is filed with the district court, unless certain factors apply. These factors are (a) the district court issues a decision on the appeal within 30 days after such appeal is filed or enters an order extending the 30-day period for cause upon motion of a party or by the court *sua sponte*; or (b) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision. For purposes of this provision, section 1234(a) provides that an appeal is considered filed with the district court on the date on which the notice of appeal is filed, except in a case where a party has made an election

that the appeal be heard by the district court. If the appellant so elects, then the appeal is considered filed with the district court on the date such election is made.

Section 1234(a) provides that the courts of appeals shall have jurisdiction of appeals from (1) all final judgments, decisions, orders, and decrees of district courts entered under section 158(a); (2) all final judgments, decisions, orders, and decrees of bankruptcy appellate panels entered under section 158(b); (3) all judgments, decisions, orders, and decrees of district courts entered under section 158(d) (as amended by this Act) to the extent they are reviewable by a district court pursuant to section 158(a). Section 1234(a) further provides that the court of appeals may use its discretion, in accordance with rules prescribed by the Supreme Court, to exercise jurisdiction over an appeal from an interlocutory judgment, decision, order, or decree under section 158(e)(3) (as added by this Act).

Section 1234(b) makes technical and conforming amendments to implement this provision.

Section 1235. Exemptions

Section 1235 makes a conforming amendment to section 522(g)(2) of the Bankruptcy Code.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

Section 1301. Enhanced disclosures under an open end credit plan

Section 1301(a) amends section 127(b) of the Truth in Lending Act to mandate the inclusion of certain specified disclosures in billing statements with respect to various open end credit plans. In general, these statements must contain an example of the time it would take to repay a stated balance at a specified interest rate. In addition, they must warn the borrower that making only the minimum payment will increase the amount of interest that must be paid and the time it takes to repay the balance. Further, a toll-free telephone number must be provided where the borrower can obtain an estimate of the time it would take to repay the balance if only minimum payments are made. With respect to a creditor whose compliance with title 15 of the United States Code is enforced by the Federal Trade Commission (FTC), the billing statement must advise the borrower to contact the FTC at a toll-free telephone number to obtain an estimate of the time it would take to repay the borrower's balance. Section 1401(a) permits the creditor to substitute an example based on a higher interest rate. As necessary, the provision requires the Board of Governors of the Federal Reserve System ("Board"), to periodically recalculate by rule the interest rate and repayment periods specified in Section 1401(a). With respect to the toll-free telephone number, section 1401(a) permits a third party to establish and maintain it. Under certain circumstances, the toll-free number may connect callers to an automated device.

For a period not to exceed 24 months from the effective date of the Act, the Board is required to establish and maintain 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 or State credit union

(as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million. Not later than 6 months prior to the expiration of the 24-month period, the Board must submit a report on this program 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.

In addition, section 1301(a) requires the Board to 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 month payments and if no other advances are made. The table should reflect a significant number of different annual percentage rates, and account balances, minimum payment amounts. The Board must also promulgate regulations providing instructional guidance regarding the manner in which the information contained in the tables should be used to respond to a request by an obligor under this provision. Section 1401(a) provides that the disclosure requirements of this provision are inapplicable to any charge card account where the primary purpose of which is to require payment of charges in full each month.

Section 1301(b)(1) requires the Board to promulgate regulations implementing section 1301(a)'s amendments to section127. Section 1301(b)(2) specifies that the effective date of the amendments under subsection (a) and the regulations required under this provision shall not take effect until the later of 18 months after the date of enactment of this Act or 12 months after the publication of final regulations by the Board.

Section 1301(c) authorizes the Board to 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. The provision specifies the factors that should be considered. The findings of such study must be submitted to Congress and include recommendations for legislative initiatives, based on the Board's findings.

Section 1302. Enhanced disclosure for credit extensions secured by a dwelling

Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds the fair market value of a dwelling specifying that 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.

Section 1302(a)(2) amends section 147(b) of the Truth in Lending Act to require an advertisement relating to an extension of credit that may exceed the fair market value of a dwelling and such advertisement is disseminated in paper form to the public or through the Internet (as opposed to dissemination by radio or television) to include a specified statement. The statement must disclose that 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 that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

With respect to non-open end credit extensions, section 1302(b)(1) amends section 128 of the Truth in Lending Act to require that a consumer receive a specified statement at the time he or she applies for credit with respect to a consumer credit transaction secured by the consumer's principal dwelling and where the credit extension may exceed the fair market value of the dwelling must contain a specified statement. The statement must disclose that the interest on the portion of the credit extension that exceeds the dwelling's fair market value is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

Section 1302(b)(2) requires certain advertisements disseminated in paper form to the public or through the Internet that relate to a consumer credit transaction secured by a consumer's principal dwelling where the extension of credit may exceed the dwelling's fair market value to contain specified statements. These statements advise that 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 that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

Section 1302(c)(1) requires the Board to promulgate regulations implementing the amendments effectuated by section 1402. Section 1302(c)(2) provides that the these regulations shall not take effect until the later of 12 months following the Act's enactment date or 12 months after the date of publication of such final regulations by the Board.

Section 1303. Disclosures related to "introductory rates"

Section 1303(a) amends section 127(c) of the Truth in Lending Act by adding a provision add further requirements for applications, solicitations and related materials that are subject to section 127(c)(1). With respect to an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation involving an "introductory rate" offer, such materials must do the following if they offer a temporary annual percentage rate of interest:

(1) use the term "introductory" in immediate proximity to each listing of the temporary annual percentage interest rate applicable to such account;

(2) if the annual percentage interest rate that will apply after the end of the temporary rate period will be a fixed rate, 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 must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate;

(3) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, 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 60 days before the date of mailing of the application or solicitation must be clearly and conspicuously stated in a prominent location

closely proximate to the first listing of the temporary annual percentage rate.

The second and third provisions described above 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.

With respect to an application or solicitation to open a credit card account for which disclosure is required pursuant to section 127(c)(1), section 1303(a) specifies that certain statements be made if the rate of interest is revocable under any circumstance or upon any event. The statements must be clearly and conspicuously appear in a prominent manner on or with the application or solicitation. The disclosures include a general description of the circumstances that may result in the revocation of the temporary annual percentage rate and an explanation of the type of interest rate that will apply upon revocation of the temporary rate.

To implement this provision, section 1303(b) amends section 127(c) to define various relevant terms and requires the Board to promulgate regulations. The provision does not become effective until the earlier of 12 months after the Act's enactment date or 12 months after the date of public of such final regulations.

Section 1304. Internet-based credit card solicitations

Section 1304(a) amends section 127(c) of the Truth in Lending Act to require any solicitation to open a credit card account for an open end consumer credit plan through the Internet or other interactive computer service to clearly and conspicuously include the disclosures required under section 127(c)(1)(A) and (B). It also specifies that the disclosure required pursuant to section 127(c)(1)(A) be readily accessible to consumers in close proximity to the solicitation and be updated regularly to reflect current policies, terms, and fee amounts applicable to the credit card account. Section 1304(a) defines terms relevant to the Internet.

Section 1304(b) requires the Board to promulgate regulations implementing this provision. It also provides that the amendments effectuated by section 1404 do not take effect until the later of 12 months after the Act's enactment date or 12 months after the date of publication of such regulations.

Section 1305. Disclosures related to late payment deadlines and penalties

Section 1305(a) amends section 127(b) of the Truth in Lending Act to provide that if a late payment fee is to be imposed due to the obligor's failure to make payment on or before a required payment due date, the billing statement must specify the date on which that payment is due (or if different the earliest date on which a late payment fee may be charged) and the amount of the late payment fee to be imposed if payment is made after such date.

Section 1305(b) requires the Board to promulgate regulations implementing this provision. The amendments effectuated by this provision and the regulations promulgated thereunder shall not take effect until the later of 12 months after the Act's enactment date or 12 months after the date of publication of the regulations.

Section 1306. Prohibition on certain actions for failure to incur finance charges

Section 1306(a) amends section 127 to add a provision prohibiting a creditor of an open end consumer credit plan from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. The provision does not prevent the creditor from terminating such account for inactivity for three or more consecutive months.

Section 1306(b) requires the Board to promulgate regulations implementing the amendments effectuated by section 1306(a) and provides that they do not become effective until the later of 12 months after the Act's enactment date or 12 months after the date of publication of such final regulations.

Section 1307. Dual use credit card

Section 1307(a) provides that the Board may conduct a study and submit a report to Congress 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. The report must include recommendations for legislative initiatives, if any, based on its findings.

Section 1307(b) provides that the Board, in preparing its report, may include analysis of section 909 of the Electronic Fund Transfer Act to the extent this provision is in effect at the time of the report and the implementing regulations. In addition, the analysis may pertain to whether any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability and whether amendments to the Electronic Fund Transfer Act or implementing regulations are necessary to further address adequate protection for consumers concerning unauthorized use liability.

Section 1308. Study of bankruptcy impact of credit extended to dependent students

Section 1308 directs the Board of Governors of the Federal Reserve to study the impact that the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions has on the rate of bankruptcy cases filed. The report must be submitted to the Senate and House of Representatives no later than 1 year from the Act's enactment date.

Section 1309. Clarification of clear and conspicuous

Section 1309(a) requires the Board (in consultation with other Federal banking agencies, the National Credit Union Administration Board, and the Federal Trade Commission) to promulgate regulations not later than 6 months after the Act's enactment date to provide guidance on the meaning of the term "clear and conspicuous" as it is used in section 127(b)(11)(A), (B) and (C) and section 127(c)(6)(A)(ii) and (iii) of the Truth in Lending Act.

Section 1309(b) provides that regulations promulgated under section 1309(a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required under the Truth in Lending Act provisions set forth therein.

Section 1309(c) requires the Board, in promulgating regulations under this provision, to ensure that the clear and conspicuous standard required for disclosures made under the Truth in Lending Act provisions set forth in section 1309(a) can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

Section 1310. Enforcement of certain foreign judgements barred

Section 1310(a) provides that 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 and fraudulent omission that occurred in the United States during the period beginning on January 1, 1975, and ending on December 31, 1993.

Section 1310(b) provides that section 1310(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 section 1310(a) occurred.

TITLE XIV. GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Section 1401. Effective date; application of amendments

Section 1401(a) states that the Act shall take effect 180 days after the date of enactment, unless otherwise specified in this Act.

Section 1401(b) provides that the amendments made by this Act shall not apply with respect to cases commenced under the Bankruptcy Code before the Act's effective date, unless other specified in this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 11, UNITED STATES CODE

TITLE 11—BANKRUPTCY

Chap.		Sec.
1.	**General Provisions**	**101**
*	* * * * * * *	
15.	***Ancillary and Other Cross-Border Cases***	***1501***

CHAPTER 1—GENERAL PROVISIONS

Sec.
101. Definitions.
* * * * * * *
111. Credit counseling services; financial management instructional courses.

§ 101. Definitions

[In this title—**]** *In this title the following definitions shall apply:*

(1) *The term* "accountant" means accountant authorized under applicable law to practice public accounting, and includes professional accounting association, corporation, or partnership, if so authorized**[**;**]**.

(2) *The term* "affiliate" means—

(A) * * *

* * * * * * *

(D) entity that operates the business or substantially all of the property of the debtor under a lease or operating agreement**[**;**]**.

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

(4) *The term* "attorney" means attorney, professional law association, corporation, or partnership, authorized under applicable law to practice law**[**;**]**.

(4A) The term "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.

(5) *The term* "claim" means—

(A) * * *

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured**[**;**]**.

(6) *The term* "commodity broker" means futures commission merchant, foreign futures commission merchant, clearing organization, leverage transaction merchant, or commodity options dealer, as defined in section 761 of this title, with respect to which there is a customer, as defined in section 761 of this title**[**;**]**.

(7) *The term* "community claim" means claim that arose before the commencement of the case concerning the debtor for which property of the kind specified in section 541(a)(2) of this title is liable, whether or not there is any such property at the time of the commencement of the case**[**;**]**.

(8) *The term* "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose**[**;**]**.

(9) *The term* "corporation"—

(A) * * *

(B) does not include limited partnership**[**;**]**.

(10) *The term* "creditor" means—

(A) * * *

* * * * * * *

(C) entity that has a community claim**[**;**]**.

(10A) The term "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 without 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.

(11) *The term* "custodian" means—

(A) * * *

* * * * * * *

(C) trustee, receiver, or agent under applicable law, or under a contract, that is appointed or authorized to take charge of property of the debtor for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor's creditors**[**;**]**.

(12) *The term* "debt" means liability on a claim**[**;**]**.

[(12A) "debt for child support" means a debt of a kind specified in section 523(a)(5) of this title for maintenance or support of a child of the debtor;**]**

(12A) The term "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.

(13) *The term* "debtor" means person or municipality concerning which a case under this title has been commenced**[**;**]**.

(13A) The term "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.

[(14) "disinterested person" means person that—

[(A) is not a creditor, an equity security holder, or an insider;

[(B) is not and was not an investment banker for any outstanding security of the debtor;

[(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

[(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

[(E) 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 an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;**]**

(14) The term "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.

(14A) The term "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.

(15) *The term* "entity" includes person, estate, trust, governmental unit, and United States trustee**[**;**]**.

(16) *The term* "equity security" means—

(A) * * *

* * * * * * *

(C) warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in subparagraph (A) or (B) of this paragraph**[**;**]**.

(17) *The term* "equity security holder" means holder of an equity security of the debtor**[**;**]**.

(18) *The term* "family farmer" means—

(A) * * *

(B) corporation or partnership in which more than 50 percent of the outstanding stock or equity is held by one family, or by one family and the relatives of the members of such family, and such family or such relatives conduct the farming operation, and

(i) * * *

* * * * * * *

(iii) if such corporation issues stock, such stock is not publicly traded**[**;**]**.

(19) *The term* "family farmer with regular annual income" means family farmer whose annual income is sufficiently stable and regular to enable such family farmer to make payments under a plan under chapter 12 of this title**[**;**]**.

(20) *The term* "farmer" means (except when such term appears in the term "family farmer") person that received more than 80 percent of such person's gross income during the taxable year of such person immediately preceding the taxable year of such person during which the case under this title concerning such person was commenced from a farming operation owned or operated by such person**[**;**]**.

(21) *The term* "farming operation" includes farming, tillage of the soil, dairy farming, ranching, production or raising of crops, poultry, or livestock, and production of poultry or livestock products in an unmanufactured state**[**;**]**.

(21A) *The term* "farmout agreement" means a written agreement in which—

(A) * * *

(B) such other entity (either directly or through its agents or its assigns), as consideration, agrees to perform drilling, reworking, recompleting, testing, or similar or related operations, to develop or produce liquid or gaseous hydrocarbons on the property**[**;**]**.

(21B) *The term* "Federal depository institutions regulatory agency" means—

(A) * * *

* * * * * * *

(D) with respect to any insured depository institution for which the Federal Deposit Insurance Corporation has been appointed conservator or receiver, the Federal Deposit Insurance Corporation**[**;**]**.

(22) *The term* the term "financial institution"—

(A) * * *

(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991**[**;**]**.

(22A) The term "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.

[(23) "foreign proceeding" means proceeding, whether judicial or administrative and whether or not under bankruptcy law, in a foreign country in which the debtor's domicile, residence, principal place of business, or principal assets were located at the commencement of such proceeding, for the purpose of liquidating an estate, adjusting debts by composition, extension, or discharge, or effecting a reorganization;

[(24) "foreign representative" means duly selected trustee, administrator, or other representative of an estate in a foreign proceeding;**]**

(23) The term "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) The term "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 reorganiza-

tion or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding.

(25) *The term* "forward contract" [means a contract] *means—*

(A) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity, as defined in section 761(8) of this title, 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 two days after the date the contract is entered into, including, but not limited to, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction[, or any combination thereof or option thereon;]*, or any other similar agreement;*

(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.

[(26) "forward contract merchant" means a person whose business consists in whole or in part of entering into forward contracts as or with merchants in a commodity, as defined in section 761(8) of this title, 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;]

(26) The term "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.

(27) *The term* "governmental unit" means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth,

a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government**[**;**]**.

(27A) The term "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.

(27B) The term "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.

(28) *The term* "indenture" means mortgage, deed of trust, or indenture, under which there is outstanding a security, other than a voting-trust certificate, constituting a claim against the debtor, a claim secured by a lien on any of the debtor's property, or an equity security of the debtor**[**;**]**.

(29) *The term* "indenture trustee" means trustee under an indenture**[**;**]**.

(30) *The term* "individual with regular income" means individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under chapter 13 of this title, other than a stockbroker or a commodity broker**[**;**]**.

(31) *The term* "insider" includes—

(A) * * *

* * * * * * *

(F) managing agent of the debtor[;].

(32) *The term* "insolvent" means—

(A) * * *

* * * * * * *

(C) with reference to a municipality, financial condition such that the municipality is—

(i) generally not paying its debts as they become due unless such debts are the subject of a bona fide dispute; or

(ii) unable to pay its debts as they become due[;].

(33) *The term* "institution-affiliated party"—

(A) * * *

(B) with respect to an insured credit union, has the meaning given it in section 206(r) of the Federal Credit Union Act[;].

(34) *The term* "insured credit union" has the meaning given it in section 101(7) of the Federal Credit Union Act[;].

(35) *The term* "insured depository institution"—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit Insurance Act; and

(B) includes an insured credit union (except in the case of [paragraphs (21B) and (33)(A)] *paragraphs (23) and (35)* of this subsection)[;].

(35A) *The term* "intellectual property" means—

(A) * * *

* * * * * * *

(F) mask work protected under chapter 9 of title 17; to the extent protected by applicable nonbankruptcy law[; and].

(36) *The term* "judicial lien" means lien obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding[;].

(37) *The term* "lien" means charge against or interest in property to secure payment of a debt or performance of an obligation[;].

(38) *The term* "margin payment" means, for purposes of the forward contract provisions of this title, payment or deposit of cash, a security or other property, that is commonly known in the forward contract trade as original margin, initial margin, maintenance margin, or variation margin, including mark-to-market payments, or variation payments[; and].

(38A) The term "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) The term "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;

(39) *The term* "mask work" has the meaning given it in section 901(a)(2) of title 17.

(40) *The term* "municipality" means political subdivision or public agency or instrumentality of a State**[**;**]**.

(40A) The term "patient" means any person who obtains or receives services from a health care business.

(40B) The term "patient records" means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium.

(41) *The term* "person" includes individual, partnership, and corporation, but does not include governmental unit, except that a governmental unit that—

(A) * * *

* * * * * * *

(C) is the legal or beneficial owner of an asset of—

(i) an employee pension benefit plan that is a governmental plan, as defined in section 414(d) of the Internal Revenue Code of 1986; or

(ii) an eligible deferred compensation plan, as defined in section 457(b) of the Internal Revenue Code of 1986;

shall be considered, for purposes of section 1102 of this title, to be a person with respect to such asset or such benefit**[**;**]**.

(42) *The term* "petition" means petition filed under section 301, 302, 303, or 304 of this title, as the case may be, commencing a case under this title**[**;**]**.

(42A) *The term* "production payment" means a term overriding royalty satisfiable in cash or in kind—

(A) contingent on the production of a liquid or gaseous hydrocarbon from particular real property; and

(B) from a specified volume, or a specified value, from the liquid or gaseous hydrocarbon produced from such property, and determined without regard to production costs**[**;**]**.

(43) *The term* "purchaser" means transferee of a voluntary transfer, and includes immediate or mediate transferee of such a transferee**[**;**]**.

(44) *The term* "railroad" means common carrier by railroad engaged in the transportation of individuals or property or owner of trackage facilities leased by such a common carrier**[**;**]**.

(45) *The term* "relative" means individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree**[**;**]**.

(46) *The term* "repo participant" means an entity that, [on any day during the period beginning 90 days before the date of] *at any time before* the filing of the petition, has an outstanding repurchase agreement with the debtor[;].

[(47) "repurchase agreement" (which definition also applies to a reverse repurchase agreement) means an agreement, including related terms, which provides for the transfer of certificates of deposit, eligible bankers' acceptances, or securities that are direct obligations of, or that are fully guaranteed as to principal and interest 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, or securities with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, or securities as described above, at a date certain not later than one year after such transfers or on demand, against the transfer of funds;]

(47) The term "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 trans-

action 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.

(48) *The term* "securities clearing agency" means person that is registered as a clearing agency under section 17A of the Securities Exchange Act of 1934 *or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,* or whose business is confined to the performance of functions of a clearing agency with respect to exempted securities, as defined in section 3(a)(12) of such Act for the purposes of such section 17A**[**;**]**.

(48A) The term "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).

(49) *The term* "security"—

(A) * * *

* * * * * * *

(B) does not include—

(i) * * *

* * * * * * *

(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered**[**;**]**.

(50) *The term* "security agreement" means agreement that creates or provides for a security interest**[**;**]**.

(51) *The term* "security interest" means lien created by an agreement**[**;**]**.

(51A) *The term* "settlement payment" means, for purposes of the forward contract provisions of this title, a preliminary settlement payment, a partial settlement payment, an interim settlement payment, a settlement payment on account, a final settlement payment, a net settlement payment, or any other similar payment commonly used in the forward contract trade**[**;**]**.

(51B) *The term* "single asset real estate" means real property constituting a single property or project, other than residential real property with fewer than 4 residential units, which generates substantially all of the gross income of a debtor *who is not a family farmer* and on which no substantial business is being conducted by a debtor other than the business of operating the real property and activities incidental **[**thereto having aggregate noncontingent, liquidated secured debts in an amount no more than $4,000,000;**]**

[(51C) "small business" means a person engaged in commercial or business activities (but does not include a person

whose primary activity is the business of owning or operating real property and activities incidental thereto) whose aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition do not exceed $2,000,000;]

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term "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).

(52) *The term* "State" includes the District of Columbia and Puerto Rico, except for the purpose of defining who may be a debtor under chapter 9 of this title[;].

(53) *The term* "statutory lien" means lien arising solely by force of a statute on specified circumstances or conditions, or lien of distress for rent, whether or not statutory, but does not include security interest or judicial lien, whether or not such interest or lien is provided by or is dependent on a statute and whether or not such interest or lien is made fully effective by statute[;].

(53A) *The term* "stockbroker" means person—

(A) * * *

(B) that is engaged in the business of effecting transactions in securities—

(i) * * *

(ii) with members of the general public, from or for such person's own account[;].

[(53B) "swap agreement" means—

[(A) an agreement (including terms and conditions incorporated by reference therein) which is a rate swap agreement, basis swap, forward rate agreement, commodity swap, interest rate option, forward foreign exchange agreement, spot foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency option, any other similar agreement (including any option to enter into any of the foregoing);

[(B) any combination of the foregoing; or

[(C) a master agreement for any of the foregoing together with all supplements;]

(53B) The term "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.

(53C) *The term* "swap participant" means an entity that, at any time before the filing of the petition, has an outstanding swap a greement with the debtor**[**;**]**.

(56A) *The term* "term overriding royalty" means an interest in liquid or gaseous hydrocarbons in place or to be produced from particular real property that entitles the owner thereof to a share of production, or the value thereof, for a term limited by time, quantity, or value realized**[**;**]**.

(53D) *The term* "timeshare plan" means and shall include that interest purchased in any arrangement, plan, scheme, or similar device, but not including exchange programs, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, right to use agreement, or by any other means, whereby a purchaser, in exchange for consideration, receives a right to use accommodations, facilities, or recreational sites, whether improved or unimproved, for a specific period of time less than a full year during any given year, but not necessarily for consecutive years, and which extends for a period of more than three years. A "timeshare interest" is that interest purchased in a timeshare plan which grants the purchaser the right to use and occupy accommodations, facilities, or recreational sites, whether improved or unimproved, pursuant to a timeshare plan**[**;**]**.

[(54) "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 debtor's equity of redemption;**]**

(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.

(54A) *The term* the term "uninsured State member bank" means a State member bank (as defined in section 3 of the Federal

Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation[; and].

(55) *The term* "United States", when used in a geographical sense, includes all locations where the judicial jurisdiction of the United States extends, including territories and possessions of the United States[;].

* * * * * * *

§ 103. Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title*, and this chapter, sections 307, 362(l), 555 through 557, and 559 through 562 apply in a case under chapter 15*.

* * * * * * *

(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.

§ 104. Adjustment of dollar amounts

(a) * * *

(b)(1) On April 1, 1998, and at each 3-year interval ending on April 1 thereafter, each dollar amount in effect under sections *101(3),* 109(e), 303(b), 507(a), 522(d), *522(f)(3), 522(n), 522(p),* and 523(a)(2)(C) immediately before such April 1 shall be adjusted—

(A) * * *

* * * * * * *

(2) Not later than March 1, 1998, and at each 3-year interval ending on March 1 thereafter, the Judicial Conference of the United States shall publish in the Federal Register the dollar amounts that will become effective on such April 1 under sections 109(e), 303(b), 507(a), 522(d), *522(f)(3),* and 523(a)(2)(C) of this title.

* * * * * * *

(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, 2004.

§ 105. Power of court

(a) * * *

* * * * * * *

(d) The court, on its own motion or on the request of a party in interest[, may]—

[(1) hold a status conference regarding any case or proceeding under this title after notice to the parties in interest; and]

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

* * * * * * *

§ 108. Extension of time

(a) * * *

* * * * * * *

(c) Except as provided in section 524 of this title, if applicable nonbankruptcy law, an order entered in a nonbankruptcy proceeding, or an agreement fixes a period for commencing or continuing a civil action in a court other than a bankruptcy court on a claim against the debtor, or against an individual with respect to which such individual is protected under section 1201 or 1301 of this title, and such period has not expired before the date of the filing of the petition, then such period does not expire until the later of—

(1) * * *

(2) 30 days after notice of the termination or expiration of the stay under section 362, **[**922, or**]** *922, 1201, or* 1301 of this title, as the case may be, with respect to such claim.

§ 109. Who may be a debtor

(a) * * *

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) * * *

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a small business investment company licensed by the Small Business Administration under **[**subsection (c) or (d) of**]** section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act; or

[(3) a foreign insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, or credit union, engaged in such business in the United States.**]**

(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.

* * * * * * *

(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 briefing 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.

§ 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section—

(1) "bankruptcy petition preparer" means [a person, other than an attorney or an employee of an attorney] *the attorney for the debtor or an employee of such attorney under the direct supervision of such attorney*, who prepares for compensation a document for filing; and

* * * * * * *

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address. *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.

[(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.]

(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.

(c)(1) * * *

[(2) For purposes] *(2)(A) Subject to subparagraph (B), for purposes* of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(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.

[(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.]

[(d)(1)] *(d)* A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor's signature, furnish to the debtor a copy of the document.

[(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than $500 for each such failure unless the failure is due to reasonable cause.]

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

[(2) A bankruptcy petition preparer may be fined not more than $500 for each document executed in violation of paragraph (1).]

(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.

[(f)(1)**]** *(f)* A bankruptcy petition preparer shall not use the word "legal" or any similar term in any advertisements, or advertise under any category that includes the word "legal" or any similar term.

[(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).**]**

[(g)(1)**]** *(g)* A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

[(2) A bankruptcy petition preparer shall be fined not more than $500 for each violation of paragraph (1).**]**

(h)*(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.*

[(1)**]** *(2)* Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury *by the bankruptcy petition preparer shall be filed together with the petition,* disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. *If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).*

[(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor may exempt any funds so recovered under section 522(b).**]**

(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).

[(3)**]** *(4)* The debtor, the trustee, a creditor, **[**or the United States trustee**]** *the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,* may file a motion for an order under paragraph (2).

[(4)**]** *(5)* A bankruptcy petition preparer shall be fined not more than $500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

[(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—**]**

(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—

(A) * * *

* * * * * * *

(j)(1) * * *

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title **[**a violation of which subjects a person to criminal penalty**]**;

* * * * * * *

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent such person's interference with the proper administration of this title, **[**or**]** has not paid a penalty imposed under this section, *or failed to disgorge all fees ordered by the court* the court may enjoin the person from acting as a bankruptcy petition preparer.

(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.

[(3)] *(4)* The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable [attorney's] *attorneys'* fees and costs of the action, to be paid by the bankruptcy petition preparer.

* * * * * * *

(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.

§ 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.

* * * * * * *

CHAPTER 3—CASE ADMINISTRATION

SUBCHAPTER I—COMMENCEMENT OF A CASE

Sec.
301. Voluntary cases.
* * * * * * *
[304. Cases ancillary to foreign proceedings.]
* * * * * * *
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* * * * * * *

SUBCHAPTER II—OFFICERS

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* * * * * * *
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* * * * * * *

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341. Meetings of creditors and equity security holders.
* * * * * * *
351. Disposal of patient records.
* * * * * * *

SUBCHAPTER I—COMMENCEMENT OF A CASE

§ 301. Voluntary cases

(a) A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. [The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.]

(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

* * * * * * *

§ 303. Involuntary cases

(a) * * *

* * * * * * *

[(k) Notwithstanding subsection (a) of this section, an involuntary case may be commenced against a foreign bank that is not engaged in such business in the United States only under chapter 7 of this title and only if a foreign proceeding concerning such bank is pending.]

[§ 304. Cases ancillary to foreign proceedings

[(a) A case ancillary to a foreign proceeding is commenced by the filing with the bankruptcy court of a petition under this section by a foreign representative.

[(b) Subject to the provisions of subsection (c) of this section, if a party in interest does not timely controvert the petition, or after trial, the court may—

[(1) enjoin the commencement or continuation of—

[(A) any action against—

[(i) a debtor with respect to property involved in such foreign proceeding; or

[(ii) such property; or

[(B) the enforcement of any judgment against the debtor with respect to such property, or any act or the commencement or continuation of any judicial proceeding to create or enforce a lien against the property of such estate;

[(2) order turnover of the property of such estate, or the proceeds of such property, to such foreign representative; or

[(3) order other appropriate relief.

[(c) In determining whether to grant relief under subsection (b) of this section, the court shall be guided by what will best assure an economical and expeditious administration of such estate, consistent with—

[(1) just treatment of all holders of claims against or interests in such estate;

[(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 such estate;

[(4) distribution of proceeds of such estate substantially in accordance with the order prescribed by this title;

[(5) comity; and

[(6) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.]

§ 305. Abstention

(a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—

[(2)(A) there is pending a foreign proceeding; and

[(B) the factors specified in section 304(c) of this title warrant such dismissal or suspension.]

(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.

* * * * * * *

(c) An order under subsection (a) of this section dismissing a case or suspending all proceedings in a case, or a decision not so to dismiss or suspend, is not reviewable by appeal or otherwise by the court of appeals under **[**section 158(d)**]** *subsection (e) or (f) of section 158*, 1291, or 1292 of title 28 or by the Supreme Court of the United States under section 1254 of title 28.

§ 306. Limited appearance

An appearance in a bankruptcy court by a foreign representative in connection with a petition or request under section 303**[**, 304,**]** or 305 of this title does not submit such foreign representative to the jurisdiction of any court in the United States for any other purpose, but the bankruptcy court may condition any order under section 303**[**, 304,**]** or 305 of this title on compliance by such foreign representative with the orders of such bankruptcy court.

* * * * * * *

§ 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.

* * * * * * *

SUBCHAPTER II—OFFICERS

* * * * * * *

§ 328. Limitation on compensation of professional persons

(a) The trustee, or a committee appointed under section 1102 of this title, with the court's approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, *on a fixed or percentage fee basis,* or on a contingent fee basis. Notwithstanding such terms and conditions, the court may allow compensation different from the compensation provided under such terms and conditions after the conclusion of such employment, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.

* * * * * * *

§ 330. Compensation of officers

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, an examiner, *an ombudsman appointed under section 331, or* a professional person employed under section 327 or 1103—

(A) reasonable compensation for actual, necessary services rendered by the trustee, examiner, *ombudsman,* professional person, or attorney and by any paraprofessional person employed by any such person; and

* * * * * * *

(3)**[**(A) In**]** *In* determining the amount of reasonable compensation to be awarded *to an examiner, trustee under chapter 11, or professional person*, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—

(A) * * *

* * * * * * *

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; **[**and**]**

(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

[(E)**]** *(F)* whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

* * * * * * *

(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.

* * * * * * *

§ 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.

* * * * * * *

SUBCHAPTER III—ADMINISTRATION

§ 341. Meetings of creditors and equity security holders

(a) * * *

* * * * * * *

(c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors. *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.

* * * * * * *

(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.

* * * * * * *

§ 342. Notice

(a) * * *

[(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed.**]**

(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.

(c)*(1)* If notice is required to be given by the debtor to a creditor under this title, any rule, any applicable law, or any order of the court, such notice shall contain the name, address, and taxpayer identification number of the debtor**[**, but the failure of such notice to contain such information shall not invalidate the legal effect of such notice**]**.

(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.

(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) 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.

* * * * * * *

[§ 346. Special tax provisions

[(a) Except to the extent otherwise provided in this section, subsections (b), (c), (d), (e), (g), (h), (i), and (j) of this section apply notwithstanding any State or local law imposing a tax, but subject to the Internal Revenue Code of 1986.

[(b)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, any income of the estate may be taxed under a State or local law imposing a tax on or measured by income only to the estate, and may not be taxed to such individual. Except as provided in section 728 of this title, if such individual is a partner in a partnership, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of income, gain, loss, deduction, or credit of such individual 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 estate.

[(2) Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such a case, and any State or local tax on or measured by such income, shall be computed in the same manner as the income and the tax of an estate.

[(3) The estate in such a case shall use the same accounting method as the debtor used immediately before the commencement of the case.

[(c)(1) The commencement of a case under this title concerning a corporation or a partnership does not effect a change in the status of such corporation or partnership for the purposes of any State or local law imposing a tax on or measured by income. Except as otherwise provided in this section and in section 728 of this title, any income of the estate in such case may be taxed only as though such case had not been commenced.

[(2) In such a case, except as provided in section 728 of this title, the trustee shall make any tax return otherwise required by State or local law to be filed by or on behalf of such corporation or partnership in the same manner and form as such corporation or partnership, as the case may be, is required to make such return.

[(d) In a case under chapter 13 of this title, any income of the estate or the debtor may be taxed under a State or local law imposing a tax on or measured by income only to the debtor, and may not be taxed to the estate.

[(e) A claim allowed under section 502(f) or 503 of this title, other than a claim for a tax that is not otherwise deductible or a capital expenditure that is not otherwise deductible, is deductible by the entity to which income of the estate is taxed unless such claim was deducted by another entity, and a deduction for such a claim is deemed to be a deduction attributable to a business.

[(f) 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 was paid.

[(g)(1) Neither gain nor loss shall be recognized on a transfer—

[(A) by operation of law, of property to the estate;

[(B) other than a sale, of property from the estate to the debtor; or

[(C) in a case under chapter 11 or 12 of this title concerning a corporation, of property from the estate to a corporation that is an affiliate participating in a joint plan with the debtor, or that is a successor to the debtor under the plan, except that gain or loss may be recognized to the same extent that such transfer results in the recognition of gain or loss under section 371 of the Internal Revenue Code of 1986.

[(2) The transferee of a transfer of a kind specified in this subsection shall take the property transferred with the same character, and with the transferor's basis, as adjusted under subsection (j)(5) of this section, and holding period.

[(h) Notwithstanding sections 728(a) and 1146(a) of this title, for the purpose of determining the number of taxable periods during which the debtor or the estate may use a loss carryover or a loss carryback, the taxable period of the debtor during which the case is commenced is deemed not to have been terminated by such commencement.

[(i)(1) In a case under chapter 7, 12, or 11 of this title concerning an individual, the estate shall succeed to the debtor's tax attributes, including—

[(A) any investment credit carryover;

[(B) any recovery exclusion;

[(C) any loss carryover;

[(D) any foreign tax credit carryover;

[(E) any capital loss carryover; and

[(F) any claim of right.

[(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) of this subsection but that was not utilized by the estate. The debtor may utilize such tax attributes as though any applicable time limitations on such utilization by the debtor were suspended during the time during which the case was pending.

[(3) In such a case, the estate may carry back any loss of the estate to a taxable period of the debtor that ended before the order for relief under such chapter the same as the debtor could have carried back such loss had the debtor incurred such loss and the case under this title had not been commenced, but the debtor may not carry back any loss of the debtor from a taxable period that ends after such order to any taxable period of the debtor that ended before such order until after the case is closed.

[(j)(1) Except as otherwise provided in this subsection, income is not realized by the estate, the debtor, or a successor to the debtor by reason of forgiveness or discharge of indebtedness in a case under this title.

[(2) For the purposes of any State or local law imposing a tax on or measured by income, a deduction with respect to a liability may not be allowed for any taxable period during or after which such liability is forgiven or discharged under this title. In this paragraph, "a deduction with respect to a liability" includes a capital loss incurred on the disposition of a capital asset with respect to a liability that was incurred in connection with the acquisition of such asset.

[(3) Except as provided in paragraph (4) of this subsection, for the purpose of any State or local law imposing a tax on or measured by income, any net operating loss of an individual or corporate debtor, including a net operating loss carryover to such debtor, shall be reduced by the amount of indebtedness forgiven or discharged in a case under this title, except to the extent that such forgiveness or discharge resulted in a disallowance under paragraph (2) of this subsection.

[(4) A reduction of a net operating loss or a net operating loss carryover under paragraph (3) of this subsection or of basis under paragraph (5) of this subsection is not required to the extent that the indebtedness of an individual or corporate debtor forgiven or discharged—

[(A) consisted of items of a deductible nature that were not deducted by such debtor; or

[(B) resulted in an expired net operating loss carryover or other deduction that—

[(i) did not offset income for any taxable period; and

[(ii) did not contribute to a net operating loss in or a net operating loss carryover to the taxable period during or after which such indebtedness was discharged.

[(5) For the purposes of a State or local law imposing a tax on or measured by income, the basis of the debtor's property or of property transferred to an entity required to use the debtor's basis in whole or in part shall be reduced by the lesser of—

[(A)(i) the amount by which the indebtedness of the debtor has been forgiven or discharged in a case under this title; minus

[(ii) the total amount of adjustments made under paragraphs (2) and (3) of this subsection; and

[(B) the amount by which the total basis of the debtor's assets that were property of the estate before such forgiveness or discharge exceeds the debtor's total liabilities that were liabilities both before and after such forgiveness or discharge.

[(6) Notwithstanding paragraph (5) of this subsection, basis is not required to be reduced to the extent that the debtor elects to treat as taxable income, of the taxable period in which indebtedness is forgiven or discharged, the amount of indebtedness forgiven or discharged that otherwise would be applied in reduction of basis under paragraph (5) of this subsection.

[(7) For the purposes of this subsection, indebtedness with respect to which an equity security, other than an interest of a limited partner in a limited partnership, is issued to the creditor to whom such indebtedness was owed, or that is forgiven as a contribution to capital by an equity security holder other than a limited partner in the debtor, is not forgiven or discharged in a case under this title—

[(A) to any extent that such indebtedness did not consist of items of a deductible nature; or

[(B) if the issuance of such equity security has the same consequences under a law imposing a tax on or measured by income to such creditor as a payment in cash to such creditor in an amount equal to the fair market value of such equity security, then to the lesser of—

[(i) the extent that such issuance has the same such consequences; and

[(ii) the extent of such fair market value.]

§ 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.

* * * * * * *

§ 348. Effect of conversion

(a) * * *

* * * * * * *

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion; **[**and**]**

(B) valuations of property and of allowed secured claims in the chapter 13 case shall apply **[**in the converted case, with allowed secured claims**]** *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* reduced to the extent that they have been paid in accordance with the chapter 13 plan**[**.**]***; and*

(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.

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property *of the estate* in the converted case shall consist of the property of the estate as of the date of conversion.

* * * * * * *

§ 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.

SUBCHAPTER IV—ADMINISTRATIVE POWERS

* * * * * * *

§ 362. Automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) * * *

* * * * * * *

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning **[**the debtor**]** *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*.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) * * *

[(2) under subsection (a) of this section—

[(A) of the commencement or continuation of an action or proceeding for—

[(i) the establishment of paternity; or

[(ii) the establishment or modification of an order for alimony, maintenance, or support; or

[(B) of the collection of alimony, maintenance, or support from property that is not property of the estate;**]**

(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.);

* * * * * * *

(6) under subsection (a) of this section, of the setoff by a commodity broker, forward contract merchant, stockbroker, [financial institutions,] *financial institution, financial participant,* or securities clearing agency of any mutual debt and claim under or in connection with commodity contracts, as defined in section 761 of this title, forward contracts, or securities contracts, as defined in section 741 of this title, that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, arising out of commodity contracts, forward contracts, or securities contracts against cash, securities, or other property held by*, pledged to, and under the control of,* or due from such commodity broker, forward contract merchant, stockbroker, [financial institutions,] *financial institution, financial participant,* or securities clearing agency to margin, guarantee, secure, or settle commodity contracts, forward contracts, or securities contracts;

(7) under subsection (a) of this section, of the setoff by a repo participant, of any mutual debt and claim under or in connection with repurchase agreements that constitutes the setoff of a claim against the debtor for a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, arising out of repurchase agreements against cash, securities, or other property held by*, pledged to, and under the control of,* or due from such repo participant to margin, guarantee, secure or settle repurchase agreements;

* * * * * * *

[(17) under subsection (a) of this section, of the setoff by a swap participant, of any mutual debt and claim under or in connection with any swap agreement that constitutes the setoff of a claim against the debtor for any payment 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 of the debtor held by or due from such swap participant to guarantee, secure or settle any swap agreement; or

[(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax imposed by the District of Columbia, or a political subdivision of a State, if such tax comes due after the filing of the petition.]

(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;

(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;

(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;

(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;

(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;

(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;

(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);

(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

(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 pro-

gram (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.).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989. *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) Except as provided in subsections (d), **[**(e), and (f)**]** *(e), (f), and (h)* of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate; **[**and**]**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) * * *

* * * * * * *

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied**[**.**]***;*

(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 re-

quired 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.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

(1) * * *

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization; **[**or**]**

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) *or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later*—

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

[(B) the debtor has commenced monthly payments 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), which payments are in an amount equal to interest at a current fair market rate on the value of the creditor's interest in the real estate.**]**

(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

(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.

(e)*(1)* Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(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.

* * * * * * *

(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.

(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.

[(h) An**]** *(k)(1) Except as provided in paragraph (2), an* individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(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.

(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.

(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.

§ 363. Use, sale, or lease of property

(a) * * *

* * * * * * *

(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section **[**only to the extent not inconsistent with any relief granted under section 362(c), 362(d), 362(e), or 362(f) of this title.**]** *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.

* * * * * * *

§ 365. Executory contracts and unexpired leases

(a) * * *

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default**[**;**]** *other than a default that is a breach of a provision relating 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);

* * * * * * *

(2) Paragraph (1) of this subsection does not apply to a default that is a breach of a provision relating to—

(A) * * *

* * * * * * *

(D) the satisfaction of any penalty rate or *penalty* provision relating to a default arising from any failure by the debtor to perform nonmonetary obligations under the executory contract or unexpired lease.

* * * * * * *

(c) The trustee may not assume or assign any executory contract or unexpired lease of the debtor, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

(1) * * *

(2) such contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor; *or*

(3) such lease is of nonresidential real property and has been terminated under applicable nonbankruptcy law prior to the order for relief**[**; or**]**.

[(4) such lease is of nonresidential real property under which the debtor is the lessee of an aircraft terminal or aircraft gate at an airport at which the debtor is the lessee under one or more additional nonresidential leases of an aircraft terminal or aircraft gate and the trustee, in connection with such assumption or assignment, does not assume all such leases or does not assume and assign all of such leases to the same person, except that the trustee may assume or assign less than all of such leases with the airport operator's written consent.**]**

(d)(1) * * *

* * * * * * *

[(4) Notwithstanding paragraphs (1) and (2), in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within 60 days after the date of the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.**]**

(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.

[(5) Notwithstanding paragraphs (1) and (4) of this subsection, in a case under any chapter of this title, if the trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate before the occurrence of a termination event, then (unless the court orders the trustee to assume such unexpired leases within 5 days after the termination event), at the option of the airport operator, such lease is deemed rejected 5 days after the occurrence of a termination event and the trustee shall immediately surrender possession of the premises to the airport operator; except that the lease shall not be deemed to be rejected unless the airport operator first waives the right to damages related to the rejection. In the event that the lease is deemed to be rejected under this paragraph, the airport operator shall provide the affected air carrier adequate opportunity after the surrender of the premises to remove the fixtures and equipment installed by the affected air carrier.

[(6) For the purpose of paragraph (5) of this subsection and paragraph (f)(1) of this section, the occurrence of a termination event means, with respect to a debtor which is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate—

[(A) the entry under section 301 or 302 of this title of an order for relief under chapter 7 of this title;

[(B) the conversion of a case under any chapter of this title to a case under chapter 7 of this title; or

[(C) the granting of relief from the stay provided under section 362(a) of this title with respect to aircraft, aircraft engines, propellers, appliances, or spare parts, as defined in section 40102(a) of title 49, except for property of the debtor found by the court not to be necessary to an effective reorganization.

[(7) Any order entered by the court pursuant to paragraph (4) extending the period within which the trustee of an affected air carrier must assume or reject an unexpired lease of nonresidential real property shall be without prejudice to—

[(A) the right of the trustee to seek further extensions within such additional time period granted by the court pursuant to paragraph (4); and

[(B) the right of any lessor or any other party in interest to request, at any time, a shortening or termination of the period within which the trustee must assume or reject an unexpired lease of nonresidential real property.

[(8) The burden of proof for establishing cause for an extension by an affected air carrier under paragraph (4) or the maintenance of a previously granted extension under paragraph (7)(A) and (B) shall at all times remain with the trustee.

[(9) For purposes of determining cause under paragraph (7) with respect to an unexpired lease of nonresidential real property between the debtor that is an affected air carrier and an airport

operator under which such debtor is the lessee of an airport terminal or an airport gate, the court shall consider, among other relevant factors, whether substantial harm will result to the airport operator or airline passengers as a result of the extension or the maintenance of a previously granted extension. In making the determination of substantial harm, the court shall consider, among other relevant factors, the level of actual use of the terminals or gates which are the subject of the lease, the public interest in actual use of such terminals or gates, the existence of competing demands for the use of such terminals or gates, the effect of the court's extension or termination of the period of time to assume or reject the lease on such debtor's ability to successfully reorganize under chapter 11 of this title, and whether the trustee of the affected air carrier is capable of continuing to comply with its obligations under section 365(d)(3) of this title.**]**

[(10)**]** *(5)* The trustee shall timely perform all of the obligations of the debtor, except those specified in section 365(b)(2), first arising from or after 60 days after the order for relief in a case under chapter 11 of this title under an unexpired lease of personal property (other than personal property leased to an individual primarily for personal, family, or household purposes), until such lease is assumed or rejected notwithstanding section 503(b)(1) of this title, unless the court, after notice and a hearing and based on the equities of the case, orders otherwise with respect to the obligations or timely performance thereof. This subsection shall not be deemed to affect the trustee's obligations under the provisions of subsection (b) or (f). Acceptance of any such performance does not constitute waiver or relinquishment of the lessor's rights under such lease or under this title.

* * * * * * *

(f)(1) Except as provided in **[**subsection**]** *subsections (b) and* (c) of this section, notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection**[**; except that the trustee may not assign an unexpired lease of nonresidential real property under which the debtor is an affected air carrier that is the lessee of an aircraft terminal or aircraft gate if there has occurred a termination event.**]**.

* * * * * * *

(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.

§ 366. Utility service

(a) Except as provided in **[**subsection (b)**]** *subsections (b) and (c)* of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

* * * * * * *

(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.

CHAPTER 5—CREDITORS, THE DEBTOR, AND THE ESTATE

SUBCHAPTER I—CREDITORS AND CLAIMS

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* * * * * * *
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[560. Contractual right to terminate a swap agreement.]
559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.
560. Contractual right to liquidate, terminate, or accelerate a swap agreement.
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SUBCHAPTER I—CREDITORS AND CLAIMS

§ 501. Filing of proofs of claims or interests

(a) * * *

* * * * * * *

(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.

§ 502. Allowance of claims or interests

(a) * * *

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) * * *

* * * * * * *

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under paragraph (1), (2), or (3)

of section 726(a) of this title or under the Federal Rules of Bankruptcy Procedure, except that a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide*, 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*.

* * * * * * *

(g)*(1)* A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(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.

* * * * * * *

(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).

§ 503. Allowance of administrative expenses

(a) * * *

(b) After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including—

(1)(A) * * *

(B) any tax—

(i) incurred by the estate, *whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,* except a tax of a kind specified in section 507(a)(8) of this title; or

(ii) attributable to an excessive allowance of a tentative carryback adjustment that the estate received, whether the taxable year to which such adjustment relates ended before or after the commencement of the case; **[**and**]**

(C) any fine, penalty, or reduction in credit relating to a tax of a kind specified in subparagraph (B) of this paragraph; *and*

(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;

* * * * * * *

(4) reasonable compensation for professional services rendered by an attorney or an accountant of an entity whose expense is allowable under *subparagraph (A), (B), (C), (D), or (E) of* paragraph (3) of this subsection, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title, and reimbursement for actual, necessary expenses incurred by such attorney or accountant;

(5) reasonable compensation for services rendered by an indenture trustee in making a substantial contribution in a case under chapter 9 or 11 of this title, based on the time, the nature, the extent, and the value of such services, and the cost of comparable services other than in a case under this title; **[**and**]**

(6) the fees and mileage payable under chapter 119 of title 28**[**.**]***;*

(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);

(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

(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.

* * * * * * *

§ 504. Sharing of compensation

(a) * * *

* * * * * * *

(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.

§ 505. Determination of tax liability

(a)(1) * * *

(2) The court may not so determine—

(A) the amount or legality of a tax, fine, penalty, or addition to tax if such amount or legality was contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction before the commencement of the case under this title; **[**or**]**

(B) any right of the estate to a tax refund, before the earlier of—

(i) 120 days after the trustee properly requests such refund from the governmental unit from which such refund is claimed; or

(ii) a determination by such governmental unit of such request**[**.**]***; or*

(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.

(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.

[(b)] *(2)* A trustee may request a determination of any unpaid liability of the estate for any tax incurred during the administration of the case by submitting a tax return for such tax and a request for such a determination to the governmental unit charged with responsibility for collection or determination of such tax *at the address and in the manner designated in paragraph (1).* Unless such return is fraudulent, or contains a material misrepresentation, *the estate,* the trustee, the debtor, and any successor to the debtor are discharged from any liability for such tax—

[(1)] *(A)* upon payment of the tax shown on such return, if—

[(A)] *(i)* such governmental unit does not notify the trustee, within 60 days after such request, that such return has been selected for examination; or

[(B)] *(ii)* such governmental unit does not complete such an examination and notify the trustee of any tax due, within 180 days after such request or within such additional time as the court, for cause, permits;

[(2)] *(B)* upon payment of the tax determined by the court, after notice and a hearing, after completion by such governmental unit of such examination; or

[(3)] *(C)* upon payment of the tax determined by such governmental unit to be due.

* * * * * * *

§ 506. Determination of secured status

(a)*(1)* An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

(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.

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement *or State statute* under which such claim arose.

(c) The trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim*, including the payment of all ad valorem property taxes with respect to the property*.

* * * * * * *

§ 507. Priorities

(a) The following expenses and claims have priority in the following order:

(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.

[(1) First**]** *(2) Second*, administrative expenses allowed under section 503(b) of this title, and any fees and charges assessed against the estate under chapter 123 of title 28.

[(2) Second**]** *(3) Third*, unsecured claims allowed under section 502(f) of this title.

[(3) Third**]** *(4) Fourth*, allowed unsecured claims, but only to the extent of $4,000 for each individual or corporation, as the case may be, earned within 90 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or cor-

poration earned by acting as an independent contractor in the sale of goods or services was earned from the debtor[;].

[(4) Fourth] *(5) Fifth*, allowed unsecured claims for contributions to an employee benefit plan—

(A) * * *

* * * * * * *

[(5) Fifth] *(6) Sixth*, allowed unsecured claims of persons—

(A) * * *

* * * * * * *

[(6) Sixth] *(7) Seventh*, allowed unsecured claims of individuals, to the extent of $1,800 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

[(7) Seventh, allowed claims for debts to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

[(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

[(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.]

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A) a tax on or measured by income or gross receipts *for a taxable year ending on or before the date of filing of the petition*—

(i) * * *

[(ii) assessed within 240 days, plus any time plus 30 days during which an offer in compromise with respect to such tax that was made within 240 days after such assessment was pending, before the date of the filing of the petition; or]

(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.

* * * * * * *

(B) a property tax [assessed] *incurred* before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;

* * * * * * *

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.

* * * * * * *

(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.

* * * * * * *

§ 508. Effect of distribution other than under this title

[(a) If a creditor receives, in a foreign proceeding, payment of, or a transfer of property on account of, a claim that is allowed under this title, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor in such foreign proceeding.]

[(b)] If a creditor of a partnership debtor receives, from a general partner that is not a debtor in a case under chapter 7 of this title, payment of, or a transfer of property on account of, a claim that is allowed under this title and that is not secured by a lien on property of such partner, such creditor may not receive any payment under this title on account of such claim until each of the other holders of claims on account of which such holders are entitled to share equally with such creditor under this title has received payment under this title equal in value to the consideration received by such creditor from such general partner.

* * * * * * *

§ 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.

SUBCHAPTER II—DEBTOR'S DUTIES AND BENEFITS

§ 521. Debtor's duties

(a) The debtor shall—

[(1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;]

(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;

(2) if an individual debtor's schedule of assets and liabilities includes [consumer] debts which are secured by property of the estate—

(A) * * *

(B) within [forty-five days after the filing of a notice of intent under this section] *30 days after the first date set for the meeting of creditors under section 341(a) of this title*, or within such additional time as the court, for cause, within such [forty-five day] *30-day* period fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and

(C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title*, except as provided in section 362(h) of this title*;

(3) if a trustee is serving in the case *or an auditor appointed under section 586(f) of title 28*, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;

(4) if a trustee is serving in the case *or an auditor appointed under section 586(f) of title 28*, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title**[**, and**]***;*

(5) appear at the hearing required under section 524(d) of this title**[**.**]***; and*

(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.

(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).

(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).

(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 occur-

rence, 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.

(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.

(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.

(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.

§ 522. Exemptions

(a) * * *

(b)*(1)* Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph **[**(1)**]** *(2)* or, in the alternative, paragraph **[**(2)**]** *(3)* of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph **[**(1)**]** *(2)* and the other debtor elect to exempt property listed in paragraph **[**(2)**]** *(3)* of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph **[**(1)**]** *(2)*, where such election is permitted under the law of the jurisdiction where the case is filed. **[**Such property is—

[(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,**]**

(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.

[(2)(A)**]** *(3) Property listed in this paragraph is—*

(A) subject to subsections (o) and (p), any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the **[**180**]** *730* days immediately preceding the date of the filing of the petition**[**, or for a longer portion of such 180-day period than in any other place**]** *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*; **[**and**]**

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law**[**.**]***; and*

(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.

(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.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

[(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;**]**

(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));

* * * * * * *

(d) The following property may be exempted under subsection **[**(b)(1)**]** *(b)(2)* of this section:

(1) * * *

* * * * * * *

(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.

* * * * * * *

(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt**[**—

[(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

[(ii) to the extent that such debt—

[(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

[(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support.; or**]** *of a kind that is specified in section 523(a)(5); or*

* * * * * * *

(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.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1) * * *

(2) the debtor could have avoided such transfer under subsection ⟦(f)(2)⟧ *(f)(1)(B)* of this section.

* * * * * * *

(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.

(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.

(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.

§ 523. Exceptions to discharge

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(1) for a tax or a customs duty—

(A) * * *

(B) with respect to which a return, *or equivalent report or notice,* if required—

(i) was not filed *or given*; or

(ii) was filed *or given* after the date on which such return*, report, or notice* was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition; or

* * * * * * *

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) * * *

* * * * * * *

[(C) for purposes of subparagraph (A) of this paragraph, consumer debts owed to a single creditor and aggregating more than $1,000 for "luxury goods or services" incurred by an individual debtor on or within 60 days before the order for relief under this title, or cash advances aggregating more than $1,000 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 60 days before the order for relief under this title, are presumed to be nondischargeable; "luxury goods or services" do not include goods or services reasonably acquired for the support or maintenance of the debtor or a dependent of the debtor; an extension of consumer credit under an open end credit plan is to be defined for purposes of this subparagraph as it is defined in the Consumer Credit Protection Act;]

(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.

* * * * * * *

[(5) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that—

[(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

[(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support;**]**

(5) for a domestic support obligation;

* * * * * * *

[(8) for 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 for an obligation to repay funds received as an educational benefit, scholarship or stipend, unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and the debtor's dependents;**]**

(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;

(9) for death or personal injury caused by the debtor's no, operation of a motor vehicle*, vessel, or aircraft* if such oper-

ation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance;

* * * * * * *

(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);

(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;

(16) for a fee or assessment that becomes due and payable after the order for relief to a membership association with respect to the debtor's interest in a [dwelling] unit that has condominium [ownership or] *ownership,* in a share of a cooperative [housing] corporation, [but only if such fee or assessment is payable for a period during which—

[(A) the debtor physically occupied a dwelling unit in the condominium or cooperative project; or

[(B) the debtor rented the dwelling unit to a tenant and received payments from the tenant for such period] *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,*,

but nothing in this paragraph shall except from discharge the debt of a debtor for a membership association fee or assessment for a period arising before entry of the order for relief in a pending or subsequent bankruptcy case;

(17) for a fee imposed [by a court] *on a prisoner by any court* for the filing of a case, motion, complaint, or appeal, or for other costs and expenses assessed with respect to such filing, regardless of an assertion of poverty by the debtor under [section 1915(b) or (f)] *subsection (b) or (f)(2) of section 1915* of title 28 *(or a similar non-Federal law)*, or the debtor's status as a prisoner, as defined in section 1915(h) of title 28 *(or a similar non-Federal law)*; or

[(18) owed under State law to a State or municipality that is—

[(A) in the nature of support, and

[(B) enforceable under part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.).]

(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.

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.

* * * * * * *

(c)(1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), **[**(6), or (15)**]** *or (6)* of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), **[**(6), or (15)**]** *or (6)*, as the case may be, of subsection (a) of this section.

* * * * * * *

(e) Any institution-affiliated party of **[**a**]** *an* insured depository institution shall be considered to be acting in a fiduciary capacity with respect to the purposes of subsection (a)(4) or (11).

[(15) not of the kind described in paragraph (5) that is incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit unless—

[(A) the debtor does not have the ability to pay such debt from income or property of the debtor not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor and, if the debtor is engaged in a business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business; or

[(B) discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor;**]**

§ 524. Effect of discharge

(a) A discharge in a case under this title—

(1) * * *

* * * * * * *

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under [section 523, 1228(a)(1), or 1328(a)(1) of this title, or that] *section 523, 1228(a)(1), or 1328(a)(1), or that* would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

* * * * * * *

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(1) * * *

[(2)(A) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim; and

[(B) such agreement contains a clear and conspicuous statement which advises the debtor that such agreement is not required under this title, under nonbankruptcy law, or under any agreement not in accordance with the provisions of this subsection;]

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

* * * * * * *

(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.

(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 an-

nual 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 ap-

proval 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)).

§ 525. Protection against discriminatory treatment

(a) * * *

* * * * * * *

(c)(1) A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a *student* grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, or another per-

son with whom the debtor or bankrupt has been associated, because the debtor or bankrupt is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

(2) In this section, "student loan program" means [the program operated under part B, D, or E of] *any program operated under* title IV of the Higher Education Act of 1965 or a similar program operated under State or local law.

§ 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.

§ 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.

§ 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 assisted 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.

SUBCHAPTER III—THE ESTATE

§ 541. Property of the estate

(a) * * *

(b) Property of the estate does not include—

(1) * * *

* * * * * * *

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A) * * *

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section *365 or* 542 of this title; **[**or**]**

(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;

(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;

(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);

(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

[(5)**]** *(10)* any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) * * *

* * * * * * *

(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.

(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.

(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.

* * * * * * *

§ 545. Statutory liens

The trustee may avoid the fixing of a statutory lien on property of the debtor to the extent that such lien—

(1) * * *

(2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists*, 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*;

* * * * * * *

§ 546. Limitations on avoiding powers

(a) * * *

* * * * * * *

[(c) Except as provided in subsection (d) of this section, the rights and powers of a trustee under sections 544(a), 545, 547, and 549 of this title are subject to any statutory or common-law 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, but—

[(1) such a seller may not reclaim any such goods unless such seller demands in writing reclamation of such goods—

[(A) before 10 days after receipt of such goods by the debtor; or

[(B) if such 10-day period expires after the commencement of the case, before 20 days after receipt of such goods by the debtor; and

[(2) the court may deny reclamation to a seller with such a right of reclamation that has made such a demand only if the court—

[(A) grants the claim of such a seller priority as a claim of a kind specified in section 503(b) of this title; or

[(B) secures such claim by a lien.]

(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).

* * * * * * *

(e) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant,* or securities clearing agency, that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

* * * * * * *

(g) Notwithstanding sections 544, 545, 547, 548(a)(1)(B) and 548(b) of this title, the trustee may not avoid a transfer **[**under a swap agreement**]**, made by or to a swap participant, **[**in connection with a swap agreement**]** *under or in connection with any swap agreement* and that is made before the commencement of the case, except under section 548(a)(1)(A) of this title.

[(g)**]** *(i)* Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and a hearing, that a return is in the best interests of the estate, the debtor, with the consent of a creditor, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.

(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.

(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.

§ 547. Preferences

(a) * * *

(b) Except as provided in **[**subsection (c)**]** *subsections (c) and (i)* of this section, the trustee may avoid any transfer of an interest of the debtor in property—

(1) * * *

* * * * * * *

(c) The trustee may not avoid under this section a transfer—

(1) * * *

[(2) to the extent that such transfer was—

[(A) in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee;

[(B) made in the ordinary course of business or financial affairs of the debtor and the transferee; and

[(C) made according to ordinary business terms;**]**

(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;

(3) that creates a security interest in property acquired by the debtor—

(A) * * *

(B) that is perfected on or before **[**20**]** *30* days after the debtor receives possession of such property;

* * * * * * *

[(7) to the extent such transfer was a bona fide payment of a debt to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that such debt—

[(A) is assigned to another entity, voluntarily, by operation of law, or otherwise; or

[(B) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support; or**]**

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

(8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $600**[**.**]***; or*

(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.

* * * * * * *

(e)(1) * * *

(2) For the purposes of this section, except as provided in paragraph (3) of this subsection, a transfer is made—

(A) at the time such transfer takes effect between the transferor and the transferee, if such transfer is perfected at,

or within [10] *30* days after, such time, except as provided in subsection (c)(3)(B);

(B) at the time such transfer is perfected, if such transfer is perfected after such [10] *30* days; or

(C) immediately before the date of the filing of the petition, if such transfer is not perfected at the later of—

(i) * * *

(ii) [10] *30* days after such transfer takes effect between the transferor and the transferee.

* * * * * * *

(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.

(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.

* * * * * * *

§ 548. Fraudulent transfers and obligations

(a) * * *

* * * * * * *

(d)(1) * * *

(2) In this section—

(A) * * *

(B) a commodity broker, forward contract merchant, stockbroker, financial institution, *financial participant,* or securities clearing agency that receives a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, takes for value to the extent of such payment;

(C) a repo participant that receives a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title, in connection with a repurchase agreement, takes for value to the extent of such payment; [and]

(D) a swap participant that receives a transfer in connection with a swap agreement takes for value to the extent of such transfer[.]*; and*

(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.

* * * * * * *

§ 549. Postpetition transactions

(a) * * *

* * * * * * *

(c) The trustee may not avoid under subsection (a) of this section a transfer of *an interest in* real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of *an interest in* such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such *real* property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to ⟦the interest⟧ *such interest* of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

* * * * * * *

§ 552. Postpetition effect of security interest

(a) * * *

(b)(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, ⟦product⟧ *products*, offspring, or profits of such property, then such security interest extends to such proceeds, ⟦product⟧ *products*, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

* * * * * * *

§ 553. Setoff

(a) Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case, except to the extent that—

(1) * * *

* * * * * * *

(3) the debt owed to the debtor by such creditor was incurred by such creditor—

(A) * * *

* * * * * * *

(C) for the purpose of obtaining a right of setoff against the debtor *(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)*.

(b)(1) Except with respect to a setoff of a kind described in section 362(b)(6), 362(b)(7), [362(b)(14),] *362(b)(17), 362(b)(28), 555, 556, 559, 560, 561* 365(h), 546(h), or 365(i)(2) of this title, if a creditor offsets a mutual debt owing to the debtor against a claim against the debtor on or within 90 days before the date of the filing of the petition, then the trustee may recover from such creditor the amount so offset to the extent that any insufficiency on the date of such setoff is less than the insufficiency on the later of—

(A) * * *

* * * * * * *

[§ 555. Contractual right to liquidate a securities contract]

§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract

The exercise of a contractual right of a stockbroker, financial institution, *financial participant,* or securities clearing agency to cause the liquidation*, termination, or acceleration* of a securities contract, as defined in section 741 of this title, because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title unless such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. 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 in writing, arising under common law, under law merchant, or by reason of normal business practice*.

[§ 556. Contractual right to liquidate a commodities contract or forward contract]

§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract

The contractual right of a commodity broker*, financial participant,* or forward contract merchant to cause the liquidation*, termination, or acceleration* of a commodity contract, as defined in section 761 of this title, or forward contract because of a condition of the kind specified in section 365(e)(1) of this title, and the right to a variation or maintenance margin payment received from a trustee with respect to open commodity contracts or forward contracts, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by the order of a court in any proceeding under this title. As used in this section, the term "contractual right" includes a right set forth in a rule or 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.

* * * * * * *

[§ 559. Contractual right to liquidate a repurchase agreement]

§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement

The exercise of a contractual right of a repo participant to cause the liquidation*, termination, or acceleration* of a repurchase agreement because of a condition of the kind specified in section 365(e)(1) of this title shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title, unless, where the debtor is a stockbroker or securities clearing agency, such order is authorized under the provisions of the Securities Investor Protection Act of 1970 or any statute administered by the Securities and Exchange Commission. In the event that a repo participant liquidates one or more repurchase agreements with a debtor and under the terms of one or more such agreements has agreed to deliver assets subject to repurchase agreements to the debtor, any excess of the market prices received on liquidation of such assets (or if any such assets are not disposed of on the date of liquidation of such repurchase agreements, at the prices available at the time of liquidation of such repurchase agreements from a generally recognized source or the most recent closing bid quotation from such a source) over the sum of the stated repurchase prices and all expenses in connection with the liquidation of such repurchase agreements shall be deemed property of the estate, subject to the available rights of setoff. As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw, applicable to each party to the repurchase agreement, of a national securities exchange, a national securities association, or a securities clearing agency, and a right, whether or not evidenced in writing, arising under common law, under law merchant or by reason of normal business practice.

[§ 560. Contractual right to terminate a swap agreement]

§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement

The exercise of any contractual right of any swap participant to cause the **[**termination of a swap agreement**]** *liquidation, termination, or acceleration of one or more swap agreements* because of a condition of the kind specified in section 365(e)(1) of this title or to offset or net out any termination values or payment amounts arising under or **[**in connection with any swap agreement**]** *in connection with the termination, liquidation, or acceleration of one or more swap agreements* shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by order of a court or administrative agency in any proceeding under this title. As used in this section, the term "contractual right" includes a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

§ 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 organiza-

tion 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).

§ 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.

CHAPTER 7—LIQUIDATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
701. Interim trustee.

* * * * * * *

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

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SUBCHAPTER III—STOCKBROKER LIQUIDATION

741. Definitions for this subchapter.

* * * * * * *

753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

761. Definitions for this subchapter.

* * * * * * *

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.

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SUBCHAPTER I—OFFICERS AND ADMINISTRATION

* * * * * * *

§ 704. Duties of trustee

(a) The trustee shall—

(1) * * *

* * * * * * *

(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; **[**and**]**

(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee**[**.**]***;*

(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

(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)(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.

(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.

* * * * * * *

§ 706. Conversion

(a) * * *

* * * * * * *

(c) The court may not convert a case under this chapter to a case under chapter 12 or 13 of this title unless the debtor requests *or consents to* such conversion.

* * * * * * *

[§ 707. Dismissal]

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

(a) * * *

(b)*(1)* After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, **[**but not at the request or suggestion of**]** *trustee, bankruptcy administrator, or* any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, *or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,* if it finds that the granting of relief would be **[**a substantial abuse**]** *an abuse* of the provisions of this chapter. **[**There shall be a presumption in favor of granting the relief requested by the debtor.**]** In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(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.

(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.

* * * * * * *

SUBCHAPTER II—COLLECTION, LIQUIDATION, AND DISTRIBUTION OF THE ESTATE

* * * * * * *

§ 722. Redemption

An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien *in full at the time of redemption*.

* * * * * * *

§ 724. Treatment of certain liens

(a) The trustee may avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title.

(b) Property in which the estate has an interest and that is subject to a lien that is not avoidable under this title *(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)* and that secures an allowed claim for a tax, or proceeds of such property, shall be distributed—

(1) first, to any holder of an allowed claim secured by a lien on such property that is not avoidable under this title and that is senior to such tax lien;

(2) second, to any holder of a claim of a kind specified in section 507(a)(1) *(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)*, 507(a)(2), 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, to the extent of the amount of such allowed tax claim that is secured by such tax lien;

* * * * * * *

(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).

* * * * * * *

§ 726. Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed [before the date on which the trustee commences distribution under this section;] *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;

* * * * * * *

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), or (8) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section [1009,] 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

* * * * * * *

§ 727. Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) * * *

* * * * * * *

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within [six] *8* years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case;

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; [or]

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter[.]*; or*

(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.

* * * * * * *

(d) On request of the trustee, a creditor, or the United States trustee, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if—

(1) * * *

(2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee; **[**or**]**

(3) the debtor committed an act specified in subsection (a)(6) of this section**[**.**]***; or*

(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.

[§ 728. Special tax provisions

[(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 1112 or 1208 of this title.

[(b) Notwithstanding any State or local law imposing a tax on or measured by income, the trustee shall make tax returns of income for the estate of an individual debtor in a case under this chapter or for a debtor that is a corporation in a case under this chapter only if such estate or corporation has net taxable income for the entire period after the order for relief under this chapter during which the case is pending. If such entity has such income, or if the debtor is a partnership, then the trustee shall make and file a return of income for each taxable period during which the case was pending after the order for relief under this chapter.

[(c) If there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership, a governmental unit's claim for any unpaid liability of such partner for a State or local tax on or measured by income, to the extent that such liability arose from the inclusion in such partner's taxable income of earnings of such partnership that were not withdrawn by such partner, is a claim only against such partnership.

[(d) Notwithstanding section 541 of this title, if there are pending a case under this chapter concerning a partnership and a case under this chapter concerning a partner in such partnership,

then any State or local tax refund or reduction of tax of such partner that would have otherwise been property of the estate of such partner under section 541 of this title—

[(1) is property of the estate of such partnership to the extent that such tax refund or reduction of tax is fairly apportionable to losses sustained by such partnership and not reimbursed by such partner; and

[(2) is otherwise property of the estate of such partner.]

SUBCHAPTER III—STOCKBROKER LIQUIDATION

§ 741. Definitions for this subchapter

In this subchapter—

(1) * * *

* * * * * * *

[(7) "securities contract" means contract for the purchase, sale, or loan of a security, including an option for the purchase or sale of a security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any option entered into on a national securities exchange relating to foreign currencies, or the guarantee of any settlement of cash or securities by or to a securities clearing agency;]

(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.

* * * * * * *

§ 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.

SUBCHAPTER IV—COMMODITY BROKER LIQUIDATION

§ 761. Definitions for this subchapter

In this subchapter—

(1) * * *

* * * * * * *

(4) "commodity contract" means—

(A) * * *

* * * * * * *

(D) with respect to a clearing organization, 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; **[**or**]**

* * * * * * *

(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;

* * * * * * *

§ 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.

* * * * * * *

CHAPTER 9—ADJUSTMENT OF DEBTS OF A MUNICIPALITY

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SUBCHAPTER I—GENERAL PROVISIONS

§ 901. Applicability of other sections of this title

(a) Sections 301, 344, 347(b), 349, 350(b), 361, 362, 364(c), 364(d), 364(e), 364(f), 365, 366, 501, 502, 503, 504, 506, 507(a)(1), 509, 510, 524(a)(1), 524(a)(2), 544, 545, 546, 547, 548, 549(a), 549(c), 549(d), 550, 551, 552, 553, *555, 556,* 557, *559, 560, 561, 562,* 1102, 1103, 1109, 1111(b), 1122, 1123(a)(1), 1123(a)(2), 1123(a)(3), 1123(a)(4), 1123(a)(5), 1123(b), *1123(d),* 1124, 1125, 1126(a), 1126(b), 1126(c), 1126(e), 1126(f), 1126(g), 1127(d), 1128, 1129(a)(2), 1129(a)(3), 1129(a)(6), 1129(a)(8), 1129(a)(10), 1129(b)(1), 1129(b)(2)(A), 1129(b)(2)(B), 1142(b), 1143, 1144, and 1145 of this title apply in a case under this chapter.

* * * * * * *

SUBCHAPTER II—ADMINISTRATION

§ 921. Petition and proceedings relating to petition

(a) * * *

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(d) If the petition is not dismissed under subsection (c) of this section, the court shall order relief under this chapter *notwithstanding section 301(b)*.

* * * * * * *

CHAPTER 11—REORGANIZATION

SUBCHAPTER I—OFFICERS AND ADMINISTRATION

Sec.
1101. Definitions for this chapter.

* * * * * * *

1115. Property of the estate.
1116. Duties of trustee or debtor in possession in small business cases.

* * * * * * *

§ 1102. Creditors' and equity security holders' committees

(a)(1) * * *

* * * * * * *

(3) On request of a party in interest in a case in which the debtor is a small business *debtor* and for cause, the court may order that a committee of creditors not be appointed.

(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)(1) * * *

* * * * * * *

(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).

* * * * * * *

§ 1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; **[**or**]**

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor**[**.**]***; or*

(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.

(b)*(1)* Except as provided in section 1163 of this title, on the request of a party in interest made not later than 30 days after the court orders the appointment of a trustee under subsection (a), the United States trustee shall convene a meeting of creditors for the purpose of electing one disinterested person to serve as trustee in the case. The election of a trustee shall be conducted in the manner provided in subsections (a), (b), and (c) of section 702 of this title.

(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.

* * * * * * *

§ 1106. Duties of trustee and examiner

(a) A trustee shall—

(1) perform the duties of a trustee specified in **[**sections 704(2), 704(5), 704(7), 704(8), and 704(9)**]** *paragraphs (2), (5), (7), (8), (9), and (11) of section 704(a)* of this title;

* * * * * * *

(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; **[**and**]**

(7) after confirmation of a plan, file such reports as are necessary or as the court orders**[**.**]***; and*

(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).

* * * * * * *

(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.

* * * * * * *

§ 1112. Conversion or dismissal

(a) * * *

[(b) Except as provided in subsection (c) of this section, on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title or may dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause, including—

[(1) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

[(2) inability to effectuate a plan;

[(3) unreasonable delay by the debtor that is prejudicial to creditors;

[(4) failure to propose a plan under section 1121 of this title within any time fixed by the court;

[(5) denial of confirmation of every proposed plan and denial of a request made for additional time for filing another plan or a modification of a plan;

[(6) revocation of an order of confirmation under section 1144 of this title, and denial of confirmation of another plan or a modified plan under section 1129 of this title;

[(7) inability to effectuate substantial consummation of a confirmed plan;

[(8) material default by the debtor with respect to a confirmed plan;

[(9) termination of a plan by reason of the occurrence of a condition specified in the plan; or

[(10) nonpayment of any fees or charges required under chapter 123 of title 28.]

(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.

* * * * * * *

§ 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.

§ 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.

SUBCHAPTER II—THE PLAN

§ 1121. Who may file a plan

(a) * * *

* * * * * * *

(d) [On] *(1) Subject to paragraph (2), on* request of a party in interest made within the respective periods specified in subsections (b) and (c) of this section and after notice and a hearing, the court may for cause reduce or increase the 120-day period or the 180-day period referred to in this section.

(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.

[(e) In a case in which the debtor is a small business and elects to be considered a small business—

[(1) only the debtor may file a plan until after 100 days after the date of the order for relief under this chapter;

[(2) all plans shall be filed within 160 days after the date of the order for relief; and

[(3) on request of a party in interest made within the respective periods specified in paragraphs (1) and (2) and after notice and a hearing, the court may—

[(A) reduce the 100-day period or the 160-day period specified in paragraph (1) or (2) for cause; and

[(B) increase the 100-day period specified in paragraph (1) if the debtor shows that the need for an increase is caused by circumstances for which the debtor should not be held accountable.]

(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.

* * * * * * *

§ 1123. Contents of plan

(a) Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall—

(1) * * *

* * * * * * *

(6) provide for the inclusion in the charter of the debtor, if the debtor is a corporation, or of any corporation referred to in paragraph (5)(B) or (5)(C) of this subsection, of a provision prohibiting the issuance of nonvoting equity securities, and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with respect to dividends, adequate provisions for the election of directors representing such preferred class in the event of default in the payment of such dividends; [and]

(7) contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy with respect to the manner of selection of any officer, di-

rector, or trustee under the plan and any successor to such officer, director, or trustee[.]*; and*

(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.

* * * * * * *

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) * * *

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title *or of a kind that section 365(b)(2) of this title expressly does not require to be cured*;

* * * * * * *

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; [and]

(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

[(D)] *(E)* does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

* * * * * * *

§ 1125. Postpetition disclosure and solicitation

(a) In this section—

(1) "adequate information" means information of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records, *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,* that would enable [a hypothetical reasonable investor typical of holders of claims or interests] *such a hypothetical investor* of the relevant class to make an informed judgment about the plan, but adequate information need not include such informa-

tion about any other possible or proposed plan *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

* * * * * * *

[(f) Notwithstanding subsection (b), in a case in which the debtor has elected under section 1121(e) to be considered a small business—

[(1) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

[(2) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement as long as 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 at least 10 days prior to the date of the hearing on confirmation of the plan; and

[(3) a hearing on the disclosure statement may be combined with a hearing on confirmation of a plan.]

(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.

(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.

* * * * * * *

§ 1127. Modification of plan

(a) * * *

* * * * * * *

(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.

* * * * * * *

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) * * *

* * * * * * *

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) * * *

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) * * *

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; **[**and**]**

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim **[**deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.**]** *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

(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).

* * * * * * *

(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.

(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.

(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.

(b)(1) * * *

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) * * *

(B) With respect to a class of unsecured claims—

(i) * * *

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property*, 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).*

* * * * * * *

(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).

* * * * * * *

SUBCHAPTER III—POSTCONFIRMATION MATTERS

§ 1141. Effect of confirmation

(a) * * *

* * * * * * *

(d)(1) * * *

(2) **[**The confirmation of a plan does not discharge an individual debtor**]** *A discharge under this chapter does not discharge*

a debtor from any debt excepted from discharge under section 523 of this title.

* * * * * * *

(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.

(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.

* * * * * * *

§ 1146. Special tax provisions

[(a) For the purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

[(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.**]**

[(c)**]** *(a)* The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

[(d)**]** *(b)* The court may authorize the proponent of a plan to request a determination, limited to questions of law, by a State or local governmental unit charged with responsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

* * * * * * *

§ 1170. Abandonment of railroad line

(a) * * *

* * * * * * *

(e)(1) In authorizing any abandonment of a railroad line under this section, the court shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section [11347] *11326(a)* of title 49.

* * * * * * *

§ 1172. Contents of plan

(a) * * *

* * * * * * *

(c)(1) In approving an application under subsection (b) of this section, the Board shall require the rail carrier to provide a fair arrangement at least as protective of the interests of employees as that established under section [11347] *11326(a)* of title 49.

* * * * * * *

CHAPTER 12—ADJUSTMENT OF DEBTS OF A FAMILY FARMER WITH REGULAR ANNUAL INCOME

* * * * * * *

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

§ 1202. Trustee

(a) * * *

(b) The trustee shall—

(1) * * *

* * * * * * *

(4) ensure that the debtor commences making timely payments required by a confirmed plan; [and]

(5) if the debtor ceases to be a debtor in possession, perform the duties specified in sections 704(8), 1106(a)(1), 1106(a)(2), 1106(a)(6), 1106(a)(7), and 1203[.]*; and*

(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).

(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.

* * * * * * *

§ 1208. Conversion or dismissal

(a) * * *

* * * * * * *

(c) On request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including—

(1) * * *

* * * * * * *

(8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; **[**or**]**

(9) continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation**[**.**]***; and*

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

* * * * * * *

SUBCHAPTER II—THE PLAN

* * * * * * *

§ 1222. Contents of plan

(a) The plan shall—

(1) * * *

[(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; and**]**

(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;

(3) if the plan classifies claims and interests, provide the same treatment for each claim or interest within a particular class unless the holder of a particular claim or interest agrees to less favorable treatment**[**.**]***; and*

(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.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) * * *

* * * * * * *

(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;

[(11)**]** *(12)* include any other appropriate provision not inconsistent with this title.

* * * * * * *

§ 1225. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) * * *

* * * * * * *

(5) with respect to each allowed secured claim provided for by the plan—

(A) * * *

* * * * * * *

(C) the debtor surrenders the property securing such claim to such holder; **[**and**]**

(6) the debtor will be able to make all payments under the plan and to comply with the plan**[**.**]***; and*

(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.

(b)(1) * * *

(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not 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 on which the petition is filed*; or

* * * * * * *

§ 1228. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan*, 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*, other than payments to holders of allowed claims provided for under section 1222(b)(5) or [1222(b)(10)] *1222(b)(9)* of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or [1222(b)(10)] *1222(b)(9)* of this title; or

(2) of the kind specified in section 523(a) of this title.

* * * * * * *

(c) A discharge granted under subsection (b) of this section discharges the debtor from all unsecured debts provided for by the plan or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or [1222(b)(10)] *1222(b)(9)* of this title; or

(2) of a kind specified in section 523(a) of this title.

* * * * * * *

§ 1231. Special tax provisions

[(a) For the purpose of any State or local law imposing a tax on or measured by income, the taxable period of a debtor that is an individual shall terminate on the date of the order for relief under this chapter, unless the case was converted under section 706 of this title.

[(b) The trustee shall make a State or local tax return of income for the estate of an individual debtor in a case under this chapter for each taxable period after the order for relief under this chapter during which the case is pending.]

[(c)] *(a)* The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1225 of this title, may not be taxed under any law imposing a stamp tax or similar tax.

[(d)] *(b)* The court may authorize the proponent of a plan to request a determination, limited to questions of law, by [a State or local governmental unit] *any governmental unit* charged with re-

sponsibility for collection or determination of a tax on or measured by income, of the tax effects, under section 346 of this title and under the law imposing such tax, of the plan. In the event of an actual controversy, the court may declare such effects after the earlier of—

(1) the date on which such governmental unit responds to the request under this subsection; or

(2) 270 days after such request.

CHAPTER 13—ADJUSTMENT OF DEBTS OF AN INDIVIDUAL WITH REGULAR INCOME

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

Sec.
1301. Stay of action against codebtor.
* * * * * * *
1308. Filing of prepetition tax returns.
* * * * * * *

SUBCHAPTER I—OFFICERS, ADMINISTRATION, AND THE ESTATE

* * * * * * *

§ 1302. Trustee

(a) * * *

(b) The trustee shall—

(1) * * *

* * * * * * *

(4) advise, other than on legal matters, and assist the debtor in performance under the plan; **[**and**]**

(5) ensure that the debtor commences making timely payments under section 1326 of this title**[**.**]***; and*

(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).

* * * * * * *

(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.

* * * * * * *

§ 1307. Conversion or dismissal

(a) * * *

* * * * * * *

(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

(1) * * *

* * * * * * *

(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (1) of section 521; **[**or**]**

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (2) of section 521**[**.**]***; or*

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

(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.

[(e)**]** *(f)* The court may not convert a case under this chapter to a case under chapter 7, 11, or 12 of this title if the debtor is a farmer, unless the debtor requests such conversion.

[(f)**]** *(g)* Notwithstanding any other provision of this section, a case may not be converted to a case under another chapter of this title unless the debtor may be a debtor under such chapter.

§ 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.

SUBCHAPTER II—THE PLAN

* * * * * * *

§ 1322. Contents of plan

(a) The plan shall—

(1) * * *

(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507 of this title, unless the holder of a particular claim agrees to a different treatment of such claim; **[**and**]**

(3) if the plan classifies claims, provide the same treatment for each claim within a particular class**[**.**]***; and*

(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.

(b) Subject to subsections (a) and (c) of this section, the plan may—

(1) * * *

* * * * * * *

(9) provide for the vesting of property of the estate, on confirmation of the plan or at a later time, in the debtor or in any other entity; **[**and**]**

(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)**]** *(11)* include any other appropriate provision not inconsistent with this title.

* * * * * * *

[(d) The plan may not provide for payments over a period that is longer than three years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than five years.**]**

(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.

* * * * * * *

(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.

* * * * * * *

§ 1324. Confirmation hearing

[After**]** *(a) Except as provided in subsection (b) and after* notice, the court shall hold a hearing on confirmation of the plan. A party in interest may object to confirmation of the plan.

(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).

§ 1325. Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) * * *

* * * * * * *

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)**[**(i) the plan provides that the holder of such claim retain the lien securing such claim; and**]**

(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;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; **[**or**]** *and*

(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

(C) the debtor surrenders the property securing such claim to such holder; [and]

(6) the debtor will be able to make all payments under the plan and to comply with the plan[.]*;*

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

(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

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

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.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the [three-year period] *applicable commitment period* beginning on the date that the first payment is due under the plan will be applied to make payments *to unsecured creditors* under the plan.

[(2) For purposes of this subsection, "disposable income" means income which is received by the debtor and which is not reasonably necessary to be expended—

[(A) for the maintenance or support of the debtor or a dependent of the debtor, including 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 the 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.]

(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 on which the petition is filed 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.

(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.

* * * * * * *

§ 1326. Payments

[(a)(1) Unless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed.

[(2) A payment made under this subsection shall be retained by the trustee until confirmation or denial of confirmation of a plan. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as practicable. If a plan is not confirmed, the trustee shall return any such payment to the debtor, after deducting any unpaid claim allowed under section 503(b) of this title.]

(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.

(b) Before or at the time of each payment to creditors under the plan, there shall be paid—

(1) any unpaid claim of the kind specified in section 507(a)(1) of this title; [and]

(2) if a standing trustee appointed under section 586(b) of title 28 is serving in the case, the percentage fee fixed for such standing trustee under section 586(e)(1)(B) of title 28[.]*; and*

(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.

* * * * * * *

(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).

§ 1328. Discharge

(a) As soon as practicable after completion by the debtor of all payments under the plan*, 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*, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt—

[(1) provided for under section 1322(b)(5) of this title;

[(2) of the kind specified in paragraph (5), (8), or (9) of section 523(a) of this title; or

[(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime.]

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (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.

* * * * * * *

(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.

(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.

§ 1329. Modification of plan after confirmation

(a) * * *

* * * * * * *

(c) A plan modified under this section may not provide for payments over a period that expires after **[**three years**]** *the applicable commitment period under section 1325(b)(1)(B)* after the time that the first payment under the original confirmed plan was due, unless the court, for cause, approves a longer period, but the court may not approve a period that expires after five years after such time.

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CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

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§ 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 as-

sets 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.

TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 9—BANKRUPTCY

Sec.
151. Definition.

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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.

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§ 156. Knowing disregard of bankruptcy law or rule

(a) DEFINITIONS.—In this section—

(1) the term "bankruptcy petition preparer" means a person, other than the debtor's attorney or an employee of such an attorney, who prepares for compensation a document for filing**[**.**]***; and*

(2) the term "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under **[**this title**]** *title 11*.

* * * * * * *

§ 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.

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TITLE 28, UNITED STATES CODE

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PART I—ORGANIZATION OF COURTS

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CHAPTER 6—BANKRUPTCY JUDGES

Sec.
151 Designation of bankruptcy courts.

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159. Bankruptcy statistics.

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§ 152. Appointment of bankruptcy judges

(a)(1) [The United States court of appeals for the circuit shall appoint bankruptcy judges for the judicial districts established in paragraph (2) in such numbers as are established in such paragraph.] *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.* Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

(2) The bankruptcy judges appointed pursuant to this section shall be appointed for the several judicial districts as follows:

Districts	Judges
Alabama:	
Northern	5
Middle	2
Southern	2
* * * * * * *	
Georgia:	
Northern	8
Middle	[2] *3*
Southern	2
[Middle and Southern	1]
* * * * * * *	

§ 157. Procedures

(a) * * *

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) * * *

* * * * * * *

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; **[**and**]**

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims**[**.**]***; and*

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

* * * * * * *

§ 158. Appeals

(a) * * *

* * * * * * *

[(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.**]**

(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 judg-

ments, 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).

§ 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.

* * * * * * *

PART II—DEPARTMENT OF JUSTICE

* * * * * * *

CHAPTER 39—UNITED STATES TRUSTEES

Sec.
581. United States trustees.
* * * * * * *
589b. Bankruptcy data.
* * * * * * *

§ 586. Duties; supervision by Attorney General

(a) Each United States trustee, within the region for which such United States trustee is appointed, shall—

(1) * * *

* * * * * * *

(3) supervise the administration of cases and trustees in cases under chapter 7, 11, 12, [or 13] *13, or 15,* of title 11 by, whenever the United States trustee considers it to be appropriate—

(A) * * *

* * * * * * *

(G) monitoring the progress of cases under title 11 and taking such actions as the United States trustee deems to be appropriate to prevent undue delay in such progress; [and]

(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

[(H)] *(I)* monitoring applications filed under section 327 of title 11 and, whenever the United States trustee deems it to be appropriate, filing with the court comments with respect to the approval of such applications;

* * * * * * *

(5) perform the duties prescribed for the United States trustee under title 11 and this title, and such duties consistent with title 11 and this title as the Attorney General may prescribe; [and]

[(6) make such reports as the Attorney General directs.]

(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

(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.

* * * * * * *

(d)*(1)* The Attorney General shall prescribe by rule qualifications for membership on the panels established by United States trustees under paragraph (a)(1) of this section, and qualifications for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11. The Attorney General may not require that an individual be an attorney in order to qualify for appointment under subsection (b) of this section to serve as standing trustee in cases under chapter 12 or 13 of title 11.

(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.

(e)(1) * * *

* * * * * * *

(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.

(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.

* * * * * * *

§ 589a. United States Trustee System Fund

(a) * * *

(b) For the purpose of recovering the cost of services of the United States Trustee System, there shall be deposited as offsetting collections to the appropriation "United States Trustee System Fund", to remain available until expended, the following—

[(1) 27.42 percent of the fees collected under section 1930(a)(1) of this title;**]**

(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) ⟦one-half⟧ *three-fourths* of the fees collected under section 1930(a)(3) of this title;

(3) one-half of the fees collected under section 1930(a)(4) of this title;

(4) ⟦one-half⟧ *100 percent* of the fees collected under section 1930(a)(5) of this title;

* * * * * * *

§ 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.

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PART III—COURT OFFICERS AND EMPLOYEES

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CHAPTER 57—GENERAL PROVISIONS APPLICABLE TO COURT OFFICERS AND EMPLOYEES

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§ 960. Tax liability

(a) Any officers and agents conducting any business under authority of a United States court shall be subject to all Federal, State and local taxes applicable to such business to the same extent as if it were conducted by an individual or corporation.

(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.

* * * * * * *

PART IV—JURISDICTION AND VENUE

* * * * * * *

CHAPTER 85—DISTRICT COURTS; JURISDICTION

* * * * * * *

§ 1334. Bankruptcy cases and proceedings

(a) * * *

(b) [Notwithstanding] *Except as provided in subsection (e)(2), and notwithstanding* any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)(1) [Nothing in] *Except with respect to a case under chapter 15 of title 11, nothing in* this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

* * * * * * *

(d) Any decision to abstain or not to abstain [made under this subsection] *made under subsection (c)* (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under [section 158(d)] *subsection (e) or (f) of section 158*, 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. [This subsection] *Subsection (c) and this subsection* shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

[(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate.]

(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.

* * * * * * *

CHAPTER 87—DISTRICT COURTS; VENUE

* * * * * * *

§ 1409. Venue of proceedings arising under title 11 or arising in or related to cases under title 11

(a) * * *

(b) Except as provided in subsection (d) of this section, a trustee in a case under title 11 may commence a proceeding arising in or related to such case to recover a money judgment of or property worth less than $1,000 or a consumer debt of less than $5,000*, or a nonconsumer debt against a noninsider of less than $10,000,* only in the district court for the district in which the defendant resides.

[§ 1410. Venue of cases ancillary to foreign proceedings

[(a) A case under section 304 of title 11 to enjoin the commencement or continuation of an action or proceeding in a State or Federal court, or the enforcement of a judgment, may be commenced only in the district court for the district where the State or Federal court sits in which is pending the action or proceeding against which the injunction is sought.

[(b) A case under section 304 of title 11 to enjoin the enforcement of a lien against a property, or to require the turnover of property of an estate, may be commenced only in the district court for the district in which such property is found.

[(c) A case under section 304 of title 11, other than a case specified in subsection (a) or (b) of this section, may be commenced only in the district court for the district in which is located the principal place of business in the United States, or the principal assets in the United States, of the estate that is the subject of such case.]

§ 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.

* * * * * * *

CHAPTER 89—DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

* * * * * * *

§ 1452. Removal of claims related to bankruptcy cases

(a) * * *

(b) The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under [section 158(d)] *subsection (e) or (f) of section 158*, 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

* * * * * * *

CHAPTER 123—FEES AND COSTS

* * * * * * *

§ 1930. Bankruptcy fees

(a) [Notwithstanding section 1915 of this title, the] *The* parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

[(1) For a case commenced under chapter 7 or 13 of title 11, $155.]

(1) For a case commenced—

(A) under chapter 7 of title 11, $160; or

(B) under chapter 13 of title 11, $150.

* * * * * * *

(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.

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PART V—PROCEDURE

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CHAPTER 131 - RULES OF COURTS

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§ 2075. Bankruptcy rules

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right. The Supreme Court shall transmit to Congress not later than May 1 of the year in which a rule prescribed under this section is to become effective a copy of the proposed rule. The rule shall take effect no earlier than December 1 of the year in which it is transmitted to Congress unless otherwise provided by law. *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.*

SECTION 406 OF THE JUDICIARY APPROPRIATIONS ACT, 1990

SEC. 406. (a) * * *

(b) All fees as shall be hereafter collected for any service not of a kind described in any of the items enumerated as items 1 through 7 and as items 9 through 18, as in effect on November 21, 1989, of the bankruptcy miscellaneous fee schedule prescribed by the Judicial Conference of the United States [pursuant to 28 U.S.C. section 1930(b) and 33.87 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] *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* and shall remain available to the Judiciary until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the Courts of Appeals, District Courts, and other Judicial Services and the Administrative Office of the United States Courts. The Judicial Conference shall report to the Committees on Appropriations of the House of Representatives and the Senate on a quarterly basis beginning on the first day of each fiscal year regarding the sums deposited in said fund.

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 11. (a) * * *

* * * * * * *

(e) PROVISIONS RELATING TO CONTRACTS ENTERED INTO BEFORE APPOINTMENT OF CONSERVATOR OR RECEIVER.—

(1) * * *

* * * * * * *

(8) CERTAIN QUALIFIED FINANCIAL CONTRACTS.—

(A) RIGHTS OF PARTIES TO CONTRACTS.—Subject to [paragraph (10)] *paragraphs (9) and (10)* of this subsection and notwithstanding any other provision of this Act (other than subsection (d)(9) of this section and section 13(e)), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) any right [to cause the termination or liquidation] *such person has to cause the termination, liquidation, or acceleration* of any qualified financial contract with an insured depository institution which arises upon the appointment of the Corporation as receiver for such institution at any time after such appointment;

[(ii) any right under any security arrangement relating to any contract or agreement described in clause (i); or]

(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);

* * * * * * *

(C) CERTAIN TRANSFERS NOT AVOIDABLE.—

(i) IN GENERAL.—Notwithstanding paragraph (11), *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,* the Corporation, whether acting as such or as conservator or receiver of an insured depository institution, may not avoid any transfer of money or other property in connection with any qualified financial contract with an insured depository institution.

* * * * * * *

(D) CERTAIN CONTRACTS AND AGREEMENTS DEFINED.—For purposes of this subsection—

(i) QUALIFIED FINANCIAL CONTRACT.—The term "qualified financial contract" means any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the Corporation determines by regulation*, resolution, or order* to be a qualified financial contract for purposes of this paragraph.

[(ii) SECURITIES CONTRACT.—The term "securities contract"—

[(I) has the meaning given to such term in section 741 of title 11, United States Code, except that the term "security" (as used in such section) shall be deemed to include any mortgage loan, any mortgage-related security (as defined in section 3(a)(41) of the Securities Exchange Act of 1934), and any interest in any mortgage loan or mortgage-related security; and

[(II) does not include any 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) COMMODITY CONTRACT.—The term "commodity contract" has the meaning given to such term in section 761 of title 11, United States Code.

[(iv) FORWARD CONTRACT.—The term "forward contract" has the meaning given to such term in section 101 of title 11, United States Code.

[(v) REPURCHASE AGREEMENT.—The term "repurchase agreement"—

[(I) has the meaning given to such term in section 101 of title 11, the United States Code, except that the items (as described in such section) which may be subject to any such agreement shall be deemed to include mortgage-related securities (as such term is defined in section 3(a)(41) of the Securities Exchange Act of 1934), any mortgage loan, and any interest in any mortgage loan; and

[(II) does not include any 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.

[(vi) SWAP AGREEMENT.—The term "swap agreement"—

[(I) means any agreement, including the terms and conditions incorporated by reference in any such agreement, which is a rate swap agreement, basis swap, commodity swap, forward rate agreement, interest rate future, interest rate option purchased, forward foreign exchange agreement, rate cap agreement, rate floor agreement, rate collar agreement, currency swap agreement, cross-currency rate swap agreement, currency future, or currency option purchased or any other similar agreement, and

[(II) includes any combination of such agreements and any option to enter into any such agreement.

[(vii) TREATMENT OF MASTER AGREEMENT AS 1 SWAP AGREEMENT.—Any master agreement for any agreements described in clause (vi)(I) together with all

supplements to such master agreement shall be treated as 1 swap agreement.

[(viii) TRANSFER.—The term "transfer" has the meaning given to such term in section 101 of title 11, United States Code.]

(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 re-

ferred 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.

(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.

(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 con-

tract 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).

(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 regula-

tion, 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).

(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.

(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.

(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 re-

tention of title as a security interest and foreclosure of the depository institutions's equity of redemption.

(E) CERTAIN PROTECTIONS IN EVENT OF APPOINTMENT OF CONSERVATOR.—Notwithstanding any other provision of this Act (**[**other than paragraph (12) of this subsection, subsection (d)(9)**]** *other than subsections (d)(9) and (e)(10)* of this section, and section 13(e) of this Act), any other Federal law, or the law of any State, no person shall be stayed or prohibited from exercising—

(i) * * *

[(ii) any right under any security arrangement relating to such qualified financial contracts; or**]**

(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);

* * * * * * *

(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.

(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.

[(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—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—

[(A) transfer to 1 depository institution (other than a depository institution in default)—

[(i) all qualified financial contracts between—

[(I) any person or any affiliate of such person; and

[(II) 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 any claim described in clause (ii) or (iii) under any such contract; or

[(B) transfer none of the financial contracts, claims, or property referred to in subparagraph (A) (with respect to such person and any affiliate of such person).]

(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 de-

pository 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.

(10) NOTIFICATION OF TRANSFER.—

(A) IN GENERAL.—If—

(i) the conservator or receiver for an insured depository institution in default makes any transfer of the assets and liabilities of such institution; and

(ii) the transfer includes any qualified financial contract,

[the conservator or receiver shall use such conservator's or receiver's best efforts to notify any person who is a party to any such contract of such transfer by 12:00, noon (local time) on the business day following such transfer.**]** *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.*

(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.

[(B)**]** *(D)* BUSINESS DAY DEFINED.—For purposes of this paragraph, the term "business day" means any day other than any Saturday, Sunday, or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(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).

[(11)] *(12)* CERTAIN SECURITY INTERESTS NOT AVOIDABLE.—No provision of this subsection shall be construed as permitting the avoidance of any legally enforceable or perfected security interest in any of the assets of any depository institution except where such an interest is taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.

[(12)] *(13)* AUTHORITY TO ENFORCE CONTRACTS.—

(A) IN GENERAL.—The conservator or receiver may enforce any contract, other than a director's or officer's liability insurance contract or a depository institution bond, entered into by the depository institution notwithstanding any provision of the contract providing for termination, default, acceleration, or exercise of rights upon, or solely by reason of, insolvency or the appointment of *or the exercise of rights or powers by* a conservator or receiver.

* * * * * * *

[(13)] *(14)* EXCEPTION FOR FEDERAL RESERVE AND FEDERAL HOME LOAN BANKS.—No provision of this subsection shall apply with respect to—

(A) * * *

* * * * * * *

[(14)] *(15)* SELLING CREDIT CARD ACCOUNTS RECEIVABLE.—

(A) * * *

* * * * * * *

[(15)] *(16)* CERTAIN CREDIT CARD CUSTOMER LISTS PROTECTED.—

(A) * * *

* * * * * * *

SEC. 13. (a) * * *

* * * * * * *

(e) AGREEMENTS AGAINST INTERESTS OF CORPORATION.—

(1) * * *

[(2) PUBLIC DEPOSITS.—An agreement to provide for the lawful collateralization of deposits of a Federal, State, or local governmental entity or of any depositor referred to in section 11(a)(2) shall not be deemed to be invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or with any changes in the collateral made in accordance with such agreement.]

(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.

* * * * * * *

FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

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TITLE IV—MISCELLANEOUS PROVISIONS

Subtitle A—Payment System Risk Reduction

CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING

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SEC. 402. DEFINITIONS.

For purposes of this chapter—

(1) * * *

* * * * * * *

(2) CLEARING ORGANIZATION.—The term "clearing organization" means a clearinghouse, clearing association, clearing corporation, or similar organization—

(A) that provides clearing, netting, or settlement services for its members and—

(i) * * *

(ii) which is registered as a clearing agency under the Securities Exchange Act of 1934*, or is exempt from such registration by order of the Securities and Exchange Commission*; or

(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act *or that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act*.

* * * * * * *

(6) DEPOSITORY INSTITUTION.—The term "depository institution" means—

(A) a depository institution as defined in section 19(b)(1)(A) of the Federal Reserve Act (other than clause (vii));

(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;

[(B) a branch or agency as defined in section 1(b) of the International Banking Act of 1978;]

(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;

[(C)] *(D)* a corporation chartered under section 25(a) of the Federal Reserve Act; or

[(D)] *(E)* a corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under section 25 of the Federal Reserve Act.

* * * * * * *

(11) MEMBER.—The term "member" means a member of or participant in a clearing organization, and includes the clearing organization *and any other clearing organization with which such clearing organization has a netting contract*.

* * * * * * *

(14) NETTING CONTRACT.—

(A) IN GENERAL.—The term "netting contract"—

[(i) means a contract or agreement between 2 or more financial institutions or members, that—

[(I) is governed by the laws of the United States, any State, or any political subdivision of any State, and

[(II) provides for netting present or future payment obligations or payment entitlements (including liquidation or close-out values relating to the obligations or entitlements) among the parties to the agreement; and]

(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

(ii) includes the rules of a clearing organization.

(B) INVALID CONTRACTS NOT INCLUDED.—The term "netting contract" does not include any contract or agreement that is invalid under or precluded by Federal law.

(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.

SEC. 403. BILATERAL NETTING.

[(a) GENERAL RULE.—Notwithstanding any other provision of law, 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.]

(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).

* * * * * * *

(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).

SEC. 404. CLEARING ORGANIZATION NETTING.

[(a) GENERAL NETTING RULE.—Notwithstanding any other provision of law, the covered contractual payment obligations and 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.]

(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).

* * * * * * *

(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 In-

surance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).

* * * * * * *

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. [407.] *407A.* NATIONAL EMERGENCIES.

The provisions of this subtitle may not be construed to limit the authority of the President under the Trading With the Enemy Act (50 U.S.C. App. 1 et seq.) or the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

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SECTION 5 OF THE SECURITIES INVESTOR PROTECTION ACT OF 1970

SEC. 5. PROTECTION OF CUSTOMERS.

(a) * * *

* * * * * * *

(b) COURT ACTION.—

(1) * * *

(2) JURISDICTION AND POWERS OF COURT.—

(A) * * *

* * * * * * *

(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.

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TRUTH IN LENDING ACT

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CHAPTER 2—CREDIT TRANSACTIONS

* * * * * * *

§ 127. Open end consumer credit plans

(a) * * *

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(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) * * *

* * * * * * *

(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).

(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.

(c) DISCLOSURE IN CREDIT AND CHARGE CARD APPLICATIONS AND SOLICITATIONS.—

(1) * * *

* * * * * * *

(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.

(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 mul-

tiple 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.

* * * * * * *

(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.

SEC. 127A. DISCLOSURE REQUIREMENTS FOR OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) APPLICATION DISCLOSURES.—In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

(1) * * *

* * * * * * *

(13) STATEMENT REGARDING [CONSULTATION OF TAX ADVISOR] *TAX DEDUCTIBILITY*.—[A statement that the] *A statement that—*

(A) the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan[.]*; 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.

* * * * * * *

§ 128. Consumer credit not under open end credit plans

(a) For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) * * *

* * * * * * *

(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.

(b)(1) * * *

* * * * * * *

(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.

* * * * * * *

CHAPTER 3—CREDIT ADVERTISING

* * * * * * *

§ 144. Advertising of credit other than open end plans

(a) * * *

* * * * * * *

(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.

* * * * * * *

SEC. 147. ADVERTISING OF OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

(a) * * *

* * * * * * *

(b) TAX DEDUCTIBILITY.—**[**If any**]**

(1) IN GENERAL.—If any advertisement described in subsection (a) contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

(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.

* * * * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING

WEDNESDAY, FEBRUARY 14, 2001

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

The committee met, pursuant to notice, at 10:03 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner (chairman of the committee) presiding.

Chairman SENSENBRENNER. The committee will be in order. The Chair notes the presence of a working quorum and, pursuant to notice, I now call up the bill H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001, for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point. Without objection, the Chair is authorized to declare recesses of the committee during consideration of the noticed bills. Without objection, all members' statements will be included in the appropriate point in the record.

The Chair moves to strike the last word, and recognizes himself for 5 minutes.

Today, we have scheduled for markup two bills, both of which have long histories before this committee. H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2001 represents the culmination of more than 3 years of intense and incisive consideration by this committee. Over these 3 years, the bill has benefitted immensely from the legislative process.

During the last Congress alone, this committee entertained 59 amendments over the course of a 5-day markup of H.R. 833, which is this bill's predecessor, which included 29 recorded votes. Of these amendments, 27 were agreed to. On the floor, 11 more amendments were considered. Likewise, this bill's predecessors on the Senate side also had benefit of an extensive and mandatory process. Beginning in November 1999, through final passage the following February, more than 250 amendments were proposed.

We also need to keep in mind that this bill is the product of extensive negotiation and compromise. Shortly after H.R. 833, as amended, was passed by the Senate last year, members and their staffs from both bodies spent nearly 7 months engaged in what was initially an informal conference to reconcile differences between the bills. The product of these extensive negotiations was the conference report that accompanied H.R. 2415. This legislation was so uncontroversial that it passed the House by a voice vote last October. In the Senate, the legislation was passed by a veto-proof vote of 70 to 28. But for President Clinton's pocket veto in the waning days of the last session, the conference report, which is virtually identical to H.R. 333, would now be law.

While I acknowledge that H.R. 333 is not beyond further perfection, I am concerned that any further substantive amendments to this bill will upset the delicate balance and various compromises that have been struck. We must be mindful of the fact that the House has registered its unqualified support for this bill's progenitors on not just one occasion, but four separate times.

Once we complete the markup of H.R. 333, we will then consider H.R. 256 for markup. H.R. 256 reenacts and extends chapter 12 of the Bankruptcy Code, a specialized form of bankruptcy relief for family farmers. Chapter 12 allows eligible family farmers, under the supervision of a bankruptcy trustee, to reorganize their debts pursuant to a repayment plan. The special attributes of this form of bankruptcy relief make it better suited to meet the particularized needs of family farmers in financial distress than other forms of bankruptcy relief.

This committee has previously considered and supported the extension of chapter 12. In addition, the House, on two occasions in the last Congress, passed legislation which would have extended chapter 12. Unfortunately, however, the Senate did not act on these bills, and chapter 12 expired on July 1, 2000, as a result. H.R. 256 simply reenacts chapter 12 of the Bankruptcy Code, effective retroactively to July 1, 2000. In addition, the bill extends this temporary form of bankruptcy relief for 11 months, until June 1, 2001. It is important to note, however, that H.R. 333 would make chapter 12 a permanent form of bankruptcy relief under the Code.

I now turn to my colleague, the gentleman from Michigan, Mr. Conyers, the distinguished ranking member of this committee, and ask him if he has any opening remarks. The gentleman is recognized for 5 minutes.

Mr. CONYERS. Thank you very much, Mr. Chairman.

In the spirit of cooperation that has informed the Judiciary Committee 107th Congress, I would like to point out that both you and I arrived at the same time today here for the meeting.

Chairman SENSENBRENNER. And we couldn't be more cooperative than that. [Laughter.]

Mr. CONYERS. No, the timing, plus, I have two occasions which I got here before you still to my credit. So this intense cooperation I hope isn't getting anybody down so soon. I am delighted to come to the hearing. We're searching for more of our members, some of whom I know have asked to be excused. Mr. Delahunt is in another committee.

But the fact still remains there are a few economic issues facing the Congress that are more far-reaching than bankruptcy reform. As you all know, more of our citizens come and your constituents come into the bankruptcy courts more frequently than all of the other Federal courts combined. And at a time of record-high consumer debt, our economy slowing, there is no doubt that any changes that we make in the Bankruptcy Code will have a significant impact on our financial well-being.

Now, let me say, first and foremost, that I want to acknowledge that the bill before us has improved substantially over the course of the last two Congresses. I credit that to Mr. Gekas, the subcommittee Chair. We modified the means test. We've added safe-harbor protections; the bill includes an informa pauperis provision, and I commend the majority on this committee and the subcommittee chairman for these positive improvements. The bill, however, is still flawed, dangerously flawed, and I realize that, to me, the best course that those of us oppose it should make several focused proposed corrections and hope that we can gain a support of a majority number of people on this committee.

The first amendment that I will propose, and hope will be favorably considered, deals with the alimony and child support because, although we are seeking to enhance the status of alimony and child support payments, the problem is that in bankruptcy it is impossible to do this if we also enhance the status of credit card debt and place it in direct competition with alimony and child support payments. And so, members of the committee, this is what I seek to correct, precisely. It is very important, and I have a proposal that I will shortly offer to do that.

Now, the second thing is dealing with small business bankruptcy. We need to make sure that the new requirements are rational and that if a deadline cannot be met, for example, because of a regulatory process that must take place before the plan can be developed, we should give the court discretion to waive the deadline. Now, this is not a big, huge item, this is a small adjustment that we are asking that be made that will have a very large beneficial result.

And, finally, a couple of technical corrections that in calculating the debtor's income in chapter 13, we use actual income, not a figure based on a job he no longer has, and that lawyers who are bankruptcy petition preparers need not file a document stating they are not lawyers.

And so there you have it. These three proposals, to the extent that enough of the members in the committee could reach some joinder with me on, I think we may be able to have an even better bill than the one that is before us now.

Thank you.

Chairman SENSENBRENNER. I thank the gentleman from Michigan.

Let me state that in terms of how we are going to proceed today, the Chair has noticed a markup for this bill for tomorrow morning at 10 o'clock. I think that, given the fact that there are no votes tomorrow on the floor of the House, members would kind of like to get out of town and go back to their districts. However, I would like to be able to wrap this up either today or tomorrow. So, with a little bit of bipartisan cooperation, perhaps we can get this done today, which would eliminate the necessity of having to come back tomorrow.

It is my intention to keep the committee in session until about 5:30. Today is Valentine's Day, and I certainly do not want to have the Valentines of all of those in the room get very angry at this committee during the first markup to keep you away from whatever obligations you have arranged for yourselves later on tonight. So, if we can work until 5:30, with an hour off for lunch, about the time that the votes are called on the floor, I think that we will either be able to get done or to get almost done and have the ball at least on the 10-yard line, and I would like to ask the members to be cooperative in that respect.

Without objection, other members' opening statements will be placed in the record at this point, and are there any amendments?

Mr. WATT. Mr. Chairman, may I make an inquiry?

Chairman SENSENBRENNER. The gentleman from North Carolina.

Mr. WATT. Have you all reached some agreement that prohibits opening statements by the rest of the members of the committee or what——

Chairman SENSENBRENNER. No. No, we have not, Mr. Watt. But, you know, let me say that, you know, I have never seen any kind of press comment on opening statements by members of the committee——

Mr. WATT. Well, Mr. Chairman, I——

Chairman SENSENBRENNER. I am not going——

Mr. WATT. With all respect to the chairman, this isn't about press. I don't even know that the press is here. This is a markup of a bill.

Chairman SENSENBRENNER. If the gentleman wants to move to strike the last word, there is no way I can prevent you from doing that. But, you know, let me say that if this markup drags on, we're going to be here tomorrow, and that's an imposition on the other members.

The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I appreciate the chairman's indulgence and the committee's indulgence. I will just say at the outset, nothing that I do or say today will be done or said for any dilatory purpose, but this is a legislative body, this is the Judiciary Committee, and this is the place that a bill receives consideration in the most detail if it is going to be considered at all. I'm not sure I know what the implication to read into the chairman's statement about press coverage of opening statements. I don't think I have given him any reason to think that every time a camera is around I've got to be in front of it, but I do think I have given the chairman, and other people on this committee, reason to understand that if we are going to engage in a serious markup of a serious bill that has serious implications for the American people, neither Valentine's Day, nor Christmas, nor Hanukkah, nor any other excuses, even concerns about the necessity of having to return to Washington tomorrow need deter that.

Now, having said that, let me be clear in what I will try to do, as I was with Mr. Gekas last year. I start, unlike some people who I have heard talk about this issue, with the agreement with a number of my colleagues, that the bankruptcy law needs to be revised and reformed in many ways. I know that there are a number of people who are gaming the bankruptcy system, and I don't like it any more than anybody else, regardless of their purported philosophical stripes on this committee.

What I am seeking to do is to offer amendments, and I will seek to offer amendments. I have a total of 14, and I am going to put the chairman on notice about that at this very moment. I may or may not offer all of them, but I have 14 of them in my file, and every single one of them is designed, from my perspective, to make this bill one that I have the capacity to vote for. That's what I'm trying to get to. I support bankruptcy reform. The bill that has come out of this conference, I do not support. And if the bill is not revised, I cannot support it, and therefore I cannot follow through on what I have said to my colleagues on the committee or my constituents at home about what I feel about bankruptcy reform, which is that the Bankruptcy Code does need some reform and revisions, but I think this bill does not do it, in a number of respects, in the best way, and I think this bill, in a number of respects, is counterproductive to what it purports to do and will make more bankruptcy litigation, more paperwork, more red tape, and discour-

age a number of people from going into chapter 13 bankruptcies, rather than encouraging more people to get out of chapter 7 and into—into 13, as the bill purports to do.

So, if the chairman has any illusions about, you know, this whole—this, for me, this is not about being bipartisan or nonbipartisan. I don't know what bills anybody has struck about time to consider this bill, but I came here to work, and I will be here to work tomorrow, if we are here to work, if it is necessary to try to amend the bill in a way that will get it to the point where——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT [continuing]. At the end of the day, I can support——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT [continuing]. Or vote against the bill.

Chairman SENSENBRENNER. Are there any amendments?

Mr. CONYERS. I have one.

Chairman SENSENBRENNER. The gentleman from Michigan.

The clerk will report the amendment.

Mr. CONYERS. The Alimony and Child Support Amendment.

The CLERK. Amendment to H.R. 333 offered by Mr. Conyers and Ms. Waters, page 144, line 14, strike the period——

Mr. CONYERS. I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. And the gentleman is recognized for 5 minutes.

Mr. CONYERS. Members of the committee and Mr. Chairman, I offer this amendment on behalf of myself and Representative Maxine Waters, and we offer the amendment because of the bill's adverse impact on payment of domestic support obligations.

As is known, the bill increases the amount of funds being paid to unsecured creditors, and such payments will often come at the expense of other less-aggressive creditors, such as women and children owed alimony and child support. This problem is by no means insignificant, given that an estimated quarter of a million to 325,000 bankruptcy cases involve child support and alimony orders during the most recent years. In particular, by making significant amounts of credit card debt nondischargeable, more of these debts will survive bankruptcy. And, of course, outside the bankruptcy court is precisely the arena where sophisticated credit card companies have the greatest advantages.

While the bankruptcy court provides a strict set of priority and payment rules, generally seeking to provide equal treatment of creditors with similar legal rights, State law collection is far more akin to survival of the fittest. Whichever creditor engages in the most aggressive tactic, be it through repeated collection demands and letters cutting off access to future credit, garnishment of wages or foreclosure on asset is the one most likely to be repaid.

And that's why the women and children's advocacy groups have come out in opposition to the bill. The National Women's Law Center has said the child support provisions of the bill fail to ensure that the increased rights the bill would give to commercial creditors do not come at the—should not come at the expense of families owed support. The Governing Council of the Family Law Section of the ABA has written that if credit card debt is added to the current list of items that are not dischargeable after a bankruptcy of a support payer, the alimony and child support recipient will be forced

to compete with the well-organized, well-financed, obscenely profitable credit card companies, and it's not a fair fight, and it's one that women and children who rely on support will usually lose.

And so it's not just the advocacy groups who flag the problem, the Congressional Research Service, nonpartisan, has written that child support and credit card obligations could be pitted against each other. Both the domestic creditor and the commercial credit card creditor could pursue the debtor and attempt to collect from postpetition assets, but not in the bankruptcy court.

So all this amendment does is respond to the problem by providing a creditor should not receive any greater protections under the bill with regard to luxury good purchases, ATM debt or credit card debt used to pay taxes if it would impair the debtor's ability to pay alimony and child support. The amendment does not—does nothing to impair the present position of the creditors. It merely states that before we give that greater protection than they now enjoy—than they now enjoy, we need to make sure that alimony and child care are protected. Surely this is something that most of us can agree is fair and makes good sense.

Thank you.

[The Amendment to H.R. 333 Offered by Mr. Conyers and Ms. Waters follows:]

Amendment to H.R. 333

Offered by Mr. Conyers and Mrs. Waters

Page 144, line 14, strike the period, the close quotation marks, and the period at the end.

Page 144, after line 14, insert the following (and make such technical and conforming changes as may be appropriate):

"(IV) clause (i) shall not apply if the court determines that the limitations on discharge would impair the debtor's ability to pay domestic support obligations.".

Page 149, after line 5, insert the following:

(c) LIMITATION ON APPLICABILITY.—The amendments made by this section shall not apply if the court determines that the limitation on discharge would impair the debtors ability to pay domestic support obligations.

Chairman SENSENBRENNER. Would the gentleman yield back the balance of his time?

Let the Chair say that the lights on the timer on the desk are in the process of being repaired. The timer is working up at the chairman's desk. For what purpose does the gentleman from Pennsylvania seek recognition?

Mr. GEKAS. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. I thank the chair.

One of the answers to the gentleman from Michigan is found in his own words, in his opening statement, that to the effect that this bill, which he acknowledges is better than the one we started with from his point of view, has taken great endeavors over the past two terms to establish the primacy of domestic support and women's and children's issues and has, in various ways and in various provisions, established and reestablished the primary consideration of making sure that support payments reached their destinations as a priority.

Therefore, the language that he now employs in these amendments, although they go to a different portion of the bankruptcy concepts of the 60 days, and 90 days, and 80 days, and 70 days, provisions that have been historically cutoff marks for bankruptcy, do not, in any way, enhance the situation that we've already cured.

I ask the members to vote no on this amendment, but I have asserted to the gentleman from Michigan, so that everyone will know, that I am willing again to, between now and the floor action on the House—in the House chamber, to review this with him, with a view to possibly agreeing on some measure of solace to him or compromise even further. I believe that we have compromised and negotiated sufficiently to assure the American people that the primary obligation of support is preserved.

Mr. CONYERS. Would the gentleman yield for my last comment?

You see the problem, George, is when both are competing equally, they—the mother and the children—are at a disadvantage because they don't have the professional law firms that regularly handle this. They come in one by one and get their socks beat off. And all I am saying is that we ought to take that into consideration, since we both profess to be concerned about maintaining this stringent rule about protecting child support and alimony orders.

Mr. GEKAS. Seizing back my time. The concerns that the gentleman has I think are wrapped up in the notion that and the fact that support obligations are part of another part of the court system in which they take extra pains in support court and in domestic court and in all of the penal provisions that apply to collection of support. You say that the people are without help, that the domestic seekers of support are without help. They've got an entire court system that is available to them and is imbedded, right from the start, in our system of bankruptcy, so that they are protected even by more than an ordinary consumer lawyer that might appear for that individual to protect one's life, there's an entire system already set up to guarantee support flowing to those who will be benefitted by it. I ask for a no vote on the amendment.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. Does the gentleman yield back the balance of his time?

Mr. GEKAS. I do.

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. I move to strike the last word in support of the——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I want to rise in support of Mr. Conyers' amendment. Mr. Gekas, of course, is right that there is a separate system for child support. It is—that separate system was put in place because we have placed a premium and value on having a child support system, but it doesn't do any good to have a domestic court, State court or a child support enforcement mechanism or whatever system we have in place to protect and secure the obtaining of a judgment for child support if that judgment, if that agreement, if that system is not going to be given some sanctity above and beyond an automobile loan or some other kind of loan that we don't think is as important in the bankruptcy context.

Mr. Gekas is absolutely right that if you are not in the bankruptcy court, there is plenty of protection and system to try to make sure of that, and the reason for that, of course, is that we, we value—that's a reflection of the values that State court and even interstate mechanisms have now been put in place to guarantee collection of child support, but if we undermine that in the bankruptcy court by allowing somebody to just go in and declare bankruptcy and then put automobile loans and luxury goods up to $250 or whatever we decide is going to go into some kind of preferred category, which we are doing over and over in this bill, putting more and more things into a preferred category, then basically what we've done is set up a system where more people, at the end of the day, are competing on a preferred basis with child support.

And this amendment is a clear and unequivocal statement that when that occurs, if it occurs, if those other competing creditors are going to put domestic support, child support at a disadvantage and child support is going to be compromised in any way, we want to continue to give it the same value and recognition that we have, in fact, given it outside the bankruptcy context for good and valid public policy reasons.

I'm not sure what you can—what the—what the gentleman's objection to this language is. He says he supports making sure that child support gets paid. That's been all the rhetoric throughout this process. I don't know how much clearer you could be playing around with the words between now and the floor. This is the committee that this bill is supposed to be considered and marked up in, and I assure you that if we don't put this language in this bill in this committee, it will never see the light of day again between now and the floor or on the floor.

If we value child support, then we should support the amendment. It does no disadvantage, no harm to any other values that are purported to be advanced by this bill. What it says is what we have said over and over again in a number of different contexts, that child support is our number one priority.

I yield to Mr. Conyers.

Mr. CONYERS. Thank you for an excellent statement, Mr. Watt. What you have said about the urgency of this passing now or never is so true that any future negotiations with us, and the subcommittee chairman, and to see how things go in Rules, and out on the floor and all of that, if this provision isn't in now, we all, realistically, know that it's not going to ever appear anywhere else again.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. Who seeks recognition?

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts?

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. DELAHUNT. I will be very brief. I wanted to associate myself with the remarks by the gentleman from North Carolina. And I guess my question is what is there, and I would direct it to the former Chair of the subcommittee, what is there in the language that he objects to at this particular point in time?

Again, there seems to be rhetoric that would prioritize clearly the payment of child support. I think this makes it very clear and very unequivocal, and as the gentleman from North Carolina stated, it gives it a priority so that it is not competing with other priorities that the bill, in large, now creates as priorities.

Mr. GEKAS. Does the gentleman want me to yield?

Mr. DELAHUNT. No, I'm yielding to the gentleman, in terms of responding.

Mr. GEKAS. I might yield an answer to you.

Mr. DELAHUNT. I have the time——

Mr. GEKAS. I say——

Mr. DELAHUNT. Yes?

Mr. GEKAS. I say to the gentleman that we've already established the mechanisms, in and out of bankruptcy, to guarantee the primacy of support. When a debtor is about to declare bankruptcy, the bankruptcy—the lawyer who will be representing or the court that will be representing the spouse or the custodial parent will make certain that support is forthcoming through the regular channels of support——

Mr. DELAHUNT. Outside of the bankruptcy court.

Mr. GEKAS. Yes, as part and as part and parcel——

Mr. DELAHUNT. We——

Mr. GEKAS. In fact, our bill, our bill creates the——

Mr. DELAHUNT. Reclaiming my time, the avenues that the gentleman alludes to outside of the bankruptcy court is when an individual who is responsible for child support payment has the ability to pay. That has nothing at all to do with bankruptcy, whether it be a family court or a criminal court. Those avenues are available when an individual is not in bankruptcy. It is those particular courts that calculate the level of support. It has nothing whatsoever to do with an individual who finds himself in bankruptcy. So it really—they are absolutely, totally unrelated.

I yield back to the gentleman.

Mr. GEKAS. The gentleman fails to connect dots here. Here's an individual who is under an obligation by another court to pay $50

a week support. All of a sudden he decides he is going to go bankrupt because of the overwhelming burden of debts otherwise accumulated. What in the world does the gentleman believe will happen to that support matter, that it dissolves in favor of creditors? It stays in place. And throughout the bankruptcy proceeding——

Mr. DELAHUNT. Reclaiming my time. That support payment comes into competition with other priorities that are created by the bill before us.

Mr. GEKAS. Well, if that's the problem——

Mr. DELAHUNT. I yield to the gentleman from North Carolina.

Mr. WATT. Let me, let me point out to the members of the committee exactly what this is all about. Look at where this amendment is proposed to be inserted. It's inserted behind a provision dealing with luxury goods. We're spend—we're giving priority up to $250 to luxury goods on the same basis that we're giving the child support. That's crazy. That is insane. We are extending, and that has never been in the bankruptcy bill before. I mean, that wasn't the law. We are adding to the people that we are giving a preference to under this bill.

The same section, on page 144, gives priority up to $750 to extensions of consumer credit under an open-end credit plan. That's money that you get out of an ATM machine. I mean, you don't even know what it's going for. Basically, what you said, if the bank or you got some money out of an ATM machine, up to $750, we're going to give you the same priority that we give to children. This is crazy. It is counterproductive to the exact objectives that the sponsors and supporters of this bill, and why is that? It's because all of these people have come forward and said, "Hey, put us on the gravy train." It's kind of like this tax bill. They just—this is the train that's moving out, and everybody wants priority, and we've given everybody priority——

Chairman SENSENBRENNER. The time of the gentleman from Massachusetts has expired.

Mr. WATT [continuing]. Now on the same basis that children have priority.

Chairman SENSENBRENNER. The time of the gentleman from Massachusetts has expired.

The question is on the adoption of amendment no. 1 offered by the gentleman from Michigan.

Mr. CONYERS. Recorded vote, sir.

Chairman SENSENBRENNER. All of those in favor will signify by saying aye, as your names are called; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. I——

The CLERK. Mr. Gekas, aye.

Pardon me?

Mr. GEKAS. I am here voting no. [Laughter.]

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.

The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
[No response.]
The CLERK. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there other members who wish to cast their votes? The gentlewoman from California?
The CLERK. Ms. Waters?
Chairman SENSENBRENNER. The gentlewoman from California, the clerk did not get your vote. The gentlewoman from California?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Chairman SENSENBRENNER. The gentleman from Utah?
Mr. CANNON. No.
Chairman SENSENBRENNER. Are there other members who wish to record their vote or to change their votes?
[No response.]
Chairman SENSENBRENNER. Hearing none, the clerk will report.
The CLERK. Mr. Chairman, there are 10 ayes and 14 nays.
Chairman SENSENBRENNER. The amendment is not agreed to.
Are there further amendments? The gentleman from Michigan?
[No response.]
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from North Carolina.
Mr. WATT. Mr. Chairman, I have an amendment at the desk.
Chairman SENSENBRENNER. The clerk will report the amendment.
Mr. WATT. It's Watt No. 4.
The CLERK. Amendment to H.R. 333 offered by Mr. Watt of North Carolina.
Page 144, after line 14, insert the following [and make such technical and conforming changes as may be appropriate]:
Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from North Carolina is recognized for 5 minutes.
Mr. WATT. Thank you, Mr. Chairman.
This is not the order that I would plan to offer my amendments in, but I think this relates really to the same point that the last amendment did and illustrates the point that I was trying to make to the members of the committee about how this bill has become, in many ways, counterproductive to the purposes that many have said that they were setting out to achieve.
On page 143, section 310, of the bill starts to define the limitations on luxury goods and other items that basically are given priority in a bankruptcy proceeding. It limits to $250 luxury goods, which I think is appropriate. I don't think it ought to be on the same basis as child support, but at least it makes some sense to have a limitation, but—and it makes an exception at the end for luxury goods that are necessary for the support or maintenance of

the debtor or a dependent of the debtor, which I think is good language. That's all the way over on page 144.

The next part of this, though, talks about cash advances aggregating more than $750. That means that up to $750 you get the priority if those advances were obtained within 70 days before the order for relief is granted, and unfortunately there is no similar exemption for that $750 that subordinates it to payments for support or maintenance of the debtor or a dependent of the debtor because if you look on page 144, lines 11 through 14, the limitation that subordinates luxury goods up to $250 to reasonably necessary support and maintenance of the debtor, there is no similar limitation for the $750 that's been advanced. Even if I went to the ATM and got the $750 to try to pay child support, there is no recognition of that.

Basically, what the credit card companies have succeeded in doing, and I'm not an opponent of credit card companies, I just think we've got to be reasonable in the approach we are using here, and what this amendment would do is make that $750-credit card advance, that cash advance of extension of consumer credit under an open-end credit plan subject to the same limitation that we have placed on luxury goods if a person can come into the bankruptcy court and show that that advance, that credit card extension was for the purpose of support and maintenance of their children.

So this further illustrates how we have gotten this whole thing out of whack. And if you can't support the general language that gets everything subject to providing child support for children who need it, at least we ought to make luxury goods and these cash advances subject to that child support payment.

And I would, therefore, encourage my colleagues to support and vote for this amendment, and I yield back the balance of my time.

[The Amendment to H.R. 333 Offered by Mr. Watt follows:]

Amendment to H.R. 333
Offered by Mr. Watt of North Carolina

Page 144, after line 14, insert the following (and make such technical and conforming changes as may be appropriate):

"(IV) the terms 'cash advances' and 'extensions of consumer credit under an open end credit plan' do not include those reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.".

Chairman SENSENBRENNER. The gentleman from Pennsylvania?

Mr. GEKAS. I rise to state my opposition to the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. Again, it's difficult to explain, I believe, or it's my failure, but the current law in these luxury item provisions to which the gentleman refers, the current law gives primacy to support payments, the current law, which we leave untouched, absolutely untouched in our bill. All we do in the sections that you are corresponding here is change the amounts that would constitute

fraud if perpetrated within a certain number or period of days before bankruptcy. That's all we do. We do not affect the obligation to make sure that those items do not include goods or services reasonably acquired for the support or maintenance of the debtor or dependent of the debtor.

So the rhetoric which is accused handily by the members of the minority as to—or the proponents of this bill is the rhetoric that you're using. You're using rhetoric to say, "Oh, my gosh, how can we take support and put it behind luxury items?" That's, that's what is inane.

Mr. WATT. Would the gentleman yield?

Mr. GEKAS. It's my time.

Mr. WATT. I'm asking if the gentleman would yield.

Mr. GEKAS. Let me finish my statement.

I'm saying to you, and I repeat, for the benefit of all of the members, we do not, I repeat, we do not harm the current law which gives primacy to support payments vis-a-vis the 60—the prior to bankruptcy period of time, when someone goes to the extreme to try to defraud the system, to game the system.

The gentleman from North Carolina is an opponent of individuals who game the system. These provisions are there to prevent gaming the system, and they are accompanied by strong language that says when they do try to game the system, even if they do try to game the system, if they use part of that money, which they have gamed, for support payments, then that will not be dischargeable.

So I am saying that this is rhetoric, unaccompanied by logic, that you are attending to this provision.

Mr. WATT. Will the gentleman yield?

Mr. GEKAS. Yes, I'll yield.

Mr. WATT. I thank the gentleman for yielding.

First of all, let me clear I have never said that you have elevated these things above support payment. What I said is that you put them on the same basis. You expanded the number of things you put on the same basis as support payment, and in the process of doing that, unless you make it clear that if you have to come to a choice between these things and support payments, that support payments take priority, then you have done a disservice to support payments.

Now, if the gentleman would just look at lines 11 through 14, where you make luxury goods or services subject to support payments. Why is it not logical to make the $750-credit card advance subject to the same support payments if they come into conflict with each other? Just—that's the only, only time at which this would be applicable. Why would you not make that same exception for credit card advances? You've made it for luxury goods.

Mr. GEKAS. Reclaiming my time. I do not want to venture on the same treadmill as the gentleman from North Carolina in repeating and repeating what is—happens not to be the case. The current law, I repeat, on this luxury items is unaffected. It is unaffected except for the numerical figure that is now applied in our bill to supplant that which currently exists.

Therefore, the primacy of support payments, if an individual contemplates bankruptcy, so he is going to game the system, he immediately goes out and gets cash advances for $750. All of a sudden

the red light goes up when he files for bankruptcy. If he did this within a short period of time before filing bankruptcy, it should be disallowed. But on second thought, if he used part of that money for support of the dependent or the spouse or someone relying on that support, then there is no penalty. It does not constitute fraud. That's the current law, and all we do is substitute different money figures.

Mr. NADLER. Would the gentleman yield for questions?

Mr. GEKAS. I yield back the balance of my time.

Mr. NADLER. Would the gentleman yield for questions?

Mr. GEKAS. Yes. Yes, I'll——

Mr. NADLER. I don't understand what you just said, George.

If you used part of that for the——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. NADLER. Mr. Chairman, what this amend—what the bill does is to change—what's the time period of it?—is to change $1,075 within 60 days to $750 within 70 days. So it's a much smaller amount of money. It's $10 a day.

But second of all what it does is—let me ask a question. Let's assume, let's assume that this person is not fraudulent, that this person is in very good faith, that this person has a dozen different credit card debts at 6- or 7- or 8- or 10-percent interest or whatever it is, and in an attempt to avoid bankruptcy, gets in the mail one of these promotions that says, "Consolidate your debts. Join up on First Card, National Citibank, for 2.99 percent," and he consolidates his debts. He takes that credit card, and he takes a thousand dollars on the credit card, all of which is existing debt. He transfers it from five different credit cards to one just to get a lower interest rate.

It seems to me that he's taking cash advances aggregating, that he meets the definition here, and he's presumptively fraudulent.

Mr. GEKAS. Would the gentleman yield?

Mr. NADLER. Yes, I will yield.

Mr. GEKAS. I haven't the slightest idea of what you just described in your hypothetical.

Mr. NADLER. Well, I described it very simply.

Mr. GEKAS. And it's a—what I, for the purpose of this debate and for the purpose of getting on with the process of this committee, I reassert that the changes that were made in the bill with respect to the 70 days prior, 90 days prior and so forth, were chiefly monetary in aspect, and they did not affect at all the current demand by the language——

Mr. NADLER. Reclaiming my time. I don't understand, if it doesn't affect it, why it's in here. But let me give a better example, perhaps, that will be more understandable.

Seven hundred and fifty dollars in 70 days is about $10 a day. So a person who is spending $10 a day on Pampers and baby food, and milk for the baby, is presumed to be a fraud—and is using a

credit card to buy it—is presumed to be having so much credit card within that 70 days that he's obviously doing this in contemplation of bankruptcy, and it's fraudulent. And, frankly, that doesn't make a heck—and then he's got to hire a lawyer to defend himself, and it doesn't make a heck of a lot of sense to me. I just hope we pass this amendment so this bill is a little less egregiously unfair, though still egregiously unfair in most of the——

Mr. WATT. Would the gentleman yield?

Mr. NADLER. I'll yield.

Mr. WATT. Let me be clear to Mr. Gekas and to the members of the committee. We are not trying to do away with the luxury goods exception. We're not trying to do away with the $750. I actually think you have—I agree with you. You have moved the bill in a good direction. The problem is that what you have done, in the process, is put luxury goods up to $250 and $750 worth of cash advances on the same basis that child support is being put if they—and I don't have any problem with that if a—if a debtor can pay all three of those things, it's fine.

But when you come to a fork in a road and that debtor's money is not enough to pay but one of those things, all we're saying—we're not trying to do away with the language. I mean, I didn't move—the amendment doesn't take the language out. All it says is when they come into competition with each other, child support ought to take priority, and that's exactly what you have said in lines 11 through 14 about luxury goods up to $250. Why wouldn't the same rationale apply to credit card debt?

Mr. NADLER. Reclaiming my time.

The key point that the gentleman from Pennsylvania misses on this whole question of child support priority, he said again a few minutes ago, we give priority to child support. Sure, you do, but the priority given in this bill to child support is only in bankruptcy court. Once you make these other debts nondischargeable, as child support already is, the competition for the mother to collect, the competition between the mother and the Chemical Bank lawyer to collect between child support and nondischargeable debt is after the debt is discharged, you are no longer in bankruptcy court. You are in State court, and there is no such thing as a priority——

Chairman SENSENBRENNER. The time of the gentleman from New York——

Mr. NADLER [continuing]. In State court——

Chairman SENSENBRENNER [continuing]. Has expired.

Mr. NADLER. So it's all irrelevant.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from North Carolina, Mr. Watt.

Those in favor will say aye.

Those opposed will say no.

The noes appear to have it.

Mr. WATT. Mr. Chairman, I request a recorded vote.

Chairman SENSENBRENNER. Roll call is ordered. Those in favor of the Watt amendment will vote aye, as your names are called; those opposed will vote no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. I am present, voting no. [Laughter.]
The CLERK. Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.

The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]
The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there members in the room who wish to record their vote or change their vote?
The gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
Chairman SENSENBRENNER. The gentleman from Alabama, Ms. Bachus?
Mr. BACHUS. No.
Chairman SENSENBRENNER. Any further members who wish to record their vote or change their vote? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 8 ayes and 15 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments?
Mr. CONYERS. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from Michigan, Mr. Conyers?
Mr. CONYERS. Mr. Chairman, I'd like to call up my business amendment now.
Chairman SENSENBRENNER. Is there a number on your amendment so the clerk is——
Mr. CONYERS. No, it's known as the business amendment.
Chairman SENSENBRENNER. The clerk will report the Conyers business amendment.
Mr. CONYERS. It's Conyers and Nadler, by the way.
It's the one that begins, "Page 181, line 3." On the top is "Conyers 002."
Chairman SENSENBRENNER. The clerk will report the amendment.
The CLERK. Amendment to H.R. 333 offered by Mr. Conyers, page 181, line 3, strike the close——
Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the gentleman from Michigan will be recognized for 5 minutes.
Mr. CONYERS. Thank you, Mr. Chairman.
I'd like to ask unanimous consent to have this amendment denominated the Conyers and Nadler amendment.
Chairman SENSENBRENNER. Without objection.
Mr. CONYERS. Thank you.

Ladies and gentlemen, this amendment amends several provisions of the bill that provides for strict new deadlines and allows them to be extended where it can be shown that the reason for the delay is due to circumstances beyond the debtor's control. It also specifies that the new provisions exempting asset-backed securities from bankruptcy only apply to true sales.

Now, as it presently stands, the legislation before us would completely alter the manner in which small businesses and real estate concerns may reorganize under the bankruptcy laws. In particular, it imposes a whole host of arbitrary deadlines designed to speed up the bankruptcy process. These provisions have drawn the strong opposition of the Small Business Administration Office of Advocacy and organized labor. The AFL–CIO has correctly warned that the small business provisions will threaten jobs by placing substantial procedural barriers in the way of small business's access to the protections of chapter 11.

Now, I've stated before that I agree that we need to streamline and expedite small business cases, but what's happened again is that in our haste, we have made new requirements that are now onerous in their own regard. Thus, if the reason a deadline can't be met is because of a regulatory process which the bankrupt applicant can't control; for example, a hearing on an environmental claim which must take place before a plan can be developed, we want to merely give the court the discretion to waive the deadline, for goodness sake, not a big deal. The last thing we want to do—the last thing we want to do is to worsen the current situation the applicant is in by forcing businesses to liquidate or layoff workers to comply with some arbitrary deadline.

Now it's one thing to tighten the bankruptcy rule where the only parties involved are the borrower and lender, but where the changes will harm innocent third parties, namely, employees and their families, I think most of us believe we have an obligation to give the business a reasonable chance to reorganize in bankruptcy. And so I urge the members of the committee to join with me and Mr. Nadler in supporting this idea of protecting American jobs by giving the court discretion to waive the deadline. This is all this amendment is, not a horribly big deal. I urge its support and return any time that may be remaining.

[The Amendment to H.R. 333 Offered by Mr. Conyers and Mr. Nadler follows:]

Amendment to H.R. 333

Offered by Mr. Conyers + Mr. Nadler

Page 181, line 3, strike the close quotation marks and the period at the end.

Page 181, after line 3, insert the following (and make such technical and conforming changes as may be appropriate):

"(iii) The court may extend the time periods specified in this paragraph if the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date of the order for relief.".

Page 185, line 18, strike "The" and insert "Unless the debtor establishes by clear and convincing evidence that there are circumstances beyond the debtor's control that were not foreseeable on the date of the order of relief, the".

Page 185, line 21, strike "The" and insert "Unless the debtor establishes by clear and convincing evidence

that there are circumstances beyond the debtor's control that were not foreseeable on the date of the order of relief, the".

Page 190, after line 24, insert the following (and make such technical and conforming changes as may be appropriate):

"(4) The court may extend the time period specified in paragraph (2) if the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date the assurance of payment was due.

Page 200, line 7, insert "(a) DUTIES.—".

Page 201, line 25, strike the close quotation marks and the period at the end.

Page 201, after line 25, insert the following:

"(b) The court may extend the time periods specified in paragraphs (1) and (3) of subsection (a) if the debtor establishes by clear and convincing evidence that an extension is justified by circumstances that there are beyond

the debtor's control that were not foreseeable on the date of the order of relief.".

Page 203, line 5, strike "and" at the end.

Page 203, line 7, strike the close quotation marks and the period at the end.

Page 203, after line 7, insert the following (and make such technical and conforming changes as may be appropriate):

> "(D) the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date of the order of relief.".

Page 203, line 14, insert "or the debtor establishes by clear and convincing evidence that an extension is justified by circumstances beyond the debtor's control that were not foreseeable on the date of the order for relief" after "1121(e)(3)".

Amendment to H.R. 333

Offered by

Page 351, line 19, insert "of this title or the transfer of the asset-backed securitization would not be a true transfer, conveyance or sale under nonbankruptcy law" after "548(a)".

Chairman SENSENBRENNER. For what purpose does the gentleman from Pennsylvania rise?

Mr. GEKAS. Move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman and members, we should recognize part of the history of how we arrived at this juncture in bankruptcy reform. Several years ago the Congress authorized the Commission, the well-known Bankruptcy Commission, to look at, particularly to look at the business provisions of the current bankruptcy law. They concluded, and it was part of Congress's rationale in the first place that the reorganization features under chapter 11 were not working. Why? Because there was too much delay, too many extensions, too much time granted over a period of time guaranteeing the failure of a business more than giving it time to resuscitate its business activities.

I repeat, it promoted failure on the part of a business to continue to extend times without regard to deadlines of established law. So the Bankruptcy Commission, in its wisdom, came up with recommendations that said we've got to more tightly fit the reorganization features of bankruptcy into time tables to allow the business to make certain that it can survive by doing X, Y, and Z, in consultation with the creditors and with the bankruptcy court so that, although we do still allow and have the courts given discretion to extend deadlines in some quarters on the whole process, we do not have the abject open-ended discretion that led to the failures about which the Bankruptcy Commission made so much commentary in their recommendations.

So, for those reasons, mainly the reason that the Conyers amendment in this regard takes us back to the time before the Bankruptcy Commission looked at this very set of features as being a cause of failure of reorganization, we want reorganization to work, we want to do it in a speedy and in deliberate time, and we want all of the parties involved to know what's facing them in the form of time tables so that they can make appropriate——

Mr. WEINER. Would the gentleman yield on that point?
Mr. NADLER. Mr. Chairman?
Mr. WEINER. Would the gentleman yield on that point?
Mr. GEKAS. Yes, I'll yield.
Chairman SENSENBRENNER. Which gentleman from New York are you yielding to?
Mr. GEKAS. To both of them at the same time. [Laughter.]
To the gentleman, Mr. Weiner.
Chairman SENSENBRENNER. I'm sorry. I saw the gentleman's hand up.
Mr. NADLER. I was seeking recognition, but not for yielding.
Mr. WEINER. I just want to clarify something that you said that is, in fact, not correct.
In the Conyers amendment, they have to show by clear and convincing evidence, it's a new standard that's been inserted, that will put quite a burden on the debtor to show that there is something beyond his control. I mean, it seems to me that if you trust even a modicum of the judgment of the judge in the case to be able to take the case that can't be anticipated by us here—very often my colleagues on that side talk about us setting rules here in Washington that are unnecessarily strict, unnecessarily dictatorial and not giving enough discretion to localities—it seems to me that Mr. Conyers strikes a balance by putting this, this clear and convincing evidence test, into his amendment. Doesn't that satisfy your concern about having extraneous delays and delays that are simply for the purpose——
Mr. GEKAS. Reclaiming my time.
Mr. WEINER. Certainly, sir.
Mr. GEKAS. I believe it's in the eyes of the beholder. I believe that the additional extension of time that you're referring to, even with clear and convincing evidence, takes us back to the Never-Never Land of never-ending reorganization, which the Bankruptcy Commission felt had to come to an end for justice in bankruptcy. So I am relying on the tighter set of deadlines that seem to be, in a unanimous way, felt would best serve the reorganization of bankruptcies.
I yield back the balance of my time. I yield to the other gentleman from New York.
Mr. NADLER. I move to strike the last word.
Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.
Mr. NADLER. Thank you, Mr. Chairman. I find it remarkable that the gentleman from Pennsylvania is citing the work of that lamented Bankruptcy Commission. If the gentleman would introduce a bill simply incorporating all of the recommendations of that Bankruptcy Commission and nothing else, we'd pass that bill unanimously in about 3 minutes. But as you know, this bill rejects about 95 percent of what the Bankruptcy Commission recommended. The Bankruptcy Commission was against means tests, the Bankruptcy Commission rejected everything on taxes. The fact is that this is the only thing that this bill seems to do that goes along with the Bankruptcy Commission.
Let me say this: It is a mischaracterization of this amendment to talk about abject and open-ended. It's clear and convincing evidence, circumstances beyond the debtor's control, not foreseeable

the date of the order for relief. You don't get back into a Never-Never Land of unending reorganization unless you assume that all of our judges are incompetent, and I certainly wouldn't assume that the judges to be appointed by President Bush are all incompetent. Some may be competent.

The fact is that what this bill seeks to do is to remove all discretion from a judge here, and I guarantee you that by putting these severe and inflexible deadlines, you are going to cause a lot of businesses that could have been reorganized and could have been saved, you're going to put them into liquidation. And even at the hearing last week, when I asked the gentleman, I think his name was Fosten from the Chamber of Commerce, the question about wouldn't these provisions of inflexible deadlines put more—force more businesses out of business and into liquidation, he essentially said, yes, but it was worth it because of the balance of other good things in the bill, but we can amend the bill. We don't have to balance terrible provisions that are going to destroy lots of small businesses.

We may be heading into, I hope not, the President says we are, heading into a recession. If we go into a recession, you're going to get a lot of small businesses going into chapter 11 just in time to meet this provision that will force many of them to be liquidated instead of being able to be saved and lay off a lot of people. To simply say that if a debtor can show, by clear and convincing evidence, which is a high burden of proof, that the extension is justified by unforeseen circumstances beyond his control and let the judge decide that, not the debtor, if he can prove that, that you can get an extension, that's reasonable. But, of course, this bill is not designed to be reasonable, so I know this amendment is forlorn.

I withdraw the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Michigan, Mr. Conyers, and the gentleman from New York, Mr. Nadler.

Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment——

Mr. NADLER. Recorded vote, sir.

Chairman SENSENBRENNER. A recorded vote will be ordered. The question is on the Conyers-Nadler amendment. Those in favor will signify by saying aye, as your names are called; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no. Mr. Chabot?

[No response.]
The CLERK. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no. Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
[Aye.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
[No response.]

The CLERK. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional members who wish to record their vote?
The gentleman from California, Mr. Gallegly?
Mr. GALLEGLY. No.
Chairman SENSENBRENNER. The gentleman from South Carolina, Mr. Graham?
Mr. GRAHAM. No.
Chairman SENSENBRENNER. Are there any members who wish to change their vote? If not—Mr. Jenkins of Tennessee, do you wish to record your vote?
Mr. JENKINS. No.
Chairman SENSENBRENNER. Further members? Clerk will report.
The CLERK. There are 6 yeas and 18 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? The gentleman from New York, Mr. Nadler?
Mr. NADLER. Mr. Chairman, I have an amendment at the desk, No. 001.
Chairman SENSENBRENNER. The clerk will report .001.
The CLERK. Amendment to H.R. 333 offered by Mr. Nadler, page 178, after line 4, insert the following [and make such technical——
Chairman SENSENBRENNER. Without objection, the reading of the amendment is dispensed with, and the gentleman from New York is recognized for 5 minutes.
Mr. NADLER. Thank you, Mr. Chairman.
Mr. Chairman, I offered this amendment in this committee last year, and in the Senate it was offered by Mr. Schumer and passed the Senate last year with 80 votes.
As Senator Hatch pointed out in the confirmation hearings on Attorney General Ashcroft a couple of years ago, even Senator Ashcroft, former Senator Ashcroft, voted for this amendment, for this exact language, not because Senator Ashcroft is pro-choice, but because he believes that the law must be respected.
This amendment would deal with an ongoing and highly publicized abuse of the Bankruptcy Code involving people who violate the legal rights of Americans to receive medical care, and intimidate their health care providers and to then file for bankruptcy for the express purpose of having the debts incurred in judgments of courts because of their torts against people seeking interest in these clinics, they then seek to have these judgments discharged in bankruptcy.
There are several cases currently in lengthy and costly litigation on this question. In one case, a $107-million verdict was rendered in the case of the so-called Nuremberg files, which was implicated in the murder, murder of at least one doctor.
Randall Terry has filed for bankruptcy to avoid payment of over $1.6 million in legal fines and related fees. He said, "I cannot in

good conscience permit the National Organization for Women, Planned Parenthood and others who have profited from abortion to harass my wife and family and possibly get money from me to continue their crusade against unborn life."

These are bold words, but as Senator Ashcroft pointed out during the hearings, opposing abortion does not give you a license to break the law, and it certainly should not translate into a license to abuse the Bankruptcy Code to avoid the lawful payment of legal judgments awarded by courts to compensate victims of deliberate violations of the law.

Although no debt has actually been discharged, this widespread and growing pattern of using bankruptcy to avoid payment of judgments in these cases have proved extremely burdensome to the individuals who are awarded these judgments because their legal rights have been violated.

The victims have been chasing these lawbreakers through the courts for years, going through discovery, being forced to engage in further costly litigation, seeking assets and litigating in bankruptcy courts across the country. We should settle any uncertainty in the law by making clear that the Bankruptcy Code cannot be used a shield against judgments for these lawbreakers. We make debts for drunk boating accidents nondischargeable in this bill, we penalize a parent who uses cash advances at the rate of little more than $10 a day to purchase necessities for the family, including baby food and Pampers, by making those debts nondischargeable.

I think we should preserve the integrity of the Code and take a tremendous burden off our bankruptcy courts and off the victims of this wrongdoing with the simple clarification that these judgments, awarded by a court for torts, are not dischargeable in bankruptcy.

I yield back.

[The Amendment to H.R. 333 Offered by Mr. Nadler follows:]

Amendment to H.R. 333

Offered by Mr. Nadler

Page 178, after line 4, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 329. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH THE COMMISSION OF VIOLENCE AT CLINICS.

Section 523(a) of title 11, United States Code, as amended by this Act, is amended—

(1) in paragraph (18), by striking "or" at the end;

(2) in paragraph (19)(B), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor, including any damages, fine, penalty, citation, or attorney fee or cost owed by the debtor, arising from—

"(A) an actual or potential action under section 248 of title 18;

"(B) an actual or potential action under any Federal, State, or local law, the purpose of which is to protect—

"(i) access to a health care facility, including a facility providing reproductive health services, as defined in section 248(e) of title 18 (referred to in this paragraph as a 'health care facility'); or

"(ii) the provision of health services, including reproductive health services (referred to in this paragraph as 'health services');

"(C) an actual or potential action alleging the violation of any Federal, State, or local statutory or common law, including chapter 96 of title 18 and the Federal civil rights laws (including sections 1977 through 1980 of the Revised Statutes) that results from the debtor's actual, attempted, or alleged—

"(i) harassment of, intimidation of, interference with, obstruction of, injury to, threat to, or violence against any person—

"(I) because that person provides or has provided health services;

"(II) because that person is or has been obtaining health services; or

"(III) to deter that person, any other person, or a class of persons from obtaining or providing health services; or

"(ii) damage or destruction of property of a health care facility; or

"(D) an actual or alleged violation of a court order or injunction that protects access to a health care facility or the provision of health services.".

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas?

Mr. GEKAS. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. I ask the members to vote no on this amendment. The current law in bankruptcy, which we preserve in our reform measure, already calls for nondischargeability of debts incurred as a result of violence or willful misconduct, such as murder, which was referred to by the gentleman, and any other kind of willful damage caused at an abortion clinic or any other institution, so that willful misconduct and damages, willful criminal conduct, so to speak, willful conduct of that nature, is already covered by the current law. We gain nothing by specifying violence in an abortion clinic, except to allow the pro-abortion factions to make a statement, and so we oppose the amendment, certifying and asserting that these kinds of measures taken by demonstrators at an abortion clinic are already covered by our law.

In addition, the Nadler amendment, if it—and I'm only guessing now—if it follows the same language as the Schumer amendment——

Mr. NADLER. It's identical.

Mr. GEKAS. It's identical. Who followed whom, I don't know for sure.

Mr. NADLER. He followed me.

Mr. GEKAS. He followed you, all right. Thank you.

It goes a little farther and puts in nebulous criteria about intent or—let me find the exact language that I'm referring to. Actual or potential actions alleging the violation of any Federal, State or local statutory or common law. You're talking about establishing 20 new courts to determine the definition of those particular portions of the amendment. It's bad enough to repeat already stated law about violence and misconduct, but now you extend it to curious language about alleging the violation of any Federal, State or local statutory or common law.

I ask the members to reject this amendment. I yield back the balance of my time.

Mr. WEINER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from New York, Mr. Weiner, seek recognition?

Mr. WEINER. Strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEINER. What the sponsor of the legislation in his explanation fails to point out is there is ambiguity or at least inasmuch as the bankruptcy law and the bankruptcy courts have been a place where people who are guilty of these crimes, people who are having or who are—or are being forced to pay these civil penalties and other penalties, they are using the bankruptcy courts currently to get out from under in a clearly stated strategy.

And I would remind the gentleman, also, that this is not a question of your views on a woman's right to choose. In the Senate this passed with 80 votes because this is simply a question about whether or not someone should be allowed to use the bankruptcy courts in an effort to get out from under the responsibilities they

would otherwise have which, from the gentleman's own explanation of this bill for the course of the last 2 years, is exactly what he says he seeks to do with this bankruptcy reform law, which is to make sure that people that have the ability to pay don't use the bankruptcy law as a way to get out from paying.

So all that the Nadler amendment does is seek to clarify that, and it's clearly a necessity because it has become a strategy of those that violate the clinic access laws to use the bankruptcy laws. In jurisdictions throughout this Nation, it's been part of their strategy. There is zero harm and a great deal of benefit to clearing up the ambiguity that apparently exists. You may not see it, I certainly don't see it. I believe it's a matter, it's a matter of moral certainty and a matter of certainty under the law, but the fact of the matter is that bankruptcy courts throughout the Nation are having to wrestle with this exact case, and we have an opportunity now——

Mr. HUTCHINSON. Would the gentleman yield?

Mr. WEINER [continuing]. To clarify that point.

Mr. HUTCHINSON. Would the gentleman yield for a question?

Mr. WEINER. I would certainly yield.

Mr. HUTCHINSON. My experience in having a judgment against someone for willful misconduct, I simply filed a petition with the court to have that debt nondischargeable because of willful misconduct, and the court ruled in my favor, and it is exactly what should have happened, and it was very similar to this.

The current law, as Mr. Gekas indicated, does protect against the dischargeability of cases which you cite would involve violence against a clinic. And you indicated that it's a strategy out there to use the bankruptcy as protection. Are there any cases in which an individual had the debt discharged by a court which involved violence against a clinic?

Mr. WEINER. If I can reclaim my time, I think it's fascinating that in this amendment the folks in the majority party are saying, well, we can trust judges to make the correct decisions, and look, this is a ground-ball judgment call that they can make. In the last amendment, we didn't even trust the judges to make the decisions about whether something was outside the control of one of the parties in the case.

And in answer to your question, yes, it's going on now. You know, the people trying to, trying to recover have to go through discovery, they have to go through the different jurisdictions. This is an opportunity for us to clarify the state of the law in a very obvious way, and I would yield to Mr. Nadler.

Mr. NADLER. Thank you.

Mr. Chairman, first of all, the language from the amendment that the gentleman from Pennsylvania wrote that he said was vague, et cetera, that's language describing an action. This amendment only applies to a judgment order consent decree or decree entered in a Federal or State court in various types of actions. It's got to be a judgment. You don't have to speculate about what it is, number one. It's a judgment or decree.

Number two, it talks about malicious and willful. Already malicious and willful is already nondischargeable. True, but you don't have to be malicious and willful to violate the law. The law which these people violate makes it prohibited by force or threat of force,

or by physical obstruction, intentionally injures, intimidates or interferes or attempts to injure, intimidate or interfere with any person, et cetera. It doesn't say it has to be willful or malicious. So you're establishing a new standard.

Number three, right now, yes, there has not been a discharge yet, but according to a statement from the hearing last year, "My firm, to date, has expended over 3,200 attorney hours in litigating these bankruptcy proceedings, in addition to the time spent by local counsel in each jurisdiction and the substantial expense of filing fees, service fees, and travel around the country. Thus far, after extensive litigation and considerable expense, we have won the willful and malicious injury issue in four of the bankruptcy courts. Despite these victories, enactment of the proposed amendment to the Bankruptcy Code is necessary because defendant should not have been given the opportunity to litigate the issue of the discharge in bankruptcy when they have been judged guilty of violating the faith statute, as intended by Congress."

In other words, the tort fees, the people who violated the law——

Chairman SENSENBRENNER. The gentleman's time has expired.

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentlewoman from Texas, Ms. Jackson Lee, seek recognition?

Ms. JACKSON LEE. To strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Let me just define what I think is the appropriate role of this room and this body. Often we are described as problem solvers. I hope we can be described as doing no harm.

The issue that Mr. Nadler raises in his amendment is an issue that raises the specter of confusion. Just about 3 years ago we sat and listened to a nurse from Birmingham, Alabama, if my recollection serves me well, that was horrifically mutilated by a bombing incident at an abortion clinic—visibly mutilated, emotionally mutilated, the victim of a very terrible and devastating crime to this date has not been solved.

As a basis of study, we can utilize the approach that many in the segregated South, Ku Klux Klan, took to avoid compensating those whose civil rights they violated. It is well known that individuals of this propensity have used the bankruptcy courts or have used the concept of bankruptcy to suggest that when a judgment has been rendered against them, the KKK or them individually, they would not pay.

It seems to me, Mr. Chairman, and to my colleagues, with an 80-vote support in the Senate, that it would be beneficial for an overhaul of the Bankruptcy Code, of which we are doing, and reasonable minds can disagree because I certainly think that this is an unnecessary process, an unneeded process, but we are in the midst of it, that clarification and specificity is the route to go; specificity meaning that it clarifies that you cannot utilize the Bankruptcy Code, under H.R. 333, to avoid the just judgment rendered against you.

In my sense, Mr. Chairman, this is doing no harm, based upon proceeding evidence and actual incidences where organizations have taken to the bankruptcy courts to blatantly try to overcome

just judgments against them, where they have mutilated, where they have violated, where they have destroyed the property and the lives of others.

Now, it seems to me a benign amendment. It does not harm. It helps. And I am at a loss as to why the opposition, the Republican majority, finds the necessity to oppose clarification because if the bankruptcy courts are saying that there is potential for confusion, why not narrow the need for them to furry around in trying to make a decision, when they can turn to what may be potentially a past legislation. This looks like it's on the route to be law. Why can't this amendment simply clarify that you cannot avoid, you cannot negate, you cannot usurp, you cannot ignore, you cannot abuse, you cannot utilize the Bankruptcy Code to avoid the just judgment rendered against you in an instance of violence against clinics?

And I have yet to hear any argument by the esteemed gentleman from Pennsylvania and others that would make any sense as to why a simple point of clarification cannot be added. Do we need to bring in more mutilated victims? Do we need to bring in the relatives of deceased doctors who rightly deserve to recover against those who perpetrated the heinous crimes of which the lives cannot be brought back? But certainly in the scheme of our justice system, some compensation obviously is warranted, some monetary penalty. And it is well known that the trickery of those who are in their minds violently opposed to abortion, violently exercising their opposition, that they will likewise use any tactic, which includes the bankruptcy code, to avoid the just rendering of this heinous act where families and loved ones and those who have been violated and abused and frightened and intimidated cannot recover.

This is simple language, the non-dischargeability of debts incurred through the commission of violence at clinics, supports by an 80-vote margin in the Senate. And I guess I am—I am—I'm simply at a loss——

Chairman SENSENBRENNER. The woman's time has expired.

Ms. JACKSON LEE [continuing]. That unfortunately the bipartisanship——

Chairman SENSENBRENNER. For what purpose does the gentleman from Ohio seek recognition?

Ms. JACKSON LEE [continuing]. Has disintegrated. I ask my colleagues to support the amendment.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Good morning Mr. Chairman, as you know, the issue of bankruptcy reform has been a heated topic of debate in this body since the first session of the 105th Congress, when shortly before the *National Bankruptcy Review Commission* issued its report recommending changes to the current bankruptcy laws; legislation was introduced to dramatically change the way in which consumer bankruptcies are administered under the *U.S. Code, 11 U.S.C. sec. 101 et seq.* Both the House and Senate enacted different versions of the bill in the second session of the 105th Congress and a conference report was filed shortly after. The House agreed to the conference report version of the bill by a vote of 300 to 25 on October 9, 1998, but this bill which then, President Clinton threatened to veto, was not brought before the Senate for a vote prior to adjournment.

This legislation was again reintroduced in the 106th Congress and was passed by voice vote in the House and passed in the Senate by a vote of 70 to 28. Then, Presi-

dent Clinton withheld his approval, Congress adjourned sine die, and bill was "pocket" vetoed.

Mr. Chairman, in yesterday's hearing, I questioned Philip J. Strauss who was representing the California District Attorney's Association and the California Family Support Council on the fact that H.R. 333 places economically vulnerable women and children who are forced into bankruptcy, and those who are owed support by men who file for bankruptcy at greater risk by increasing the rights of many creditors, including credit card companies, finance companies, auto lenders and others over that of the women and children. Mr. Strauss, however, appeared shocked at these facts and affirmatively stated that women and children's child support payments from former spouses are protected because the states collect money from people who owe child support and make payments to mothers.

Mr. Chairman, I was not able to finish my point yesterday, however, in the interest of justice for the thousands of women and children who will be held hostage by H.R. 333. However, I will correct this gross misrepresentation today. While it is true that states collect money from people who owe child support to make payments to mothers, H.R. 333 would effectively bottle this money in the coffers of the state because it increases the rights of creditors over these vulnerable women and children, and sets up a competition for scarce resources between parents and children owed support and commercial creditors both during and after bankruptcy. Therefore, single parents facing financial crises often caused by divorce, nonpayment of support, loss of a job, uninsured medical expenses or domestic violence would find it harder to regain their economic stability through the bankruptcy process.

Mr. Chairman, this fact is not something new whose light has recently been cast over the dark future of bankruptcy reform that would follow H.R. 333. The fact that H.R. 333 would effectively place women and children in a gladiator's arena with creditors to do battle for child support money owed by former spouses who file bankruptcy has been articulated by national organizations such as the National Women's Law Center, the National Association of Consumer Bankruptcy Attorney's, the National Organization for Women, a coalition of bankruptcy professors and bankruptcy judges and the National Association of Attorney's General's to name but a few. How, anyone could argue against the drastic effects and hardships that the language in this bill will cause on the vulnerable women and children in this country is beyond me.

I have consistently said that the greatest challenge before us in the bankruptcy reform efforts is solving the widely recognized inadequacies of the law in the area of consumer bankruptcy. As it has always been in the Congress, the key to this process, is, of course, successfully balancing the priorities of creditors, who desire a general reduction in the amount of debtor filing fraud, and debtors, who desire fair and simple access to bankruptcy protections when they need them. H.R. 333 does not accomplish this goal.

Once again, however, the bankruptcy reform bill has been introduced, now in the 107th Congress. As with the bills introduced in the 105th and 106th Congress's, I cannot in good faith support H.R. 333 introduced in the 107th Congress, because it:

- will weaken important credit card disclosure provisions that will help ensure consumers understand the debt they are incurring;
- will eliminate protections for reasonable retirement pensions that reflect years of contributions by workers and their employers; and
- will include an anti-consumer provision eliminating existing law protections against inappropriate collection practices when collecting from people who bounce checks.

For H.R. 333 to accomplish its intended goals, I believe that it must include provisions that will:

- ensure families who need Chapter 7 relief are able to get it, including the preservation of appropriate judicial discretion;
- ensure women and children seeking to collect child support from a debtor do not have to compete with other creditors;
- contain adequate protection for families against abusive reaffirmation practices of creditors;
- enhance, not detract from, the viability of Chapter 13 plans; and
- require adequate and accurate disclosure of credit repayment terms.

In addition, given the recent turn in the economy, resulting in major corporations laying off workers by the thousands, it is even more important for Congress to carefully consider the impact of H.R.333.

Mr. Chairman, colleagues, ladies and gentlemen, I am for bankruptcy reform, but I believe that it must be equitable and fair to all interested parties. I am for bankruptcy reform that recognizes the financial interest at stake for the debtor, his or her family and the creditors.

As I have already mentioned, in assessing bankruptcy reform we must balance two key principles. First, debtors must not be allowed to use the law to avoid repaying loans when they can actually afford to do so; and; Second, debtors should not be forced into serious hardship. Efforts to implement these two ideas have been made for a long time. The statute of Anne, enacted in 1705, was the first such effort. It introduced the idea of the fresh start into our law and punished those who abused the bankruptcy with death by hanging. In the bill before us today, the sponsors sought to draw the line by separating those who are worthy of a fresh start from those who abuse the system, but it is this very goal that they have failed to accomplish.

In reviewing H.R. 333, I was reminded of a hypothetical given by Douglas Baird, a law professor at the University of Chicago on H.R. 333's predecessor's in the 105th and 106th Congress's stating that those bankruptcy reform bills would fail to balance the two competing goals that are the base of bankruptcy reform. The same is the case with H.R. 333 today.

Professor Baird's hypothetical considers an elderly woman living in Florida who returned to the workforce several years after her husband became ill and died. She makes $30,000 annually as a secretary and she has not taken a vacation in several years. She rents a one-bedroom apartment and owes $60,000, much of which stems from medical bills for the care of her late husband. Most of the remaining debt consists of unpaid credit card bills, most of it spent on household goods and groceries. Interest runs at 15%. The widow is behind in her payments, collection agencies call at home and at work, and they are threatening to garnish her wages.

The hypothetical then considers a 45-year-old businessman, also living in Florida. He works for a large corporation and makes $95,000 a year. He previously had his own business but it failed. Though single, he lives in a 5-bedroom house worth $500,000. He owes $60,000 in debt from his 10 credit cards, which he used to pay for vacations, clothes and meals in restaurants. In addition, he is personally liable for $200,000 in debt from his failed business venture.

The current bankruptcy law would allow both the elderly widow and the businessman to file Chapter 7 bankruptcy petitions and receive a fresh start. However, under H.R. 333, only the businessman would be allowed a fresh start because the widow's use of Chapter 7 would be presumed abusive. The widow might be eligible for relief under Chapter 13 but only if she commits all of her income for the next five years to the repayment of her debts, apart from monthly living expenses.

In contrast, under H.R. 333, the businessman will be eligible for Chapter 7 relief, and be able to discharge all of his debt and keep his house.

The reform laid out in H.R. 333, will also increase hardship on debtors because it toughens the rules for ordinary debtors, most of whom declare bankruptcy not out of irresponsibility but because of catastrophic medical bills, unemployment or divorce.

Mr. Chairman, women are the fastest growing and largest group filing bankruptcy today. In 1999, over half a million women filed for bankruptcy by themselves—more than men filing by themselves or married couples. Of this number, over 200,000 women who filed for bankruptcy in 1999 tried to collect child support or alimony. The domestic support provisions of H.R. 333 does not solve the problems faced by women in bankruptcy and does nothing address the additional problems it would cause to the hundreds of thousands of women forced into bankruptcy each year, including the single mothers forced into bankruptcy because they are unable to collect child support.

Furthermore, the National Association of Attorneys General has already warned that increasing the claims of partially secured creditors as H.R. 333 would do would make it more difficult to collect child support because credit card companies would treat all debts as secured, resulting in credit card debt being elevated to the same or a higher level than domestic support claims, and thus, make it more difficult to ensure that debtors are able to satisfy their obligations to their spouses and children.

H.R. 333, also creates a new priority for support debts owed to government units over that of a spouse, former spouse or child, which must be paid in full in a chapter 13 plan. Mr. Chairman, this bill does not provide further protections to vulnerable women and children facing creditors, instead, the points I have outlined today show that H.R. 333 gives priority in many cases to the creditors over the vulnerable women and children.

H.R. 333 also fails in its attempt to encourage chapter 13 filings by debtors, resulting in many families who currently save their homes and cars through chapter

13 being no longer able to do so. Under current law, a chapter 13 case can be filed after a chapter 7 or 13 discharge, or after a dismissed case. This is important to families who might incur large medical expenses a few years after a prior discharge or whose chapter 13 plans fail for circumstances beyond their control.

H.R. 333, however, prohibits a new chapter 7 case within 8 years, rather than the current 6 years, after a petition resulting in a prior chapter 7 discharge, and a new chapter 13 case within 5 years. Furthermore, it is unclear whether the 5 years runs from the prior petition or the discharge. If the 5 years begin to run from the prior petition, it would mean that a chapter 13 case could be prohibited for up to 10 years after a prior chapter 13 petition.

H.R. 333 will also place many new obstacles in the path of bankruptcy debtors, which would decrease access to the system, especially for those with the least income, primarily by raising costs. for filing motions, defending dischargeability litigation, obtaining stays in repeat filings and other added administrative costs in the area of several hundred dollars which could be prohibitive for many families. This will greatly increase the already significant number of consumers who cannot afford attorney representation in bankruptcy and who would therefore have only the choices of filing pro se, going to an unqualified non-attorney petition preparer, or not filing at all.

In addition, H.R. 333 not only restricts the circumstances that families can file for chapter 13, it also significantly reduces the scope of the chapter 13 discharge making many of the debts that are currently dischargeable, non-dischargeable under the full compliance discharge. This would effectively hurt debtors who can presently pay all they can afford.

Mr. Chairman, many of the provisions that are the base of H.R. 333 were designed for the sole purpose of reducing bankruptcy debtor filing fraud. As I stated at the out-set of my statement, I applaud and support this goal. However, the facts at hand tell us decisively that this goal will not be achieved under H.R. 333 because it is not narrowly tailored and does not provide fair and equal treatment in cases like homestead exemption. Furthermore, the goal of curbing bankruptcy debtor filing fraud is in serious question due to the sharp decline in bankruptcy filings overall. Statistics provided by the VISA Bankruptcy Notification Service, which compiles weekly reports on bankruptcy filings show a continued sharp decline in the bankruptcy rate which dropped by more than 9 % in 1999, continuing to decline at an 8% annual rate in the first five months of the year 2000. Bankruptcies are now running at a lower level than in 1997, 1998 or 1999. The per capita growth rate in personal bankruptcies was up by 25.2% in 1997, up by 3.1 % in 1998, down by 7.9% in 1999 and down by 7.7% in 2000. In addition, the growth rate in personal bankruptcies was up by 26.1% in 1997, up by 4.0% in 1998, down by 7.0% in 1999 and down by 6.8% in 2000. In addition to the VISA Bankruptcy Notification Service, these numbers are also consistent with those compiled by the Chicago Mercantile Exchange in connection with the Quarterly Bankruptcy Index contract. These numbers that show a continuing decline in bankruptcies supports the view that many of the provisions provided in H.R. 333 are unnecessary and counterproductive.

Mr. Chairman, as elected officials for the American people we must protect America's families. Most individuals who file petitions in the bankruptcy courts are usually experiencing turbulent times. Financial hardship is a serious matter that deserves legislative reform that is the product of a deliberative process. This bill, is an extreme bill undertaken at the direction of special interest groups. We must protect working-class families. We must work to find a viable solution that deters abuse of the bankruptcy system while preserving the fresh start for discharged debtors. It is ironic that the consumer lending industry actively solicits unsuspecting consumers through the mail with terms of easy credit, buy now—pay later rhetoric. After addicting debtors to this "financial crack" lenders are advocating for reform. Of course debtors are responsible for financial obligations that they incur; however, lenders must assume responsibility for their actions in creating the precarious financial crisis we are discussing.

In the 105th Congress, I served as a member of the Subcommittee on Commercial and Administrative law and as a conferee on H.R. 3150, the precursor to the bill before us today. As a member of that subcommittee in the 105th Congress, I signed onto the dissenting views of the accompanied the report from the committee. The dissents' conclusion is appropriate in this context:

For nearly 100 years, Congress has carefully considered the bankruptcy laws and legislated on a deliberate and bipartisan basis. In the past, Congress has elected also to carefully preserve an insolvency system, that provides for a fresh start for honest, hard-working debtors, protects ongoing businesses and jobs, and balances the rights of and between debtors and creditors.

Because H.R. 333 departs from these historical principles, and tramples on the preservation of the American people, I oppose this legislation in the interest of all that is just and fair.

Thank you.

Mr. CHABOT. Mr. Chairman, I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from Ohio is recognized for 5 minutes.

Mr. CHABOT. Thank you. I won't take all that time, and I'll also yield to the gentleman from Georgia, Mr. Barr. But I'd just note that I keep hearing the term "mutilated" thrown around here pretty freely, and there's absolutely no excuse for anybody who takes action against a person or any of these abhorrent bombings or anything else, it's absolutely outrageous. But I'd just note that the little babies who go into these abortion facilities come out in a pretty darn mutilated state as well. And the language in this particular amendment is totally unnecessary. The amendment's unnecessary, because malicious and willful tort awards are non-dischargeable under existing bankruptcy law. So the amendment is unnecessary and——

Ms. JACKSON LEE. Would the gentleman yield?

Mr. BARR. Would the gentleman yield?

Mr. CHABOT. [continuing]. I would urge my colleagues——

Mr. BARR. Would the gentleman yield?

Ms. JACKSON LEE. Would the gentleman yield?

Mr. CHABOT [continuing]. To oppose this amendment. I've already indicated I'd yield to the gentleman from Georgia, Mr. Barr. I yield.

Mr. BARR. Thank you. Well, I think we have here the same as we had in prior Congresses with the Schumer amendment, which essentially is what we're talking about here today. It is simply an effort to inject a debate over abortion into a bankruptcy bill, Mr. Chairman. This amendment was defeated as the red herring that it is previously, and I would ask our colleagues, again, based on the eloquent statements made by the former chairman of the committee, the subcommittee with jurisdiction, as well as the gentleman from Ohio, that this amendment is unnecessary. It is simply an effort by pro-abortion proponents to interject a debate over abortion into a bill that has and should have nothing to do with abortion.

As the gentleman from Ohio indicated, the current bankruptcy code makes a debt for willful and malicious injury to a person or property non-dischargeable in an individual debtor's chapter 7 or chapter 11 bankruptcy case.

I yield back.

Mr. NADLER. Would the gentleman from Ohio now yield for a question?

Mr. CHABOT. In the interest of time, I'm going to yield back the time, and the folks are welcome to get their own time.

Chairman SENSENBRENNER. The gentleman has yielded back his time. For what purpose does the gentlewoman from California seek recognition?

Ms. WATERS. I move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. WATERS. Mr. Chairman and members——

Chairman SENSENBRENNER. And the machine is working.

Ms. WATERS. [continuing]. I am a bit embarrassed by this debate. I'm embarrassed because I recognize that we are in the minority and that we are going to lose most of our attempts to amend this legislation, and I expect that. But there is a point where partisanship should not enter into the debate.

This amendment is a reasonable amendment that speaks to an issue that I don't believe anyone can really, really disagree with. The fact of the matter is we can argue all day long about when life begins or when does it start, and those debates will go on forever. But human beings who are sitting inside that clinic, working inside that clinic, are living. They're live human beings. It's not debatable whether or not they are put at great risk, whether or not they can be killed, whether or not they could be harmed, and it has happened. And I suppose it will continue to happen.

And I dare say that I would like to believe that no matter what you feel about abortion, that there's not one person here on this committee who would support the bombing of a clinic. I would like to believe that, no matter what you feel about abortion.

Now, the argument can be made that everybody knows, because somewhere in law these obligations are not dischargeable. But what harm does it do to send that public policy message right from here? Right from here. So it's no question about whether or not it's a decision of a—of a judge somewhere down the line but, rather, we make it very clear in this law that we are passing that you cannot discharge an obligation, a judgment, or an order that has been rendered to have someone pay for damages incurred because of that kind of an act.

So I would simply say to you, no matter what you feel, again, the person sitting in that clinic, whether you like it or not, could be your daughter. It could be your wife. It could be your neighbor. And as a woman, I'm terribly offended and embarrassed that we have to argue this case, that we have to take this time to talk about striking a blow on behalf of protection for women, even if you disagree with the decision that they have made.

I would simply ask that we support this amendment. Let's not even bring abortion into this argument. It's about whether or not we will support or whether or not you will allow public policy to roll out of this committee showing that you support a criminal who has been judged to have been guilty of an act that is so horrendous that it is just hard to imagine.

So I would ask support for this amendment, and I would yield the balance of my time to Mr. Nadler.

Mr. NADLER. Thank you, Mr. Chairman. I will say again, since Mr. Chabot apparently didn't hear when it was said earlier, yes, malicious and willful torts are not dischargeable. But violating the FACE act in a deliberate way to harass or intimidate people does not have to be malicious and willful, and it is dischargeable, and that is what this amendment seeks to get at. That's point one.

Point two, I will paraphrase Mr. Barr in a different context. This amendment is not about abortion. It's about the rule of law. The law says you can't intimidate and harass people going into a clinic. We didn't bring—we're not trying to bring abortion into a bankruptcy bill. Randall Terry and Operation Rescue and others who are using the bankruptcy courts to try to avoid judgments and fines

levied by courts for their violation of the law, they brought the bankruptcy code into this question.

Now, maybe ultimately when appellate courts rule on this question, they will rule that you—that these things are all undischargeable. But we've already had thousands and thousands and thousands of hours of litigation in bankruptcy court costing millions of dollars. The real purpose of this amendment——

Chairman SENSENBRENNER. The gentleman's time has expired.

For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I support the amendment and yield the balance of my time to the gentleman from New York.

Mr. NADLER. Thank you.

This amendment is about eliminating frivolous litigation designed to help people—frivolous litigation by people who have been adjudged in violation of the law. If you think people should be able to violate the law and then engage in thousands of hours of litigation over whether to bother paying the fine or the judgment, then vote against this amendment. That's what this is about. This has nothing to do with willful or malicious. That's a red herring raised by a few people. What this amendment says is if you violate the FACE law, if the court finds that you violated the FACE law—it's not if someone thinks you did or your intention. The court finds you violated the law and issues a judgment against you and says you should pay X dollars, you shouldn't then be able to waste the bankruptcy court's time and the victim—the tort victim's money and time by a frivolous action in bankruptcy court to avoid paying the find or the judgment. That's all this amendment says.

And I hope that Republicans are still opposed to excessive and frivolous litigation, which is all this amendment seems to—I'm sorry, seeks to curtail.

I yield back.

Mr. SCOTT. I yield back.

Chairman SENSENBRENNER. The question is on the amendment number four offered by Mr. Nadler of New York. Those in favor will say aye. Opposed, say no.

The noes appear to have it.

Mr. NADLER. Roll call.

Chairman SENSENBRENNER. A roll call is requested. The question is on the Nadler amendment. Those in favor will say aye as your names are called. Those opposed, say no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.
Mr. Gallegly?
Mr. GALLEGLY. No.
The CLERK. Mr. Gallegly, no.
Mr. Goodlatte?
Mr. GOODLATTE. No.
The CLERK. Mr. Goodlatte, no.
Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no.
Mr. Jenkins?
Mr. JENKINS. No.
The CLERK. Mr. Jenkins, no.
Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no.
Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Scarborough?
Mr. SCARBOROUGH. No.
The CLERK. Mr. Scarborough, no.
Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?

[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
Ms. LOFGREN. Aye.
The CLERK. Ms. Lofgren, aye.
Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye.
Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional members in the room who wish to cast their vote and change their vote? The gentleman from Florida?
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Chairman SENSENBRENNER. Any other additional members. If not, the clerk will report.
The CLERK. Mr. Chairman, there are 9 ayes and 20 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? And for what purpose does the gentlewoman from Texas seek recognition?
Ms. JACKSON LEE. Strike the last word, offer an amendment, Mr. Chairman.
Chairman SENSENBRENNER. The clerk will report the amendment.

Ms. JACKSON LEE. The amendment is dealing with credit card abuse of underage voters, number 6, Jackson Lee.

Chairman SENSENBRENNER. The clerk will report Jackson Lee amendment number 6.

The CLERK. Mr. Chairman, there is no amendment number 6 here at the desk.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Ms. JACKSON LEE. Excuse me, Mr. Chairman. It's there, 015 at the top.

Chairman SENSENBRENNER. Has the clerk found the amendment that is referred to by the gentlewoman from Texas? The clerk will report the amendment.

The CLERK. Amendment to H.R. 333, offered by Ms. Jackson Lee. Page 120, after line 16, insert the following: "(and make such technical and conforming changes"——

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman.

Some years ago there was a very popular movie that had the phrase that was very quotable: "Show me the money." Young people quoted it, and it got to be sort of a familiar Americana, if you will.

This bill causes reasonable minds to disagree, and I would hope in this instance we could get reasonable minds to agree. This is a simple amendment that restores the language to prevent the language that would protect the abuse of underage creditors or users of credit.

When we debated this over the last two sessions of Congress, our interest was—if we could ever find a compromise, it was in working with the credit card companies to realize that abuse is a two-way street. I offer for the consideration of my colleagues the proliferation of mail that comes to all of us, and I show one of these constant barrages that comes to everyone's mailbox.

This happens to be Visa Gold, and it says, "Send for your card now." Gleaming, bold letters reaching out and screeching to the innocent. Send the card now. No restraint, no understanding of how you balance a checkbook, but just send me the card.

[The Amendment offered by Ms. Jackson Lee follows:]

Amendment to H.R. 333

Offered by Ms. Jackson-Lee

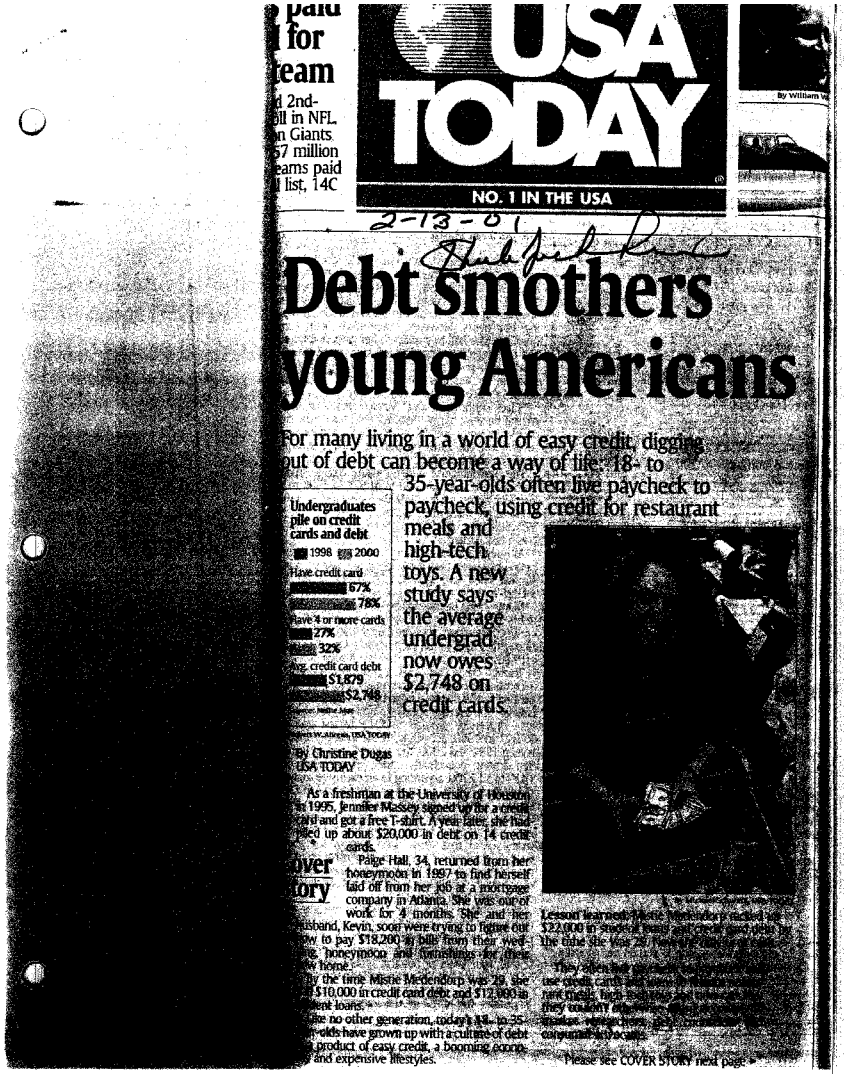
Page 120, after line 16, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 231. PROHIBITION ON ASSERTING CERTAIN CLAIMS.

Any creditor who fails to follow the requirements of the Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) imposed as a result of the amendments made by this section shall be prohibited from asserting any claim under title 11 of the United States Code against any debtor for the amount of debt that the debtor accrues on a credit card that is issued in violation of any of such requirements.

Ms. JACKSON LEE. I would ask, Mr. Chairman, as well to submit into the record an article in the USA Today, Tuesday, February 13, 2001.

[The article follows:]



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USA TODAY

NO. 1 IN THE USA

2-13-01

Debt smothers young Americans

For many living in a world of easy credit, digging out of debt can become a way of life. 18- to 35-year-olds often live paycheck to paycheck, using credit for restaurant meals and high-tech toys. A new study says the average undergrad now owes $2,748 on credit cards.

Undergraduates pile on credit cards and debt

1998 2000

Have credit card
67%
78%

Have 4 or more cards
27%
32%

Avg. credit card debt
$1,879
$2,748

By Christine Dugas
USA TODAY

As a freshman at the University of Houston in 1995, Jennifer Massey signed up for a credit card and got a free T-shirt. A year later, she had racked up about $20,000 in debt on 14 credit cards.

over
tory

Paige Hall, 34, returned from her honeymoon in 1997 to find herself laid off from her job at a mortgage company in Atlanta. She was out of work for 4 months. She and her husband, Kevin, soon were trying to figure out how to pay $18,200 in bills from their wedding, honeymoon and furnishings for their new home.

By the time Mistie Medendorp was 29, she had $10,000 in credit card debt and $12,000 in student loans.

Like no other generation, today's 18- to 35-year-olds have grown up with a culture of debt — a product of easy credit, a booming economy and expensive lifestyles.

Lessard Hartmont Photo: Wednesday racked up $22,000 in student loans and credit card debt by the time she was 25. Today, she's debt-free and

They often use credit cards to pay for rent, food, even utilities and they couldn't explain where all of the money went. Many [illegible] consumer advocates.

Please see COVER STORY next page

Many students graduate to debt

Continued from 1A

"Lenders are much more willing to take a risk on people under 25 than they were 15 years ago," says Nina Prikazsky, a vice president at student loan corporation Nellie Mae. "They will give out credit cards based on a college student's expected ability to repay the bills."

Cover story

Young people are taking advantage of the offers. A study out today from Nellie Mae shows that the average credit card debt among undergraduate students increased by nearly $1,000 in the past two years. On average, they owed $2,748 last year, up from $1,879 in 1998.

At a time when they could be setting aside money for a down payment on a home, many young people are mortgaging their financial future. Instead of getting a head start on saving for retirement, they are spending years digging themselves out of debt.

"I knew for a while that I had a problem. I wouldn't say I was living high on the hog, but when I wanted clothes, I'd buy a new outfit," says Medendorp, an Atlanta resident. "I'd go out to eat and charge it on my cards. There were a bunch of small expenses that added up and got out of control."

Massey, Hall and Medendorp each ended up seeking help from a local consumer credit counseling service. Hundreds of thousands more young people like them are turning to credit counseling or bankruptcy because they can no longer juggle their bills.

In 1999 alone, an estimated 461,000 Americans younger than 35 sought protection from their creditors in bankruptcy, up from about 380,000 in 1991, according to Harvard Law School professor Elizabeth Warren, principal researcher in a national survey of debtors who filed for bankruptcy.

At the Consumer Credit Counseling Service of Greater Denver, more than half of all the clients are 18 to 35 years old, says Darrin Sandoval, director of operations. On average, they have 30% more debt than all other age groups, he says.

"By the time they begin to settle into a suburban lifestyle, they are barely able to meet their debt obligations," Sandoval says. "If there is a job loss, an unexpected medical expense or the birth of a child, they supplement their income with credit cards. Soon they are being financially crushed."

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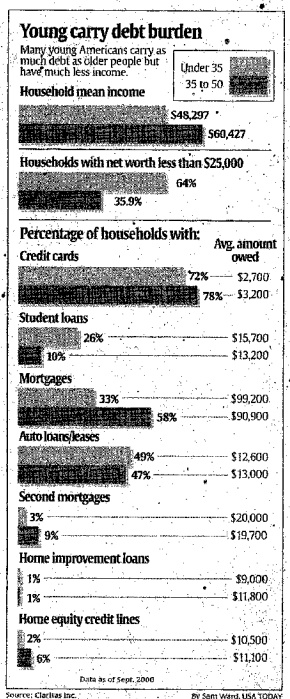

Debt heads

Unlike the baby boom generation — raised by Depression-era parents — young Americans today are often unfazed by the amount of debt they carry.

"This generation has lived through a time when everything was on the upswing," says J. Walker Smith, president of Yankelovich Partners, a market research firm. "There is no sense of worry about being overleveraged. It all seems to work out."

Kevin Jackson, a 32-year-old software engineer in Denver, has about $8,000 in credit card debt and a $20,000 home-equity loan. He doesn't believe he has a debt problem, though his goal is to reduce his credit card balance to $2,000.

"You learn to live with a certain amount of debt," he says. "It's a means to an end. There's something to be said for paying for everything and something to be said for enjoying life, as long as you do it responsibly."

Unfortunately enjoying life can be expensive serv[ice]

a second phone line or a DSL connection service provider and a Palm Pilot.

Jackson just bought a DVD player and TV. "I try to control costs," he says. "I easil spent $5,000 on the TV, but instead I paid got a one-year, no-interest deal."

Movies, TV shows and advertising only idea that young people are entitled to hav lifestyle. "We're encouraged to overspend Anthony, 31, co-author of *Debt-free by 3* wrote with a friend after they found drowning in debt.

"We all see shows like *Melrose Place Hills 90210*. It creates tremendous pressure I'm one of the few persons who think a re be good for my generation. Our expectatic evated. In the frenzy to keep up, we've g nancial trouble," he says.

The perils of plastic

Consumers like Massey, who get bogg credit card debt before they even gradua lege, learn the hard way about managing 24 and married, Massey has a good job ir She has cut up her credit cards and is grad ing her debts. However, there have b quences: She had to explain to her boss t she no longer has a credit card, she cann work if it involves renting a car or booking ervation on her own. She had to tell h about her debt problems before they wer

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The percentage of undergraduate colle with a credit card jumped from 67% in 1 last year, according to the Nellie Mae study of them are filling their wallets with card 32% said they had four or more cards, u two years earlier.

Although graduate students have an eve petite for credit, they are starting to show straint. Their average debt declined sli $4,925 in 1998 to $4,776 last year, Nellie

Many young people will be saddled with debts for years, experts say. Among all credit cardholders younger than 35 are the to pay their bills in full each month, accord ert Manning, author of *Credit Card Nation*.

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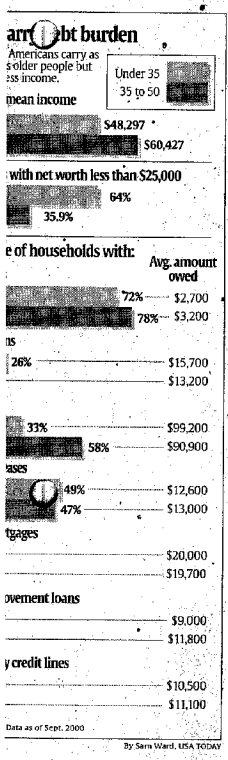

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Movies, TV shows and advertising only reinforce the idea that young people are entitled to have an affluent lifestyle. "We're encouraged to overspend," says Jason Anthony, 31, co-author of *Debt-free by 30*, a book he wrote with a friend after they found themselves drowning in debt.

"We all see shows like *Melrose Place* and *Beverly Hills 90210*. It creates tremendous pressure to keep up. I'm one of the few persons who think a recession will be good for my generation. Our expectations are so elevated. In the frenzy to keep up, we've gotten into financial trouble," he says.

The perils of plastic

Consumers like Massey, who get bogged down in credit card debt before they even graduate from college, learn the hard way about managing money. Now 24 and married, Massey has a good job in marketing. She has cut up her credit cards and is gradually repaying her debts. However, there have been consequences: She had to explain to her boss that because she no longer has a credit card, she cannot travel for work if it involves renting a car or booking a hotel reservation on her own. She had to tell her husband about her debt problems before they were married.

"I lack confidence now," Massey says. "I'm hard on myself because of my mistakes. But I blame the credit card companies and the university for allowing them to promote the cards on campus without educating students about credit."

The percentage of undergraduate college students with a credit card jumped from 67% in 1998 to 78% last year, according to the Nellie Mae study. And many of them are filling their wallets with cards. Last year, 32% said they had four or more cards, up from 27% two years earlier.

Although graduate students have an even bigger appetite for credit, they are starting to show signs of restraint. Their average debt declined slightly from $4,925 in 1998 to $4,776 last year, Nellie Mae says.

Many young people will be saddled with credit card debts for years, experts say. Among all age groups, credit cardholders younger than 35 are the least likely to pay their bills in full each month, according to Robert Manning, author of *Credit Card Nation*.

Though credit cards and uncontrolled spending are a combustible combination, many young people are pushed to the financial edge by the staggering cost of college. The average annual tuition at a four-year private university jumped to $16,332 last year from $7,207 in 1980, according to the College Board. Between 1991 and 2000, the average student loan burden among households under 35 increased nearly 142% to $15,700, according to an exclusive analysis of the finances of 18- to 34-year-olds for USA TODAY by Claritas, a market research firm based in San Diego.

Those who choose to go on and get a graduate degree pay an even higher price. Another Nellie Mae study found that those who borrow for graduate work, and specifically those in expensive professional programs in law and medicine, are likely to have unusually high debt burdens that are not always offset by comparably high salaries.

Karen Mann didn't need a survey to come to that conclusion. Her husband, Michael, is about to start his career as an orthopedic surgeon after racking up $400,000 in loans during four years of undergraduate school, four years of medical school, one year in an internship and three years of residency. Those loans have been deferred. Soon they'll have to begin paying them off.

The interest payment alone is $20,000 a year.

The Manns are not extravagant. "I've always saved, and I have a budget," says Karen, 31. "I'd love to buy a house, but there's no way. We haven't been able to afford kids yet. The loans are so awesome that you do get crazy."

Paying for everything with cash

The Manns are not alone in having to defer important goals because of heavy debt loads. Medendorp, a social worker in Decatur, Ga., lives on a budget and is diligently paying her bills with the help of a Consumer Credit Counseling Service debt-management plan. She pays for everything with cash. There are many things she'd like to do but can't afford, such as having laser eye surgery, going back to school and buying a home.

"When you get in a tar pit, forget about buying a home," author Anthony says. "Instead of saving for a down payment, you're making credit card payments."

At a time when the overall U.S. homeownership rate has risen to historic highs, young Americans are less likely than people their age 10 years ago to buy a home. The homeownership rate for heads of households younger than 35 has declined from 41.2% in 1982 to 39.7% in 1999, according to the Census Bureau. And if they own a home, young people tend to make smaller down payments or borrow against what equity they have. As a result, the average amount of equity accumulated by homeowners younger than 35 has shrunk to about $49,200 in 1999, from $57,100 10 years earlier, according to a study from the Consumer Federation of America.

"For middle-income Americans, the most important form of private savings is home equity," says Stephen Brobeck, executive director of the Consumer Federation of America. "It's essential to have paid off a mortgage by retirement so that living expenses are lower and one has an asset that can be borrowed on or sold if necessary."

By almost every measure, young people are falling behind. Between 1995 and 1998, the median net worth of families rose for all age groups except for the under-35 group. Their median net worth declined from $12,700 to $9,000, according to the Federal Reserve.

That is not to say that young people today are slackers and deadbeats, as they have sometimes been characterized. Many work hard and often make good incomes. Although they may have a lot of debt, they also are very focused on saving and investing, especially through 401(k)-type retirement accounts. Jackson, for example, contributes the maximum to his 401(k) plan.

"They want to protect themselves against future uncertainty," Smith says. "They absolutely don't expect that Social Security will be around for them."

But it's hard to save money if you are head over heels in debt. Massey earns $32,000 a year. With her husband, their annual income is more than $100,000. "But we're still broke trying to pay our bills," she says.

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Ms. JACKSON LEE. The headline said, "Debt Smothers Young Americans: Undergraduates pile on credit cards and debt." Young people having credit cards in 1998, 67 percent; in 2000, now 78 percent. Young people having four or more credit cards in 1998, 27 percent; 2000, 32 percent. Average credit card debt in 1998, $1,879; the year 2000, $2,748.

It seems ludicrous, Mr. Chairman, that previous language had protection against the abuse of underage creditors, but H.R. 333 saw either the light that none of us could see or had some vision that others of us did not have, and this language is not in it.

So my amendment is extremely simple and straightforward, what it does is it protects the underage creditor from the screeching sound of "take me now."

This is a travesty when young people from 18 to 35—and obviously 35-year-olds are certainly adults. But it is well known that through this credit system and this constant barrage from the credit card companies we live from paycheck to paycheck, young people using credit cards for restaurant meals and high-tech toys, as noted in this article, and a $3,000 debt constantly at their doorstep.

I believe that if we are to do no harm but as well to have reasonable minds, assessing the fact that maybe there is a recession—we have heard the President talk us into it. We know that growth is about 3 percent. Even though the economy is rumbling along, we do know that we will have to face some organizing of our debt, if you will.

You have language in this legislation that means testing, literally blocking people from getting into the bankruptcy court, standing in the wayside, locking the key, and yet every single day you have a barrage of credit card mailing to college campuses, to young people with first-time jobs, to unemployed young people, to unemployed Americans talking about send the credit card now. Show me the money.

And I think it's irresponsible, if we had the credit card industry sitting in here and saying give me the benefits but don't give me the burdens. Why we can't find an opportunity for a meeting of the minds to provide language that protects these underage——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Ms. JACKSON LEE. I would ask my colleagues to be reasonable——

Chairman SENSENBRENNER. The gentlewoman——

Ms. JACKSON LEE [continuing]. And support this amendment.

Chairman SENSENBRENNER. The gentlewoman's time has expired.

For what purpose does the gentleman from Pennsylvania seek recognition?

Mr. GEKAS. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. The amendment at hand is one on which I would ask the members to vote no. The—it's a little bit confusing to me as to the aim of the lady from Texas. But I have to assert that if a creditor violates the existing provisions of the Consumer Credit Protection Act, then the claim of that creditor falls of its own weight, and the bankruptcy provisions already in place and the ones which will

be addressed by our bill will already impose sanctions on that kind of creditor. So this is a simple restatement, it seems to me, of the obvious. A creditor who violates the Consumer Credit Protection Act shall not have a valid claim against a debtor. Therefore, I ask for a simple no to a simple amendment.

Chairman SENSENBRENNER. The question——

Mr. GEKAS. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the amendment number 5 offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will signify by saying aye. Opposed, no.

Ms. JACKSON LEE. Roll call.

Chairman SENSENBRENNER. The noes appear to have it. Roll call is requested and ordered. The question is on the adoption of the amendment offered by the gentlewoman from Texas, Ms. Jackson Lee. Those in favor will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Mr. Jenkins?

Mr. JENKINS. No.

The CLERK. Mr. Jenkins, no.

Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no.

Mr. Cannon?

Mr. CANNON. No.

The CLERK. Mr. Cannon, no.

Mr. Graham?

Mr. GRAHAM. No.

The CLERK. Mr. Graham, no.

Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Mr. Scarborough?

Mr. SCARBOROUGH. No.

The CLERK. Mr. Scarborough, no.

Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
[No.]
The CLERK. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye.
Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?

Chairman SENSENBRENNER. No.

The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there additional members who wish to cast their vote or change their vote? The gentleman from California, Mr. Gallegly?

Mr. GALLEGLY. No.

Chairman SENSENBRENNER. Any additional members? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 6 ayes and 18 nays.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments?

Ms. JACKSON LEE. Parliamentary inquiry, Mr. Chairman.

Chairman SENSENBRENNER. State your inquiry.

Ms. JACKSON LEE. Mr. Chairman, you noted at the beginning of this session, as you began your chairmanship, that you would be adhering to the rules. Let me acknowledge the fact that I respect your attention to the detail of the rules and will work very hard during these next 2 years to do so.

I do believe, however, in the sense of comity that a hard-hitting gavel is over the edge——

Chairman SENSENBRENNER. Well——

Ms. JACKSON LEE [continuing]. When someone is finishing their sentence. I believe that if we can work with less hostility in this room, we can all do a better job. I was concluding my sentence and had no intention to disrespect the clock. But I would appreciate it—I heard your voice, and I would appreciate it if we can work more in comity and with less hostility. And I thank the chairman.

Chairman SENSENBRENNER. The gentlewoman was not stating a parliamentary inquiry. You know, let me say that the clock runs at the same rate for both sides of the aisle.

Ms. JACKSON LEE. I appreciate it, Mr. Chairman, and I will do my best to adhere to it.

Chairman SENSENBRENNER. For all members——

Ms. JACKSON LEE. But the heavy-handed gavel does nothing but antagonize an already——

Chairman SENSENBRENNER. The gentlewoman——

Ms. JACKSON LEE [continuing]. Antagonized minority.

Chairman SENSENBRENNER [continuing]. From Texas is interrupting once again. The machine is operating properly. Every member has a yellow light notice when there is 1 minute to go. The Chair told the gentlewoman that her time had expired——

Ms. JACKSON LEE. And I was completing my sentence, Mr. Chairman.

Chairman SENSENBRENNER [continuing]. And she continued—she continued speaking, and the Chair will enforce the rules, and when the red light goes on, that means——

Ms. JACKSON LEE. And I appreciate it——

Chairman SENSENBRENNER [continuing]. Your time is up. That's the way it works——

Ms. JACKSON LEE. Since we have to spend 2 years together, I would appreciate it if we could do it in comity. I thank the chairman.

Chairman SENSENBRENNER. Okay, and comity means we don't interrupt each other.

For what purpose does the gentlewoman from California——

Ms. JACKSON LEE. I agree, and I would appreciate if you wouldn't heavy-handle on this gavel. All you're going to do is break the gavel, keep going on and on and on. We can——

Mr. SCARBOROUGH. Regular order, Mr. Chairman.

Ms. JACKSON LEE [continuing]. Work together. We are professionals——

Mr. SCARBOROUGH. Regular order, Mr. Chairman. Regular order, Mr. Chairman.

Chairman SENSENBRENNER. Would the gentlewoman from Texas kindly follow the rules?

For what purpose does the gentlewoman from California, Ms. Waters, seek recognition?

Ms. WATERS. Prior to seeking recognition, I have a parliamentary inquiry. Do you wish us—if I may, Mr. Chairman—to——

Chairman SENSENBRENNER. The gentlewoman will state her inquiry.

Ms. WATERS. I have multiple amendments. Do you wish us just to take up one so that you can go around——

Chairman SENSENBRENNER. What the——

Ms. WATERS [continuing]. The room? Will you have a second round?

Chairman SENSENBRENNER. What the Chair has been doing is he has been conferring with the Democratic staff and following their advice into which order they wish me to recognize members of the minority. So I guess I would say please consult with your staff, and which amendment do you wish to offer now? Because they told me to recognize you next.

Ms. WATERS. Well, that was not my question. I was inquiring whether or not I should do multiple amendments, but I will just go ahead. I have an amendment at the desk——

Chairman SENSENBRENNER. Would you like to do them en bloc?

Ms. WATERS. No, I would not. I have an amendment at the desk.

Chairman SENSENBRENNER. Which amendment does the gentlewoman wish to offer?

Ms. WATERS. It is not numbered. It is—it is referred to under section 102, page 12, beginning on line 18.

Chairman SENSENBRENNER. Has the clerk found the proper amendment? If so, the clerk will report the amendment.

The CLERK. Amendment to H.R. 333, offered by Ms. Waters. Page 12, beginning on line 18, insert——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the gentlewoman from California will be recognized for 5 minutes.

[The Amendment offered by Ms. Waters follows:]

Amendment to H.R. 333

Offered by Ms. Waters

Page 12, beginning on line 18, insert "(2)(B)(v) Debtors who establish that their income falls below the Federal Income Poverty Guidelines for the current year are exempt from the reporting requirements specified within paragraph 2 of this Section." (and make such technical and conforming changes as may be appropriate).

Ms. WATERS. Thank you very much.

Mr. Chairman and members, this amendment would amend section 102, dismissal or conversion, so that debtors who establish that their income falls below a specified threshold do not have to comply with all of the reporting requirements included in the means test. The threshold should be based on the Federal income poverty guidelines for the current year.

The means test is a burdensome test requiring debtors to gather a great deal of information for presentation to the bankruptcy court. Under proposed section 102, all persons filing for bankruptcy would have all of these requirements for reporting and documenting monthly expenses, rent, transportation, food, clothing, and necessary expenses to maintain safety, on and on and on. And it actually requires an attorney to be able to put all of this in order for presentation.

We're talking about people who are below the poverty guidelines and they can show proof of that, of their income. We would simply ask that they not be put in the position of hiring an attorney. Not only do they not have the resources to do so, we have cut back on legal aid so much until they cannot accommodate these kinds of requests, even when people have no way of being able to comply with the requirements of bankruptcy court.

So we need to recognize some minimal threshold below which debtors do not need to comply with the reporting requirements of the means test.

Specifically, individuals with incomes below the Federal poverty guidelines would be exempt. To be below the guidelines for 2000, for a family of four, for example, the household income must be below $17,000. They are least—people filing in that category are least able to afford an attorney to assist them in gathering the necessary information.

So, Mr. Chairman and members, I would ask that we support this amendment, give poor people an opportunity to not have to comply with these burdensome requirements, not clog up the system, and simply give proof of their earnings. And if they fall below the poverty guidelines, that should be enough.

Chairman SENSENBRENNER. Does the gentlewoman yield back the balance of her time?

Ms. WATERS. I yield back the balance of my time.

Chairman SENSENBRENNER. For what purpose does the gentleman from Pennsylvania seek recognition?

Mr. GEKAS. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. The answer to the gentlelady from California is apparent in the language of her proposed amendment. On the one hand, she says that the person under the poverty level shouldn't have to prove anything, and then in the amendment says the debtors who establish that their income falls below the Federal income poverty guidelines. So we can only imagine that there are just a few ways in which one can establish that the income falls below the Federal income poverty.

One is that the debtor can simply say I'm below the Federal income—Federal income poverty guideline, therefore, grant me bankruptcy. We can't allow that, can we?

So the second step is—to establish means to provide income tax returns or slips, bank slips, or an array of bills, et cetera, or somehow that individual still has to establish. You have gone thus far, even in this second step, toward what we are attempting to do in this bill, and that is to make certain that everyone who comes before the bankruptcy court is entitled to relief. It is not a burden in any way on anyone to prove that they come within a certain guideline——

Ms. WATERS. Will the gentleman yield?

Mr. GEKAS [continuing]. In the bankruptcy provisions.

Ms. WATERS. Will the gentleman yield?

Mr. GEKAS. And it will become readily available and readily recognizable if a person is in a poverty guideline with the initial filing that that person——

Ms. WATERS. Will the gentleman yield?

Mr. GEKAS [continuing]. Is entitled to chapter 7 discharge. I would yield.

Ms. WATERS. Thank you very much, and in my presentation, I attempted to distinguish between establishing and giving simple proof. For example, under this section, all persons filing for bankruptcy will be required to do the following: they would have to show the monthly expenses, rent, transportation, food, clothing, and all necessary expenses to maintain safety, actual expenses paid for reasonably necessary care to support the elderly, chronically ill, the disabled household member, a member of debtor's immediate family, actual expenses for each dependent child under the age of 18 years, and up to $1,500 per year for private—on and on and on.

What I'm saying to you is if you fell below the poverty guideline, you are poor, and you come in and you show proof—your income tax statement, your payment slips, simple proof of how much money you earn, if you fall below the guidelines, that you don't put

this person in the position of having to go out and try and find an attorney to do all of this documentation when, in fact, they're poor, they have nothing. And you're clogging up bankruptcy court with this, and you're asking them to meet certain kind of standards that they can't very well meet. I mean, it's—it's about having a little mercy. It's about simply recognizing that someone who falls below the poverty guidelines should not have to go and gather and try and put together all of this documentation. It really doesn't make good sense.

Mr. GEKAS. Recovering some of my time here, I simply reiterate that it is not a great burden for an individual to demonstrate by what we require under this law that they come under the median income level, let alone the poverty levels. It's not that great a burden.

As a practical matter, looking at it from a lawyer's standpoint, I believe that once the income level is stated and proved to be under the median income—forget the poverty for just a moment—but it might also be obvious that they're under the poverty level, that that ends the case right then and there, and that that individual will be accorded the protection of chapter 7.

I ask the members to vote——

Ms. WATERS. Would the gentleman yield? Then you agree with me? Are you agreeing that——

Chairman SENSENBRENNER. The time belongs to the gentleman from Pennsylvania. Do you yield?

Mr. GEKAS. Yes, I yield. What is the question?

Ms. WATERS. The latter part of your statement was a bit confusing. What you—what you said was that if you fall below the median or if you are poor that you should not have to do anything else to prove or to meet all of the requirements of this legislation. Is that what you said?

Mr. GEKAS. I did not say that. I said that the requirements that we do place in the bill do not exert a great burden on the debtor, and as a practical matter, if the individual is already declared and is proved to be under the median——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. GEKAS [continuing]. Guidelines for the poverty lines, they'll be discharged.

Chairman SENSENBRENNER. The question——

Mr. WATT. For what purpose does the gentleman from North Carolina, Mr. Watt, seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman. I'm somewhat frustrated because it—it does sound to me like what Ms. Waters and what Mr. Gekas are saying puts them on the same side of this issue philosophically. Unfortunately, the bill has no exemption from all of these onerous paperwork requirements for people who clearly fall below the median income.

Mr. GEKAS. Would the gentleman yield?

Mr. WATT. I'm happy to yield. I hope I can yield to him for the purpose of showing me where in this bill, once somebody demonstrates they fall below the median income and would be exempt from—should be exempt from the rest of the onerous provisions,

where it says they really are exempt, because I've been looking for it and a number of experts in this field have looked rigorously for the provision and say that that is a serious, serious problem. I can't find it.

Mr. GEKAS. Would the gentleman yield——

Mr. WATT. People who have testified here who are experts in this field can't find it. Not advocates. I'm talking about people from the National Bankruptcy Conference, which has people from Republicans and Democrats, conservatives and liberals, all of them are in this organization. They can't find the provision——

Mr. GEKAS. Would the gentleman yield?

Mr. WATT [continuing]. That you say does this. And maybe Ms. Waters' amendment doesn't artfully do it, either. I don't know. But if you all agree, I don't know why we're protecting the integrity of a bill that doesn't say what you all agree on.

Mr. GEKAS. Would the gentleman yield?

Mr. WATT. I think the appropriate individual to engage in this debate on this particular provision is the gentleman from North Carolina, because he very carefully articulated the notion and the fact that even a person under the median level, or even under the poverty levels, can game the system. That is a fact. But——

Mr. WATT. No, no, but——

Mr. GEKAS. Let me——

Mr. WATT. Let me just seize back my time here. I'm going to yield back to you. But that person then goes—it doesn't go out of bankruptcy. They still flip over into another bankruptcy. They're not gaming the system. What they are—what they are doing—I mean, what if all the parties in the bankruptcy court come in and stipulate that this person meets the income, there's no controversy about it whatsoever, there's nothing in this bill that allows that person to be exempted from filing all of these documents, going through all this process. You know, and that may be your intent. It sounds like it is. That's what I'm saying. But there's nothing in the bill that does that, Mr. Gekas, and perhaps Ms. Waters' amendment doesn't do it artfully either. But somewhere in this bill that ought to be addressed.

Mr. SCOTT. Would the gentleman yield?

Mr. WATT. I'd be happy to—well, I told Mr. Gekas I'd yield back to him. He's going to tell me where the provision is, maybe.

Mr. GEKAS. It's out there—what I——

Mr. WATT. Well, I think that's where it is, is out there. I'm trying to find it in this bill. It's out there in cyberspace somewhere in a notion that you have about equity, which Ms. Waters has about equity, which I think everybody on this committee has about equity, and all we're saying is please, if we—if we found something we agree about, put it in the bill.

Mr. GEKAS. Would the gentleman yield?

Mr. WATT. Yes, sir.

Mr. GEKAS. The current law requires for the purpose of making certain that individuals qualify, to have their debts discharged, to be able to prove their expenses, their income, the whole gamut of things. The current law requires that. So we don't change that portion of it.

If an individual is to be scrutinized to determine whether or not they're trying to game the system or somehow to avoid their re-

sponsibilities to repay some of the debt, it's only a necessary and proper requirement to have them list their expenses, et cetera. What I'm saying——

Mr. WATT. But what happens if everybody in the bankruptcy agrees that——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. SCARBOROUGH. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida, Mr. Scarborough, seek recognition?

Mr. WATT. Would Mr. Scarborough yield——

Mr. SCARBOROUGH. To strike——

Mr. WATT. So I can at least——

Chairman SENSENBRENNER. I'd recognize him first, please. For what purpose do you seek recognition?

Mr. SCARBOROUGH. To strike the last word.

Chairman SENSENBRENNER. The gentleman from Florida is recognized for 5 minutes.

Mr. SCARBOROUGH. I will yield to you, Mr. Watt, but let me yield to you asking you a question, too, because I'm sympathetic to Ms. Waters' concern, because I think most of us here would be sympathetic, not wanting to strap those that are truly impoverished with a lot of these requirements that would require an attorney.

But let me ask you, Mr. Watt or Ms. Waters, just to throw this out there, how do we stop, let's say, somebody worth $10 million or somebody that's making, you know, hundreds of thousands of dollars or millions of dollars a year from 1 year deciding to report that they made $13,000 in income a year or move their money around so they don't game the system? So instead of having a single mother with three kids who has run up some credit card bills that she can't pay, having somebody else game the system?

Mr. WATT. See, what happens, Mr. Scarborough, is this: This bill only takes that person and flips them over into another form of bankruptcy. Okay? They've still got to go through all of the requirements. You know, if there's some question about that, that can be determined in that bankruptcy proceeding, and they can come back over—they can be sent back over here. That's one of the—one of the concerns we've expressed about this bill, is it really doesn't have a provision that kicks people back if they've—if they've done it either. But the problem is——

Mr. SCARBOROUGH. Reclaiming real quick with one more quick question, do you agree with Ms. Waters that there are onerous requirements that would require the hiring of an attorney for somebody in poverty?

Mr. WATT. Yes.

Mr. SCARBOROUGH. You can keep talking now and just talk about whatever you wanted to talk about.

Mr. WATT. Oh, I thought you were yielding—you asked me a question, and I answered the question.

Mr. SCARBOROUGH. Okay. You want me to take my time back?

Mr. WATT. That's unusual——

Mr. SCARBOROUGH. Yeah, that is. Okay, Mr. Gekas, do you agree with Ms. Waters that—that the requirements are so onerous that, let's say, a single mother under the poverty line would have to hire

an attorney to be able to meet these requirements? I'm just curious. I'm not——

Mr. GEKAS. I don't think—yes. If the gentleman would yield, I don't think it's going to be absolutely necessary for a person under the poverty level to hire a lawyer. I really don't. I can be proved otherwise there, but there are many other reasons that we require the expenses to be outlined for a person claiming poverty or under the median income.

For instance, the creditor has a right to determine from these—these accounts as to whether or not they extended credit in the first place on a reasonable basis or were they defrauded or were they misled by the debtor when they obtained credit in the first place. They're entitled to know that.

Secondly, in the question of reaffirming—reaffirmation, the creditor is required or should know whether or not to give this person a chance to reaffirm what these expenses are and whether they're regular and proper and necessary. So it's not an undue burden for anyone claiming bankruptcy to be able to supply these kinds of——

Ms. WATERS. Would the gentleman yield?

Mr. GEKAS [continuing]. This information. That's all I'm saying. Philosophically, we agree. And as a practical matter, this is the only thing that I was trying to say in accord with Ms. Waters, that in the practice of bankruptcy, it may be apparent, as Mr. Watt implied in one of his statements, from all the circumstances—and everybody agrees that even in a recounting of the expenses, which are still a part of the record, that we agree that that person should be discharging debt. But they'll still be scrutinizing these expenses.

Mr. WATT. Would the gentleman yield?

Mr. SCARBOROUGH. Well, Ms. Waters, did you ask——

Ms. WATERS. Yes.

Mr. SCARBOROUGH. Ms. Waters?

Ms. WATERS. I—I—you asked the question about whether or not you believe it is necessary to hire an attorney, and what Mr. Gekas did not answer was all of the requirements that are in the bill that have to be addressed by somebody. And when you look at these requirements, for documentation, for everything, I think you will concur that the average person is unable to do it without an attorney and poor people simply don't have the resources to do it.

If he would but read the legislation and look at how it is delineated here, I think he cannot—he cannot reasonably conclude that this poor person won't need an attorney in order to compile all of this documentation, to depreciate, to do a lot of things, in order to have an accurate picture.

So if they're poor and they don't have anything, a family of four meeting the poverty guidelines, under $17,000, for God's sake, if that's your proof, that's all they have, let them go.

Chairman SENSENBRENNER. The time of the gentleman from Florida has expired.

Mr. DELAHUNT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts seek——

Mr. DELAHUNT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. DELAHUNT. And point out to—to Mr. Scarborough that I dare say there are not many on this particular panel, unless they have practiced in the bankruptcy courts, that had—would have the experience and the ability to fill out what would be—what be required to fill out.

In fact, at the only—at one of the hearings that this committee had, there was testimony from an individual professor from Utah who—I don't know whether I'm accurate in saying this, but he is a member of the National Bankruptcy Conference that I believe is considered a neutral—a neutral party. And he indicated that he agreed with the import of Ms. Waters' amendment, that you'd have to have a lawyer.

In response to a question by Mr. Nadler, he indicated that in most cases it would be hundreds of dollars' worth of legal fees, but in some cases thousands of dollars' worth of legal fees, even when the debtor would qualify for chapter 7.

Mr. SCARBOROUGH. Would the gentleman yield for a second? And I think we agree on that point. Let me ask you this very quickly, Mr. Delahunt. Looking at Ms. Waters' amendment, let me ask you what I asked Mr. Watt. I mean, do you think it's overly broad and is susceptible to being gamed by people? We all agree with this concept, I think. Most of us do. But are you comfortable with this language?

Mr. DELAHUNT. I—I just walked in and I haven't read the——

Mr. SCARBOROUGH. You don't read any bills, so just—just fake it.

Mr. DELAHUNT. Well, my guess is, since we're——

Mr. WATT. Would the gentleman yield?

Chairman SENSENBRENNER. If the Chair can interrupt, the author of the amendment has suggested that we might bring this amendment to a vote before we break for lunch. The committee members can be advised and the gentleman can proceed.

Mr. DELAHUNT. And I will be very brief, but I just want to direct my comments to my colleagues on the other side, that this particular bill as drafted now is a dream for lawyers. If you want to make lawyers active and busy and prosperous, reject the Watt—reject, rather, the Waters amendment.

Mr. WATT. Would the gentleman yield?

Mr. DELAHUNT. I yield to Mr. Watt.

Mr. WATT. Let me—and I appreciate you yielding to somebody who actually has read the bill and the amendment, because I've been looking for this—this phantom cyberspace amend—provision. I mean, this is a serious problem. And it's even more a problem because there's no provision in the bill that allows you to get out of this process even if everybody agrees that you qualify.

Now, does—does the Waters language leave something to be desired? Yes, it does. But the point I'm making is that if we all agree that there's a certain category of cases where it is absolutely clear that the person shouldn't be there, that they—that they're exempted, why couldn't we come up with some language to at least put that exception in the bill to keep people from having to go through all of these onerous requirements when we all agree that that shouldn't be necessary?

Mr. SCOTT. Would the gentleman yield?

Mr. SCARBOROUGH. Would the gentleman yield?

Mr. WATT. And I would say to the gentleman that Ms. Waters' amendment——

Mr. DELAHUNT. I yield to Mr. Scarborough.

Mr. WATT [continuing]. Gets a lot closer to where—where the gentleman is than the bill does.

Mr. DELAHUNT. I yield to Mr. Scarborough.

Mr. SCARBOROUGH. And I thank you. If that's the case, would Ms. Waters consider withdrawing the amendment so we could see if we couldn't work on language that Mr. Watt and others would be more comfortable with and bring it up for a vote later on?

Ms. WATERS. I appreciate the consideration that you're giving to this, and if the language is imprecise and does not get to satisfying Mr. Gekas and others, I'm very happy to work on it.

Chairman SENSENBRENNER. Does the gentlewoman withdraw the amendment?

Mr. WATT. Would the gentleman yield? Would the gentleman yield? Let me suggest to him that a better way to proceed, since there is nothing in the bill—I mean, it would be—it would make more sense on this—on this point to withdraw the bill, because Ms. Waters' amendment——

Mr. SCARBOROUGH. Don't push your luck. I'm——

Mr. WATT. I say that with tongue in cheek. The reason I say that is because——

Chairman SENSENBRENNER. The time of gentleman from Massachusetts——

Mr. WATT. I ask unanimous consent for 30 additional seconds.

Chairman SENSENBRENNER. Well, there's a vote on. The gentleman from Massachusetts is recognized for 30 additional seconds.

Mr. WATT. I just—we ought to put this provision in the bill and then continue to work on this provision to clean up the language, not just leave the bill alone and hope that some—somewhere cyberspace comes in——

Chairman SENSENBRENNER. The gentleman's time has once again——

Ms. WATERS. Excuse me. If I may, unanimous consent, if I need it, to address the concerns of Mr. Scarborough.

Chairman SENSENBRENNER. Well——

Ms. WATERS. I'd be happy over the lunch break to work with him so that we can come back and see if we can have language that we agree on.

Chairman SENSENBRENNER. Okay. The committee is recessed until 1:30. Members should be present promptly.

[Whereupon, at 12:27 p.m., the committee was recessed, to reconvene at 1:30 p.m., this same day.]

AFTERNOON SESSION [1:43 p.m.]

Chairman SENSENBRENNER. The committee will be in order. Pending at the time the committee recessed earlier today was amendment number 6 by the gentlewoman from California, Ms. Waters. All those in favor of the Waters amendment will——

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition? He has already spoken once on this amendment.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. Yes?

Mr. FRANK. I seek to strike the last word.

Chairman SENSENBRENNER. The gentleman from Massachusetts is recognized——

Mr. FRANK. I yield to the gentleman from North Carolina.

Chairman SENSENBRENNER [continuing]. For 5 minutes.

Mr. FRANK. I yield to the gentleman from North Carolina.

Mr. WATT. I thank the gentleman for yielding.

As the chairman is well aware, at the end of the discussion we had been talking with Mr. Scarborough about the possibility of—of trying to get to some language that everybody could agree upon to accomplish what it appeared that both Mr. Gekas and Ms. Waters and Mr. Scarborough and apparently a substantial majority of the committee agreed to.

I have some language here. Unfortunately, Ms. Waters is not here. Ms. Scar—Mr. Scarborough is not here. And I don't have the authority to withdraw Ms. Waters' amendment, but I would request that that amendment be deferred until we have a chance to——

Chairman SENSENBRENNER. If the gentleman from Massachusetts would yield, you know, unfortunately, the rules do not allow us to defer amendments. And only the offeror of the amendment can have it withdrawn. So I would—the defeat of the Waters amendment would not prejudice any other member offering an amendment on the same subject that was significantly similar to the Waters amendment.

Mr. WATT. Mr. Chairman, I think in light of that, I mean, since we're going to be rigid about this, I would offer my amendment, offer this language as an amendment to the Waters amendment, if that would be in order.

Chairman SENSENBRENNER. Well, the Chair doesn't know what is in this amendment on whether it would be germane or not. But the clerk will report the amendment to the amendment.

The CLERK. An amendment to an amendment to H.R. 333, offered by Mr. Watt of California. Page 12, insert after line 17, "2(B)(v), a debtor whose current monthly income is equal to"——

Mr. WATT. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection.

[The Amendment offered by Mr. Watt follows:]

Amendment to H.R. 333
Offered by Mr. Watt of California

Page 12, insert after line 17:

"(2)(B)(v) A debtor whose current monthly income is equal to or less than the amounts set forth in paragraph (7) and has been for the 1-year period preceding the date of the filing of the petition may, in lieu of the requirements of clauses (iv) and (v) of section 521(a)(1)(B) and subsections (e), (f), and (g) of section 521, file with the court written evidence showing the debtor's income for the 1-year period before the date of the filing of the petition and a declaration under penalty of perjury that the debtor's income meets the test of this clause for that period.".

Mr. GEKAS. Mr. Chairman, I reserve the right to object.

Mr. FRANK. Point of order, Mr. Chairman. Isn't it too late, the reading having already been completed?

Chairman SENSENBRENNER. No, the reading has not been completed, and the Chair hasn't recognized the gentleman for 5 minutes. You know, that's—that's when reservation of a point of order does not become timely.

Do you reserve the right to object to waiving the reading of the amendment, or are you going to reserve a point of order?

Mr. GEKAS. I'm reserving the right to object——

Chairman SENSENBRENNER. Okay.

Mr. GEKAS [continuing]. To a point of order.

Chairman SENSENBRENNER. Well——

Mr. GEKAS. To raise a point of order.

Mr. WATT. I'll withdraw my motion that the—my unanimous consent request and allow the clerk to read.

Chairman SENSENBRENNER. Okay. The clerk will read.

The CLERK. "2(B)(v), a debtor whose current monthly income is equal to or less than the amount set forth in paragraph 7 and has been for the 1-year period preceding the date of the filing of the petition may, in lieu of the requirements of clauses 4 and 5 of section 521(a)(1)(B) and subsections (e), (f), and (g) of section 521"——

Chairman SENSENBRENNER. Without objection, further——

Mr. WATT. I object, Mr. Chairman.

Chairman SENSENBRENNER. If the gentleman from North Carolina could allow the Chair to state that the Chair has reviewed the amendment and it is germane and a point of order wouldn't lie.

Mr. WATT. Well, I thought he was objecting to the reading, in which case, I—you know, I don't—I——

Chairman SENSENBRENNER. We have worked it out on this side of the aisle. I'm afraid we haven't worked—the clerk will continue to read.

Mr. WATT. Okay. I'll withdraw—I'll withdraw my objection. I thought he was objecting to—to the fact that the amendment was not being read.

Chairman SENSENBRENNER. That was not the objection. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

Mr. Chairman and members, at the end of the—before we broke for the votes, we had been engaged in a discussion with Mr. Scarborough and I thought also with Mr. Gekas about how we might satisfy the concern that the—that the system not be gamed, but still not require people who met the criteria to get out of the bankruptcy—out of chapter 7 and into 13 to go ahead and do that without an onerous paperwork burden and legal burden, how we could accomplish that, which every—everybody seemed to be intent on accomplishing.

Over the break, our staff has come up with this wording. In the haste of things, they indicated that I'm from the State of California, and I ask unanimous consent to revise that to make it clear that I'm from North Carolina still.

Chairman SENSENBRENNER. Without objection.

Mr. WATT. But beyond that, I think we have the makings of something that would—hopefully would satisfy what I think everybody is trying to achieve. And basically what that would require is if somebody met the criteria, felt that they met the criteria, they could simply file with the court written evidence showing their income for a 1-year period before the date of the filing of the petition, and file with that a declaration under penalty of perjury that the debtor's income meets the test of this clause for that period.

Now, you know, I—I think everybody is trying to achieve the same thing. We're working in good faith. And what I would like to see, since Ms. Waters hadn't seen this amendment, Mr. Scarborough hadn't seen it, but I think all of us are saying the same thing, is let's put this amendment in the bill, and if we can figure out a better way or if somebody has a problem with it, between now and the floor, Mr. Gekas and the chairman of this committee have full control over this bill between now and the floor, so, I mean, it's not going to be the end of their world—although it might be the end of our world if we don't get some language in here on this, because as I think Mr. Gekas has already acknowledged, except in cyberspace somewhere, there is nothing that even when everybody agrees the criteria are met, to get somebody exempted from this bill that will get you out of court without filing mountains and mountains of paper. And that's all we're trying to achieve.

I yield back.

Mr. GEKAS. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from—the gentleman from Pennsylvania.

Mr. GEKAS. Yes, I thank the Chair. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. GEKAS. I still oppose the amendment because in the final analysis the whole purpose of bankruptcy is to allow those people who deserve a fresh start to gain that fresh start, but the opposite

still applies, namely, that those who are able to repay even a portion of the debt should be compelled to do so. We have to examine that, and that's the purpose of the entry-level submission of documentation, et cetera, so that the court can be satisfied as to the real status of that individual.

The language of this amendment does not take into account the questions of reaffirmation. It does not take into account the questions of bad faith, except to say the penalty of perjury, et cetera. Well, that's always there. Even under our language, that penalty of perjury is still a constant. You're not adding anything or showing your toughness or anything like that by putting in the penalty of perjury when that already exists.

What we're saying is that it is not a burden, contrary to the general thinking of the debate that has thus far been held, to ask an individual to show what income is derived, what expenses apply to that and so forth. The totality of circumstances which the bankruptcy court looks at, a question of bad faith, a question of reaffirmation, all of those depend upon this full exposition of the—the details of a person's financial status.

Now, having shown why I believe we should vote no, I still, contrary John Conyers' peroration of my intentions in the past, am willing to—to meet, once this is voted down, I am—you don't know what peroration means.

Mr. FRANK. No. If the gentleman would yield, we're just afraid you thought you were getting paid per oration, and we didn't want you to get into that.

Mr. GEKAS. Peroration. You really don't know what it means, then. But I am willing, once this is defeated—I hope it is defeated—to again join with Mr. Watt and Mr. Conyers, if he deigns to meet with me, having heard my pledge to do so, to try to work something out before the floor. But for now I ask the members to vote now.

Mr. SCOTT. Would the gentleman yield?

Chairman SENSENBRENNER. Does the gentleman yield back the balance of his time?

Mr. GEKAS. I do.

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, maybe I'm missing something. I thought this reporting that was under paragraph 2 and now is under clauses 4 and 5 was for the purpose of determining what you could pay under chapter 13. What this says is if you're not going to chapter 13 because you are clearly eligible for chapter 7, all of that reporting doesn't serve—all of that reporting serves no useful purpose. And the question is: If there's no purpose to be served with the filing, why should anyone have to incur all of the expense of filing it?

Mr. GEKAS. Would the gentleman yield?

Mr. SCOTT. I would yield.

Mr. GEKAS. I believe the gentleman is begging the question. To look at the items of expense and so forth is to determine whether or not that individual is in any way exercising bad faith or trying to game the system. And once we look at that, it may well be that the solution is to go to chapter 13, or it may be to discharge, or

it may be to—to not allow discharge. There are a lot of options available. But having the evidence and the facts before us is a prerequisite.

Mr. SCOTT. Reclaiming my time, as I understand it, if you are under the median income, are you or are you not entitled to file chapter 7? I yield.

Mr. GEKAS. If you would yield again, yes. But not if it is determined that the filing has occurred, even with a demonstration prima facie that they're under the median income. It does not prima facie mean that they are not trying to game the system, to use that phrase again. And, therefore, the investigation into totality of circumstances could yield a rejection of chapter 7, even when the median income is shown—is shown to be the top level of this person's income.

Mr. SCOTT. I yield back.

Mr. FRANK. Mr. Chairman?

Mr. HUTCHINSON. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Arkansas, Mr. Hutchinson.

Mr. HUTCHINSON. I thank the chairman and I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. HUTCHINSON. The purpose of me seeking this time is to make a couple of points and ask some questions. I would agree with the gentleman from Florida that there is a legitimate need that we all have or desire to minimize the paperwork requirement for those people who are below the poverty line, those people who are not making sufficient money that they could ever repay any of the debts. We don't want them to have an onerous burden of—of filing.

But I'm just relying upon my recollection. I don't know of anybody who's filed bankruptcy that hasn't had an attorney under the present system. I just went through the University of Arkansas Legal Clinic, and under the present system they provide legal counsel to indigents who need assistance in preparing their petition for bankruptcy. And I know that the Legal Services do that to the extent that they can. So under the present system, people need assistance, legal assistance.

Mr. WATT. Would the gentleman yield?

Mr. HUTCHINSON. In a moment, because I have some questions for you. The—I think it's an admonition to us all that whenever Legal Services comes up for funding, we should be mindful of that. And so if someone's going to make that point, I will join with you in that. I think this is an instance in which, you know, if we expect people to have access to the bankruptcy court and we're going to put on some burdensome filing requirements, we need to adequately fund Legal Services so that they can have that assistance.

But in regard to the amendment that's being offered by the gentleman from North Carolina——

Mr. WATT. Would the gentleman yield so I can respond to those two issues that he just raised?

Mr. HUTCHINSON. Well——

Chairman SENSENBRENNER. The gentleman from Arkansas has the time.

Mr. HUTCHINSON. I'd like to—let me ask some questions, then I'll give you some time. In your amendment you refer to monthly income equal to or less than the amount set forth in paragraph 7. I'm not sure where paragraph 7 is. I need some assistance as to where that is. Second—let me finish. And, secondly, it talks about in the third line, in lieu of the requirements of clauses 4 and 5 of section 521(A)(1)(b), I want to know what are the burdensome requirements that we're putting on that we want to have waived. Obviously, they need to put out their income. They need to sign it under oath. So what more are we concerned about here?

Mr. WATT. Would the gentleman yield?

Mr. HUTCHINSON. Yes, I would yield.

Mr. WATT. Okay. First of all, there are a number of debtors still who go into bankruptcy court unrepresented. But even if that were not the case, I think we, in addition to imposing a massive and useless burden on poor debtors, you're—you're imposing a tremendous paperwork burden on the bankruptcy courts because the documents that you're talking about, the ones that are required under paragraph 7, could get voluminous. There's no place to store these things. We talked about that last year when we—when we debated this bill. It adds to the paperwork burden of the court——

Mr. HUTCHINSON. Reclaiming my time, I would like to be pointed to specifically the paperwork burden. You mentioned paragraph 7. Are these tax returns that must be furnished? Where are we——

Mr. WATT. Paragraph 7 is the—is the income criteria that triggers you out of chapter 7 into chapter 13. That's what paragraph 7 is. The burdensome requirements—let's see if I can get somebody to help me with that one so I can—it might take me a little bit to zero in on them. They are in paragraph——

Mr. HUTCHINSON. Well, in order to move along here, let me reclaim the time, and if the gentleman could identify that or have some staff person identify those provisions, I'd like to be able to examine what is necessary to be waived. But I would just—I believe that whatever we do, anyone who goes into bankruptcy is going to have to set forth their income, their expenses, which is currently under the present system. If there's a burden to provide tax returns, many of these people are not going to have tax returns and probably have to certify they don't have copies of them. And I think it will be a little bit more minimal, and regardless, I think you're going to have to have legal counsel. And I——

Mr. WATT. Would the gentleman yield again?

Mr. HUTCHINSON. Yes.

Mr. WATT. First of all, those requirements would be applicable if they are going to stay in—if they're going to—if they're going to stay in chapter 7, as opposed to——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. FRANK. Mr. Chairman? Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. What purpose does the gentleman from Massachusetts——

Mr. FRANK. Strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. FRANK. I yield to the gentleman from North Carolina.

Mr. WATT. So the purpose of this inquiry is to determine whether they are eligible—whether they meet the income criteria, and all of these other standards don't relate to the income criteria. If you

meet the income criteria, you are automatically allowed to stay in 7 and—and these things will take place anyway. The—the gathering of the information will take place anyway in that chapter 7 proceeding. But there's no reason to have to file it with the court. Chapter 7 has its own set of requirements about what you've got to do and expenses and income and the whole scenario, but it does not have the—the list of steps that are outlined starting—if you—if you take a look at page 151, starting with debtor's duties, and you keep going—how far does this goes?—157 I think is where all this madness finally ends. And what we're saying is if somebody clearly meets the income criteria, why are you going to do all of this stuff?

Mr. DELAHUNT. Would the gentleman yield?

Mr. FRANK. Who asked me to yield? Oh, yes, you're easy.

Mr. DELAHUNT. Thank you, Mr. Frank. And I'd like to just make these observations for the benefit of my friend from Arkansas. At the hearings that have been held during the course of the consideration of this particular proposal, the estimates of the cost to the taxpayers were an additional $200 to $300 million over a 5-year period in the implementation because of the additional paperwork and burdens that would be imposed, the additional trustees, the additional bankruptcy court judges, and the personnel. I think that's really important to remember. And I don't know if you were here earlier, Asa, but at the—at the hearing that we did have, there was testimony from a representative of the Bankruptcy Conference that to insist that everyone, even an individual who clearly was going to stay in 7, fill out the necessary—the paperwork that the bill as presently constituted would require, would mean additional hundreds if not thousands of dollars in legal fees per case. I mean, these are monies that could, you know, go to creditors, could go to debtors, and wouldn't cost the taxpayers.

I mean, I think that, you know, the gentleman from North Carolina has explained rather clearly the rationale for the—for this particular amendment. There's nothing—there's nothing here that should come as a surprise to anyone, and I think it's important.

Mr. FRANK. Let me again yield to the gentleman from North Carolina.

Mr. WATT. Let me just point out to the gentleman from Arkansas, if you start at (3)(i) on page 152—I mean, it starts before that, but look—take a look at what you—a statement of the debtor's financial affairs and, if applicable, a certificate of an attorney whose name is on the petition, if no attorney for the debtor is indicated and no bankruptcy preparer signed the petition of the debtor, such notice was obtained and read by the debtor, 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, statement of the amount of monthly income. I mean, you just go on and on and on with things that if you have all—if you meet the criteria and you are going to stay in 7, you ought not have to do that. That's all I'm saying.

Mr. FRANK. Mr. Chairman, I think I've made my point, so I yield back.

Chairman SENSENBRENNER. The question is on adoption of the amendment of the gentleman from North Carolina, Mr. Watt, to the amendment of the gentlewoman from California, Ms. Waters.

All those in favor will signify by saying aye. Opposed, no? The noes appear to have it.

Mr. WATT. Mr. Chairman, I ask for a roll call vote.

Chairman SENSENBRENNER. A roll call is requested.

Mr. WATT. My hearing is a little bit different than yours.

Chairman SENSENBRENNER. Those in favor of the Watt amendment to the Waters amendment will, as your names are called, answer aye, those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Goodlatte?

[No response.]

The CLERK. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no.

Mr. Cannon?

[No response.]

The CLERK. Mr. Graham?

[No response.]

The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Mr. Scarborough?

Mr. SCARBOROUGH. No.

The CLERK. Mr. Scarborough, aye.

Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no.

Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no.

Mr. Issa?

Mr. ISSA. No.

The CLERK. Mr. Issa, no.

Mr.—Ms. Hart?

[No response.]
The CLERK. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye.
Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye.
Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye.
Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional members in the room who wish to cast their vote or change their vote? The gentlewoman Pennsylvania?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Chairman SENSENBRENNER. Any other members who wish to cast their vote and change their vote? The gentleman from Virginia?
Mr. GOODLATTE. No.

The CLERK. Mr. Goodlatte, no.

Chairman SENSENBRENNER. Anybody else? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 9 ayes and 13 nays.

Chairman SENSENBRENNER. The question now is on the amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will say aye. Opposed, no? The noes appear to have it. The noes have it and the amendment is not agreed to.

Further amendments? The gentleman from Michigan, for what purpose do you seek recognition?

Mr. CONYERS. I have an amendment, a technical correction.

Chairman SENSENBRENNER. The clerk will report the Conyers technical correction amendment.

The CLERK. Amendment to H.R. 333, offered by Mr. Conyers. Page 13, line 14, strike——

Mr. CONYERS. Mr. Chairman, I ask unanimous consent the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered. The gentleman from Michigan is recognized for 5 minutes.

Mr. CONYERS. Thank you very much.

[The Amendment offered by Mr. Conyers follows:]

Amendment to H.R. 333

Offered by Mr. Conyers

Page 23, line 14, strike "current monthly income" and insert "projected disposable income".

Page 86, line 13, insert "if the bankruptcy preparer is not an attorney," after "(i)".

Page 86, line 16, insert "if the bankruptcy preparer is not an attorney," after "(ii)".

Page 87, line 23, strike "A bankruptcy petition" and insert "If the bankruptcy petition preparer is not an attorney, the" after "(ii)".

Mr. CONYERS. Members of the committee, this amendment provides for two technical corrections, and I think you'll find that they are genuine corrections. The first would clarify that in calculating the debtor's income in chapter 13 that we should use his actual income, not the figure based on a job that he had been laid off from. The problem arises because in calculating chapter 13 payments the bill uses a defined term based on previous income. That definition was meant to apply in the chapter 7 means test only, and that's why I think that this is a technical correction, that it may not have been intended. It was inadvertently brought over into chapter 13 where it could also apply to persons with income below the median.

The second technical amendment clarifies that lawyers who are bankruptcy petition preparers need not file a document stating that they are not lawyers. As the bill is presently written, it does this unusual thing, it states that all bankruptcy lawyers or bankruptcy petition preparers, even though part of the petition preparer's obligation is to disclose that he or she is not a lawyer. The drafters may not have intended this result, and I believe that both these matters are simple drafting oversights that may be easily corrected. I hope that this will enjoy the support of the entire committee.

Chairman SENSENBRENNER. Will the gentleman yield back?

Mr. CONYERS. Yes.

Chairman SENSENBRENNER. Gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Mr. Chairman, I seek to strike the last——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. I believe that the gentleman may intend to correct some matters here on a technical basis, but even if he is correct, the better way to proceed would be—and I am willing to look at, if he is willing to meet with me after this session and before we go to the floor—to amend section 221 and its definition of "bankruptcy petition preparer", rather than his immediate aim to try to change the definition of "attorney, et cetera.", or that it incorrectly applies to attorneys rather than to non-attorneys. So it is the question of the definition of "bankruptcy petition preparer" the may require some technical amendment. I am willing to ask first that the members vote no on this amendment, and then pledge to him, to Mr. Conyers, that I will meet with him to try to work this out before we go to the floor on the technical changes that he seeks.

Chairman SENSENBRENNER. The gentleman yield back?

Mr. SCOTT. Mr. Chairman——

Chairman SENSENBRENNER. For what purpose, the gentleman from Virginia?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. I didn't hear the gentleman from Pennsylvania comment on the amendment page 23, line 14, on that part of the amendment, which is a fairly important part of the amendment, and I didn't hear a commitment to try to work that out too.

Mr. GEKAS. Is this the one that has to do with the current monthly income you are saying?

Mr. SCOTT. Right.

Mr. GEKAS. We have been using the words of art, "current monthly income", and we believe that serves the purpose of what we are trying to do. I am not prepared to accept a substitute for that at this juncture.

Mr. SCOTT. Well, reclaiming my time, the point that the gentleman from Michigan was making was that it makes very little sense to calculate what you can pay on your bills if in fact that is not your income. If you lost your job, you can't calculate what you can pay based on the job that you lost, and that is why the words "projected disposable income." If you file, knowing that you have lost your job, your projected disposable income will be what you actually have available. The definition of "current monthly income" is calculated as what you made the last 6 months, which, in fact, may not be realistic.

Mr. GOODLATTE. Would the gentleman yield?

Mr. GEKAS. I would yield.

Chairman SENSENBRENNER. Who has the time? The gentleman from Virginia has the time.

Mr. SCOTT. I yield to my colleague from Virginia.

Mr. GOODLATTE. I thank the gentleman for yielding. I see what you are getting at, but I don't think this change gets us there, because it would then read, "For the purpose of this subsection the term 'disposable income' means projected disposable income less reasonable amounts necessary to be expended." But the rest of this section defines what disposable income is. This simply sets the benchmark of current monthly income less disposable, and there would be circumstances where somebody wouldn't be employed and might nonetheless still qualify under the provisions of this. And I think it needs some more work, but I don't think this language gets us there.

Mr. SCOTT. I will yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from Michigan, Mr. Conyers. Those in favor will say aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

For what purpose does he gentlelady from California, Ms. Waters, seek recognition?

Ms. WATERS. I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment, and is the clerk sure this is the amendment that the gentlewoman——

Ms. WATERS. 001.

Chairman SENSENBRENNER. Waters, 001.

Ms. WATERS. Section 311, page 144, line 16, insert exceptions to automatic stay. Do you have it?

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 333, offered by Ms. Waters, page 14, line 16, insert "(a) Exceptions to Automatic Stay" before——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the gentlewoman from California is recognized for 5 minutes.

Ms. WATERS. Thank you very much, Mr. Chairman and members. This would amend section 311, Automatic Stay, that allows landlords to evict debtors outside of the bankruptcy court, and to continue eviction even after debtors have obtained an automatic stay. This would amend the provision to exempt the following groups of people: victims of domestic violence, elderly persons on fixed incomes, debtors with minor children who will fall below the median of the means test. Currently, debtors can remain in a property after declaring bankruptcy, so long as they can stay current from the date of filing or catch up on arrears and stay current. Even if they don't, the landlord can seek to evict them, but the landlord must do so through the bankruptcy court. This creates an additional burden on the landlord, but is viewed as necessary to provide the debtor a chance to get on his or her feet.

The bill proposes allowing evictions through the regular eviction process, and permits landlords to proceed with evictions that had been started before the debtor filed for bankruptcy.

The provision should be amended to exempt, again, that group of persons that I just indicated. And for further explanation, the victims of domestic violence are dealing with a number of traumas simultaneously. They may need a little extra time to reorient themselves and figure out how to manage their financial affairs. Elderly persons on fixed incomes also require more time to reorganize their finances. They do not have the same opportunities for gainful employment at the same time they have increased medical costs. Debtors who have minor children and who fall below the median specified by the proposed legislation should similarly be exempted. Such debtors do not have the financial wherewithal to find other housing, and an eviction could result in more minor children becoming homeless.

Members, I don't know why we are changing this in this bill. In the previous legislation, the landlords had to go through the bankruptcy court in order to do the eviction, and you are changing that in this legislation, and it will wreak havoc on the most vulnerable of our society. And I do believe that if we give these automatic stays, that we will not be harming landlords in any way, because the people that I am trying to protect would still have the responsibility to be current, to pay current. And I would ask that you support these amendments in the interest of, again, protecting the most vulnerable in our society in this bankruptcy bill.

[The Amendment offered by Ms. Waters follows:]

Amendment to H.R. 333

Offered by Ms. Waters.

Page 144, line 16, insert "(a) EXCEPTIONS TO AUTOMATIC STAY.—" before "Section".

Page 145, after line 11, insert the following:

(b) LIMITATIONS ON EXCEPTIONS.—Section 362(b) of title 11, United States Code, as amended by this Act, is amended by inserting after the last paragraph the following:

"This subsection shall not apply if the debtor certifies in the debtor's petition that the debtor is a senior citizen or a single parent with minor children, whose income is less than the median income applicable to the debtor, or is a battered spouse whose physical well-being would be threatened if relief from the stay is granted.".

Chairman SENSENBRENNER. Will the gentlewoman yield back the balance of her time?

Ms. WATERS. Yield back the balance of my time.

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Yes, I move to strike the last word. It appears that the amendment offered by the gentlelady from California, in effect, substitutes her versions of people who should have the benefit of an automatic stay to the detriment of those articulated in section 362(b). In other words, her language vitiates, removes, erases what we have put in as combatants to the automatic stay in the previous portion of the statute. On that basis alone we have to reject the amendment.

But beyond that, on the philosophical question, her amendment would say that without any boundaries that a senior citizen, with whom we have total sympathy, and we have worked assiduously in many different ways to protect senior citizens in every aspect of their lives, this senior citizen could remain in a landlord-owned property indefinitely without paying rent. Just a moment. The better way it seems to approach these societal problems of inadequate assets on the part of senior citizens to pay rent, is to provide as fast as we could, alternative housing or additional forms of public assistance in order to pay the rent, not to find ways and means to allow the landlord to go months and months and months on an investment that would be jeopardized by allowing a senior citizen or anybody else continuing to stay rent free. That is against all the tenets of the laws of property and of enterprise and of the freedoms that we have in our country, the whole basis of our fiscal system, so——

Ms. WATERS. Will the gentleman yield?

Mr. GEKAS. [continuing]. I would ask members to vote no on this amendment.

Ms. WATERS. Will the gentleman yield?

Mr. GEKAS. Yes.

Ms. WATERS. Would you please identify the persons that you give an automatic stay to in the legislation? Who am I replacing that you have already protected? Who am I substituting for in the bill?

Mr. GEKAS. It says "an eviction based on endangerment to property or person, or the use of illegal drugs", just for one example.

Ms. WATERS. I beg your pardon?

Mr. GEKAS. Under 311, section 3, just to give you one example, "An eviction action based on endangerment to property or person, or the use of illegal drugs."

Ms. WATERS. That is not what I am talking about at all.

Mr. GEKAS. I know that is not what you intended.

Ms. WATERS. But you are not protecting drug dealers. I asked who is it you are protecting?

Mr. GEKAS. The tenants—the property and the tenants from the illegal drug——

Ms. WATERS. Well, I am sorry. We are not on the same track here.

Mr. GEKAS. That is true.

Ms. WATERS. We are not talking about the same thing.

Mr. GEKAS. That is true.

Ms. WATERS. What I——

Mr. SCOTT. Will the gentlelady yield?

Chairman SENSENBRENNER. The time belongs to the gentleman from Pennsylvania.

Mr. SCOTT. Excuse me.

Mr. GEKAS. Did somebody ask?

Chairman SENSENBRENNER. Does the gentleman yield?

Mr. GEKAS. Yes.

Mr. SCOTT. The amendment appears to me to be adding, not replacing language. Is that your understanding?

Mr. GEKAS. I think it replaces it.

Ms. WATERS. No.

Mr. SCOTT. It says——

Mr. GEKAS. I don't think that was the intent.

Mr. SCOTT. No, it adds language. It doesn't replace any language, according to the way I read the amendment.

He thought you were knocking this out.

Ms. WATERS. No, we are not. We are talking about two different things.

Mr. GEKAS. That is true.

Ms. WATERS. If the gentleman would yield. If I may, I am asking that a particular category of people be protected. I am not asking that they be able to stay rent free, and I do not want my amendment to be misunderstood that way. I am asking that this category of vulnerable persons be granted an automatic stay, and that if the landlord wishes to evict, they have to go through the bankruptcy court in order to do that. And I am additionally saying that these people are responsible for paying their rent while they are in bankruptcy.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. GEKAS. I yield back the balance of my time.

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts. For what purpose do you seek recognition?

Mr. FRANK. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I join with my colleague from California in being puzzled by one of the assertions of the gentleman from Pennsylvania. I understood him to say that he objected in part to the gentlewoman's amendment because it vitiated, removed and excised, which is a pretty powerful triple threat. Even lawyers generally only go two words. You used three. But he said that it was removing some exceptions that were in there. The gentlewoman's amendment clearly says amended by inserting, after the last paragraph. So it is hard to see how an amendment which consists entirely of an additional set of words, removes, vitiates, excises, diminishes, belittles, criticize or perorates anything. So I would be glad to yield to the gentleman, but I think he may have a point in mind other than the one he expressed.

Mr. GEKAS. Would the gentleman yield to the peroration?

Mr. FRANK. With resignation.

Mr. GEKAS. Line 5 of the amendment that is offered by the lady says, "This subsection shall not apply", meaning all the three previous——

Mr. FRANK. But only—oh, in that case then, I understand what the gentleman is saying, but I don't think it is what he said before. It does not remove exceptions. It does state exceptions to them.

Mr. GEKAS. It nullifies them.

Mr. FRANK. No. Only in certain very limited cases, the single parent, et cetera, so it does modify the exceptions. But I think the gentleman gave the impression, when he spoke, that this was going to entirely replace that section. It does say that those exceptions in the section wouldn't apply if you had these particular categories. So then I think the legitimate debate is should you or shouldn't you carve out an exception here for the battered spouse or the senior citizen. I yield to the gentleman.

Ms. WATERS. Will the gentleman yield?

Mr. GEKAS. In order to vitiate the impression, then I repeat, what we are saying here is that what we took careful time and effort in the past to put in with regard to reform of automatic state provisions, is modified unduly by the——

Mr. FRANK. Okay. Well, let me just say—I haven't—there is a policy difference here, and that is okay. I do not think that the gentlewoman means any disrespect to the gentleman's care. There is a policy difference, and that is what she is trying to do. But it does not, as we said, remove it. And let me yield now. The gentlewoman from California wanted me to yield to her.

Ms. WATERS. Would the gentleman yield?

Mr. FRANK. Yes.

Ms. WATERS. If it makes it clearer to you, we just looked at a way by which we can state it so perhaps it is clearer to you. Under line 5——

Mr. FRANK. If the gentlewoman would yield, I would not get my hopes up unduly on that particular point. [Laughter.]

Ms. WATERS. This elimination of the automatic stay set forth in the subsection shall not apply if the debtor certifies in the debtor's petition that the debtor is senior citizen or a single parent with minor children whose incomes is less than the median income applicable to the debtor, or is a battered spouse, and on and on and on. You see what we are saying? I want to make sure that you understand that we are not in any way eliminating any protections that you think that you have. We are not substituting. What we are doing is we are inserting this category of vulnerable citizens that we think should be protected.

Mr. FRANK. Would the gentlewoman yield? Let me just say I think it is clear now that what the gentlewoman would do would modify that list, and I think there was a confusion. It wouldn't entirely remove it. The list would still be there in the original legislation, but the gentlewoman's legislation is a modification of that and says the provision he says doesn't apply in these limited class of cases.

Mr. GEKAS. If the gentleman would yield?

Mr. FRANK. I yield.

Mr. GEKAS. It means that we have to look at trying to accommodate what the lady is trying to do by redrafting this to make certain that——

Mr. FRANK. No, I think it is fairly clear.

Mr. GEKAS. Well, if——

Mr. FRANK. I am taking back my time.

Mr. GEKAS. Yes.

Mr. FRANK. We have technical corrections to deal with this. What you are talking about here is a policy statement. The gentleman's proposal says there are these cases in which the automatic stay doesn't apply, et cetera. The gentlewoman has proposed a policy modification. I think we understand that. It is a modification of the language. The technical wording, as I said, that is why we have technical and conforming amendments done at the end. I don't think the gentleman's objection to the amendment is in fact technical; it is substantive. He does not think that there should be exceptions carved out that way. That is what we ought to be voting on.

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman's recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, I would ask to speak in favor of the amendment. We are changing the law in terms of a stay on evictions. The Waters' Amendment says that we ought not change the law for these—for this category of people, senior citizens, single parent with minor children whose income is less than the median income. You know, it just seems to me that that category of people, if you allow the eviction to go forward and not allow the bankruptcy to take place, while they may be able in fact to catch up with back rent, you are kicking these people out in the street.

Now, the question is whether or not we want the change of the law to apply to them, or whether you want just that category. Change the law for everybody else, but not for them. The bankruptcy law has been in effect for hundreds of years, and it has always been the case that you get a stay of all proceedings. If you are going to change that, we are just asking, very simply, that you not kick senior citizens out in the street under this new law, at least exempt them and single parents with minor children, and not kick them out in the street, not change the law for them. I yield back.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from California, Ms. Waters. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. Roll call?

Ms. WATERS. Roll call, please.

Chairman SENSENBRENNER. Roll call is ordered. The question is on the Waters' Amendment. Those in favor will, as your names are called, answer aye. Those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.
The CLERK. Mr. Smith, no. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no. Mr. Jenkins?
[No response.]
The CLERK. Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
[No response.]
The CLERK. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
[No response.]
The CLERK. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
Mr. MEEHAN. Aye.

The CLERK. Mr. Meehan, aye. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
Mr. WEINER. Aye.
The CLERK. Mr. Weiner, aye. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there——
Mr. BACHUS. Mr. Chairman?
Chairman SENSENBRENNER. The gentleman from Alabama.
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Chairman SENSENBRENNER. The gentleman from Indiana.
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.

Chairman SENSENBRENNER. Are there additional members in the chamber who wish to record their vote or change their vote? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 9 ayes and 13 nays.

Chairman SENSENBRENNER. The amendment is not agreed to. For what purposes does the gentleman from Massachusetts, Mr. Meehan, seek recognition?

Mr. MEEHAN. Mr. Chairman, I have an amendment at the desk.

Chairman SENSENBRENNER. The clerk will report the amendment, and if there are more than one by you, please inform the clerk which one you want.

Mr. MEEHAN. It's Meehan.002.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 333, authored by——

Mr. MEEHAN. Mr. Chairman, I ask unanimous consent——

Chairman SENSENBRENNER. Without objection. And the gentleman is recognized for 5 minutes.

Mr. MEEHAN. Mr. Chairman, I offer this amendment to correct what I think is an unintended but nonetheless significant problem with the bill's various safe harbors for low-income debtors. Under the bill, debtors of certain size households were exempt from the chapter 7's mean test, and exempt from having IRS expense standards used to judge their proposed chapter 13 plans if their incomes are less than the median family income of their states last reported by the Bureau of Census for a family of the same size as their household.

The problem is, from what I can see and tell, the Bureau of Census currently publishes State by State median family income adjusted for variations in family size only once a decade, following the decennial census, and based on the data collected in that census. The Census Bureau doesn't publish State by State median household income on a yearly basis based on the annual surveys of 50,000 randomly selected households nationwide. But the statistics

published on a yearly basis is not adjusted for variations in family size.

In any event, median household income is entirely different from median family income. If I am wrong or if someone can demonstrate to the contrary, this isn't correct. If I am right, and I think I am, this means that the bill's safe harbor provisions may become quickly outdated as the years elapse, since the once-a-decade publication of the state by state median family income figure is adjusted for various variations in family size.

So, basically what my amendment says is the State by State median family income figures are counting for variations in family size last published by the Bureau of Census, which is what the bill sets as a basis for its safe harbors, should be indexed for inflation for each year, since their publication that the—since their publication that the Census Bureau has not published new figures on State by State median family income adjusted for these variations in family size. This is not an automatic inflation adjustment. Inflation adjustment would happen only when the Bureau of Census had not published new figures on a yearly basis.

As I suggested earlier, the Census Bureau does not do annual data collection and annual publication of income statistics. My understanding is that they could readily State by State median family income figures accounting for variations in family size on a yearly basis. Now, it would be my hope that that is exactly what they would do, but there is no way to be assured that they will do it that way. So I think there is an adjustment that needs to be made, and I thank the chairman and yield back the balance of my time.

[The Amendment offered by Mr. Meehan follows:]

Amendment to H.R. 333

Offered by Mr. Meehan

Page 16, line 18, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 16, line 23, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 17, lines 3, 14, 19, and 24, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 20, lines 4, 9, 20, and 25, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 24, lines 20 and 25, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 25, line 5, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 159, lines 14, 19, and 24, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which

such median income is not reported by the Bureau of the Census)" after "Census".

Page 160, lines 9, 14, and 19, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 161, lines 17 and 23, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Page 162, line 4, insert "(adjusted to reflect the percentage change in the Consumer Price Index for All Urban Consumers, published by the Department of Labor, for each subsequent year during which such median income is not reported by the Bureau of the Census)" after "Census".

Chairman SENSENBRENNER. For what purpose does the gentleman from Pennsylvania seek recognition?

Mr. GEKAS. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. Mr. Chairman and members, I ask for a no vote on this proposition. We want the record to indicate that when these sections were drafted, it was after full consultation, as I understand it, by the conferees and those who were helping to draft the legislation, led by Senator Torricelli, I might add, who had conferences or consultations at least with the Bureau of Census to which you have referred, to the Department of Labor, to all concerned to craft what could be extrapolated finally by way of these statistics to which you refer into use in the bankruptcy code. And so we have adopted what seems to be a consensus among those people who were drafting it at that time. This does not prohibit a review of all of these things next year, or with new census figures or amended census figures or amended labor standards or anything. But for the time being, this represents the best effort of those involved in drafting this set of provisions on a bipartisan basis, and with due consultation with the entities to which the gentleman has referred. I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on the——

Mr. FRANK. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Massachusetts.

Mr. FRANK. To strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. FRANK. I appreciate the fact that the people who originally voted didn't include this, because by definition, if they had, it wouldn't have been in order as an amendment. But I didn't get the policy reasons why it wasn't included. It would seem to me if you agree that there should be an income level adjusting it, particularly when we're talking about individuals adjusting it for this inflation factor, or to just be routine, and other than the fact that they didn't do it, we didn't know why they didn't do it. The gentleman said it was on a bipartisan basis. Certainly nobody on this side of the committee was involved in that decision. So I would yield to the gentleman. What is the policy reason for not doing this, I mean, other than the fact that you didn't do it? I would yield.

Mr. GEKAS. We understand that the Census Bureau is in the ongoing process all the time of filling in the blanks, as it were, of bringing in the data to which the gentleman has referred. We do not prohibit them from promulgating these changes in the Census Bureau that would accommodate what the gentleman is referring to.

Mr. FRANK. I yield to the gentleman from Massachusetts.

Mr. MEEHAN. I am not suggesting that you don't prohibit them from doing it, but the fact is, if that is going to be the basis for these safe harbors, they ought to do it every year if you want it to be accurate. Presently they do it once every 10 years, so how are these figures for a family income by the size of family, in some cases could be 7, 8, 9-years old, they are not really relevant any more. So what you could—all we are saying is you put it in the legislation so you either index it for inflation or you get the Census

Bureau to do it every year, if you are going the rely on that for safe harbors.

Mr. FRANK. Let me just add my understanding, and maybe there is a question—surely, the Bureau of Labor Statistics, that is, the—yes, it is the Department of Labor. So what we are saying is those figures are there, and why not update them every year when there is a danger in the eighth and ninth year of it being too long? And the gentleman says we don't prohibit it. Well, we think it is a good idea. It would seem to me non-prohibition isn't enough. If we think it is a good policy idea, why don't we simply incorporate it? I don't understand why it I controversial. I yield to the gentleman.

Mr. GEKAS. We don't believe it is controversial. The Census Bureau can and does, on a periodic basis, change its figures and——

Mr. FRANK. No. The gentleman is contradicting himself. If you didn't think it was controversial, you would have accepted this a couple of debates ago, and we would have had it. When it is offered, as a general—on the principle of saying, "Well, we have no objection to this. We just don't want it in the bill, and the Census Bureau can do it if it wants to or not." We are the policy-making body. We are setting an important number here. Leaving it to the discretion of the agency seems to me not to be doing our job. I would ask the gentleman from Pennsylvania, does he think it would be a bad thing in policy terms if this was done every year?

Mr. GEKAS. We do believe that we have the right to and are satisfied with relying on the regular work of the Census Bureau throughout the 10 years, who will be able to adjust——

Mr. FRANK. Well, the gentleman didn't answer my question.

Mr. GEKAS [continuing]. And they do regularly adjust——

Mr. FRANK. The gentleman didn't answer my question. You know, arguing—I have to say, as a general legislative principle, when people tell me that they are against an amendment solely because it is redundant and unnecessary, I am always skeptical, because if it is only unnecessary, it doesn't do any harm. And I asked the gentleman does he have any policy objection. He is saying, "Well, the Census Bureau may well do this anyway."

Mr. GEKAS. Not may well, will.

Mr. FRANK. Well, why not put it in the legislation? What harm will it do to have it in the legislation if the gentleman thinks it is going to happen anyway? And I will yield to him.

Mr. GEKAS. And there is the controversy. You want to introduce a controversial amendment to put in solid language, when we know that the process agreed to by the Treasury Department, the administration, the Census Bureau, all the people who were involved in the reform measure, who will recognize that the Census Bureau, in its ongoing figure creation, will be doing that next year——

Mr. FRANK. Mr. Chairman, I must say, the argument that it is a good policy, there is no objection to the policy, but we should trust that the Census Bureau would do it anyway, rather than write it in, is wholly unpersuasive to me. And I do not—if the policy of regular adjustment for inflation is not controversial, I do not understand why it becomes controversial for us to say that we want to reassure that we—we want to assure that we do the noncontroversial policy.

Let me say this. I have voted for this bill. I ask for 30 second, Mr. Chairman. I have voted for this bill in committee before. I do

think that there is abuse, and I am ready for changes, but adopt the posture that your Rembrandt—and not a brush stroke of this masterpiece can ever be changed, even if people find that there are ways in which it can be improved, and you will drive votes away; you will not add votes. I thank you, Chairman.

Chairman SENSENBRENNER. The gentleman's time has expired. The question is on the——

Mr. WATT. Mr. Chairman.

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina, Mr. Watt, seek recognition?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognize for 5 minutes.

Mr. WATT. I am sorry. I had to be out for a little bit, and may have missed part of this, but is Mr. Gekas's contention that the Census Bureau can change the bankruptcy bill, even if it adopts a cost of living increase?

Mr. GEKAS. Would the gentleman yield?

Mr. WATT. It wouldn't have any bearing—maybe I am just—I got in on the end of the discussion.

Mr. GEKAS. Many of the bureaus in our system of government have regular reporting updates of current conditions and a variety of our societal needs and institutions. In our bill we say, in this particular instance, that for instance, in the portion having to do with a household of two, three or four 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 we are saying that that does not mean this is the final set of statistics. "Last reported" contemplates the ongoing duty of the Census Bureau to update all of these statistics. Thus, we incorporate by reference, after they promulgate their latest reporting——

Mr. WATT. So the gentleman's argument is, if we do this, we are doing something that the Census Bureau might do anyway?

Mr. GEKAS. Is doing anyway.

Mr. WATT. And it is redundant?

Mr. GEKAS. Well, yes. That is a peroration. No, but—no, I think that states the proposition.

Mr. WATT. Which set into play the Barney Frank Principle of redundancy. I yield, Mr. Meehan.

Mr. MEEHAN. The problem is that the Census Bureau only updates these figures, the family income based on the size of the family, every 10 years. That is when they do it presently. So all the amendment says is, is that we should update the figures. If you are going to have safe harbor provisions and they are going to be 8 years old or 9 years old, that we ought to use the most updates information. There is nothing that assures that the US Census Bureau is going to change. It is a very simple amendment.

Mr. WATT. Perhaps the gentleman has forgotten that because the cost of living has been so modest under the Democratic Administration, he has forgotten the times that there was runaway inflation under some of the prior administrations.

Mr. FRANK. The gentleman yield to me?

Mr. WATT. I will yield.

Mr. FRANK. It is very clear. If the Census Bureau did it on an annual basis, this amendment would have no effect. This amendment would only have an effect if the Census Bureau, for some reason, did not promulgate these figures annually. So if in fact it works exactly as the gentleman from Pennsylvania expects, there is no problem. But if the Census Bureau did not promulgate them annually, this would prevent there from being a lag in that figure. As someone who supports that concept, I cannot for the life of me, understand why there should be any substantive objection to this amendment.

Mr. WATT. I think I understand, Mr. Chairman. Mr. Gekas thinks he has a Rembrandt that any brush will clearly make——

Chairman SENSENBRENNER. Moses had a more hard-line attitude than Rembrandt did. Will the gentleman yield back?

Mr. WATT. Moses?

Chairman SENSENBRENNER. Yes. He sent things down in stone tablets.

Mr. WATT. Oh, yeah. Well——

Mr. FRANK. If the gentleman would yield, I am not——

Mr. WATT. Perhaps he thinks he has a stone tablet then.

Mr. FRANK. If the gentleman would yield, I am not a great theologian, but I don't think Moses sent down the tablets; he was more the recipient. I don't think Moses ever claimed to be the author.

Chairman SENSENBRENNER. I stand corrected. Will the gentleman yield back?

Mr. WATT. I think I will, on that happy note.

Chairman SENSENBRENNER. Okay. The question is on the amendment offered by the gentleman from Massachusetts, Mr. Meehan. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. Roll call is ordered. The question is on the Meehan Amendment. Those in favor will, as your names are called, vote aye. Those opposed, no. And the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

[No response.]

The CLERK. Mr. Cannon?

[No response.]

The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no. Mr. Scarborough?
[No response.]
The CLERK. Mr. Bachus?
[No response.]
The CLERK. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Issa?
[No response.]
The CLERK. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
Mr. CONYERS. Aye.
The CLERK. Mr. Conyers, aye. Mr. Frank?
Mr. FRANK. Aye.
The CLERK. Mr. Frank, aye. Mr. Berman.
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Aye.
The CLERK. Ms. Jackson Lee, aye. Ms. Waters?
Ms. WATERS. Aye.
[No response.]
The CLERK. Mr. Meehan?
Mr. MEEHAN. Aye.
The CLERK. Mr. Meehan, aye. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.

Chairman SENSENBRENNER. Are there members in the chamber who wish to record their vote or change their vote? The gentleman from Alabama, Mr. Bachus.

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no.

Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler.

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Chairman SENSENBRENNER. The gentleman from Florida, Mr. Scarborough?

Mr. SCARBOROUGH. No.

The CLERK. Mr. Scarborough, no.

Chairman SENSENBRENNER. Further members who wish to record or change their vote? The gentleman from Arkansas, Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no.

Chairman SENSENBRENNER. Anybody else? If not, the clerk will report.

The CLERK. Mr. Chairman, there are 9 ayes and 13 nays.

Chairman SENSENBRENNER. And the amendment is not agreed to. Are there further amendments? For what purpose the gentlewoman from Texas, Ms. Jackson Lee seek recognition?

Ms. JACKSON LEE. Mr. Chairman, I have an amendment at the desk. I think it is known as No. 3. It has .010 at the top.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 333 offered by Ms. Jackson Lee. Beginning on page 417, strike line 21 and all that follows——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the gentlewoman from Texas is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Mr. Chairman. I am hoping that there can be an opportunity for a rich and rewarding discussion on this. First of all, I am gratified that the chairman allowed us to have hearings last week, because if my recollection serves me well, I believe Mr. Gekas raised an issue as well about section 1310, which this amendment addresses.

My concern about this particular provision in the legislation is that it was added in conference, and it was not in either the House or the Senate bills, and therefore, I think it merits a deep consideration. If it stays as it is in H.R. 333, this provision would have, I believe, a drastic and serious impact on the international commerce, on insurance and reinsurance placements for American business, and could interfere with the states' regulation of the insurance industry.

In addition, international investment organizations, such as the US State Department, the US Department of Justice, have both declared that such a provision could undermine US efforts to enforce US court orders in foreign courts.

This is sort of a two-way street. If we are to be in the international arena, we must give to international businesses or businesses other than American businesses, the same opportunity and

the same grace that we would wish our businesses receive in doing international trade.

I would like to yield to Mr. Gekas and ask his thoughts. I would like to have this language eliminated. I know that my recollection is that you have an interest in this language not being in the bill. I would be willing to have further discussions about this. I have this amendment that I am ready to move forward, but I wanted to engage you, Mr. Gekas, to see whether or not we could work together on this.

[The Amendment offered by Ms. Jackson Lee follows:]

Amendment to H.R. 333

Offered by

Ms. Jackson Lee

Beginning on page 417, strike line 21 and all that follows through line 14 on page 418 (and make such technical and conforming changes as may be appropriate).

Mr. GEKAS. Yes. If the lady——

Ms. JACKSON LEE. I yield to the gentleman.

Mr. GEKAS. All right. I do not—I am not enamored of this language, and I intended to, and still intend to follow through with attempting to remove it from the final outcome of this bill. By way of authorship jealousy or whatever we want to—pride, I want this bill to remain intact for the time being, and therefore, during these proceedings, I will not offer to remove it, nor will I support an amendment to remove it. But I have had discussions with this with a variety of people, and if nothing else happens, I will go before the Rules Committee and ask that an amendment to remove this from the bill be made an order, so that we can have full debate on it. But I would not be loyal to my own concept of keeping this bill intact on the one hand and my desire to do something about this provision if I didn't approach it in that manner.

Chairman SENSENBRENNER. Will the gentlewoman yield to me?

Ms. JACKSON LEE. Yes, I would be happy to yield to the chairman.

Chairman SENSENBRENNER. First of all, I thank the gentlewoman for yielding. Let me state that I share the gentleman from Pennsylvania's discomfort with the provisions in section 1310.

Ms. JACKSON LEE. My discomfort as well.

Chairman SENSENBRENNER. Any your discomfort as well. I am informed, however, that if section 1310 is removed here, then the Committee on Financial Services will demand a sequential referral of this legislation. As I stated at the organization meeting of this

committee, I will vigorously defend the jurisdiction of the Judiciary Committee against all enemies, foreign and domestic. [Laughter.]

Ms. JACKSON LEE. I support you, Mr. Chairman.

Chairman SENSENBRENNER. And the enemies of the jurisdiction of this committee are more domestic than foreign, and we know who they are. Bankruptcy is very clearly within the jurisdiction of the Judiciary Committee, and I am not willing to have another committee start mucking around in what I think everybody in this committee feels is within our jurisdiction. If section 1310 stays in, the bill goes to the floor without a sequential. What happens out on the floor will be the will of the House and not the will of this committee or any other committee, but I will join with the gentleman from Pennsylvania in seeking to make an amendment to strike section 1310 in order on the floor if the gentlewoman will withdraw her amendment at this time.

Ms. JACKSON LEE. Mr. Chairman, with that generous offer, and I would like to be included as part of the offeror of such an amendment to go to the floor, I would be willing to——

Mr. SCOTT. Before you do that.

Ms. JACKSON LEE. I will withhold.

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Alabama also wants to say something, so—the gentleman from Virginia, go ahead.

Mr. SCOTT. Before it is stricken, Mr. Chairman, I have an additional discomfort. We have a provision in here that obviously means something, and no one can explain to us what we are voting on, why it is in there, how it got there.

Chairman SENSENBRENNER. The gentlewoman's time has expired. For what purpose does the gentleman seek recognition?

Mr. SCOTT. Move to strike the last——

Ms. JACKSON LEE. I was going to ask for an additional——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, we have a provision in the bill that obviously means something. It is there for some reason, and no one can explain to use what it does or why it got there, and I think the gentleman from Alabama—I will yield to him if he can explain to us why we ought to vote for the bill with that provision in there.

Mr. BACHUS. Let me say this. You are yielding to me?

Mr. SCOTT. I yield.

Mr. BACHUS. What this does, this language, which was put in in the Senate, only applies to a foreign judgment which is the result of fraudulent misrepresentations made in the United States to investors. So it is narrowly drawn. And what it says, if someone—fraud was practiced on an American citizen here in the United States, in getting them to invest. In this case it is in a Lloyd's of London underwriting situation, that in the bankruptcy proceeding, they would be allowed to assert that they were defrauded, that the judgment was a result of fraud.

Mr. SCOTT. Well, I would reclaim my time, and I would ask the gentleman, why shouldn't this benefit apply to others if it is such a good idea, and why is it limited to these years, and does it apply to anybody other than those names of Lloyd's of London?

Mr. BACHUS. I can't answer that. I can tell you that in my mind, as far as what the language does—I mean, if the gentleman has another amendment—but in my mind, an American citizen who believes they have been defrauded deserves their day in court, and I think the long history of bankruptcy is that in a proceeding to try to collect a judgment, that they can assert fraud. And I think really the provision is more consistent than inconsistent with——

Mr. SCOTT. I would ask to reclaim my time. I don't see anything in this provision that has anything to do with bankruptcy. Can you point out to me what this has to do with bankruptcy, a proceeding in bankruptcy?

Mr. BACHUS. If it deals with bankruptcy. I mean, I don't—I am just simply telling what the——

Mr. SCOTT. It doesn't say anything about bankruptcy. I reclaim my time.

Ms. WATERS. Mr. Chairman, I cannot hear the gentleman. Can he speak into his mike?

Mr. SCOTT. Reclaiming my time. It says, "Notwithstanding any provision of law"——

Mr. BACHUS. I don't know whether——

Chairman SENSENBRENNER. Will the gentleman from Alabama please speak into the mike, because the gentlewoman from California's point is well taken.

Mr. SCOTT. "A court within the United States shall not recognize or enforce any judgment rendered in a foreign court." It doesn't say anything about bankruptcy.

Mr. BACHUS. I am simply saying I am not arguing about that. What I am simply saying is the reasoning behind it. You said could anyone explain it.

Ms. JACKSON LEE. Will the gentleman yield?

Mr. BACHUS. And I am explaining it by saying that this deals with—it is narrowly constructed to deal with simply saying you cannot enforce a foreign judgment which was gained as a result of a fraudulent misrepresentation made here in the United States to an investor, and that that investor would have its day in court here.

Mr. SCOTT. Well, reclaiming my time, I am a little lost as to what it is doing in a bankruptcy bill, but I will yield to the gentlelady from Texas.

Ms. JACKSON LEE. I think the gentleman has a sort of struck the court of the issue of the amendment that I presented. I think that it tampers with state insurance law. It stifles quid pro quo of having US judgments enforced, as well as foreign judgments enforced. I too was trying to find a relationship to the bankruptcy code, and that is why I was offering to say that we would do well to have this language stricken as it is not relative to this code, but as well, it puts at a second class position, judgments that US citizens would want to enforce, because of the way it would be implemented. And I would ask that we work together for an amendment subsequent to this hearing and this markup to have this language addressed and removed.

Chairman SENSENBRENNER. Does the gentlewoman want to withdraw her amendment at this time?

Ms. JACKSON LEE. Mr. Chairman, can I secure from the—do I understand—let me not—do I understand from Mr. Gekas and the

Chair that we can work together for such an amendment moving to the floor, and I would like to work with them?

Chairman SENSENBRENNER. Well, I will give you a commitment that the rule that I asked for the Rules Committee to grant will allow this amendment to be offered. I have an open mind on whether or not personally to support it, but I do believe that this issue should be brought to the floor.

Ms. JACKSON LEE. All right. I thank the gentleman. You and Mr. Gekas. Mr. Gekas, are you intending to jointly offer it, or would you join me, or would you support the amendment that I would like to have before Rules Committee?

Mr. GEKAS. I will appear before the Rules Committee with the chairman at the appropriate time, and urge that this proposition be put up under their consideration to be made an order. I will continue, at this juncture, to oppose its inclusion subject to whatever I learn between now and then, but in either event, I will urge that we have it made an order.

Chairman SENSENBRENNER. Would the gentlewoman care to withdraw the amendment at this time?

Ms. JACKSON LEE. And I am not trying to be overly persistent, Mr. Chairman. I will withdraw it, but I intend to offer such an amendment. I am trying to understand if the chairman and the ranking will be supporting the amendment that I would be offering to strike the language?

Chairman SENSENBRENNER. The amendment is withdrawn.

Ms. JACKSON LEE. Mr. Chairman, I was asking an inquiry.

Chairman SENSENBRENNER. The gentleman from Massachusetts.

Ms. JACKSON LEE. Mr. Chairman, I am sorry. I was asking an inquiry. I was concerned about the amendment that I have offered and withdrawn. Is it my understanding that if offered in Rules Committee, if I offer it in Rules Committee as it is, that I would have the support of the chairman and Mr. Gekas for it to move forward?

Chairman SENSENBRENNER. Yes. To have it made an order.

Ms. JACKSON LEE. I understand.

Chairman SENSENBRENNER. That both Mr. Gekas and I have said that you would have an opportunity to offer it on the floor.

Ms. JACKSON LEE. I appreciate that, Mr. Chairman.

Chairman SENSENBRENNER. I can't speak for any other member, but I can say that I am not sure whether I would support the amendment on the floor.

Ms. JACKSON LEE. I understand.

Chairman SENSENBRENNER. But I will protect the gentlewoman's right to get a vote on it on the floor.

Ms. JACKSON LEE. And, Mr. Chairman, I withdraw the amendment at this time.

Chairman SENSENBRENNER. The amendment is withdrawn.

Ms. JACKSON LEE. Thank you.

Chairman SENSENBRENNER. For what purpose does the gentleman from Massachusetts, Mr. Delahunt, seek recognition?

Mr. DELAHUNT. Mr. Chairman, I have an amendment at the desk. It is labeled Delahunt 004, and ask for its consideration.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Amendment to H.R. 333, offered by Mr. Delahunt. Page 169, line 3, strike "during the 2-year period."

Chairman SENSENBRENNER. Without objection, the amendment is considered as read, and the gentleman from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. Thank you, Mr. Chairman. This amendment would eliminate, in my mind, the most significant loophole in the bankruptcy code, by placing a meaningful national cap on the so-called homestead exemption. And I say "meaningful", Mr. Chairman, because $100,000 cap that is currently in the bill is conditioned by a series of exemptions that assure that those who engage in flagrant abuse of the bankruptcy system by sheltering homestead assets can continue to do so. Amendment this amendment would extend that cap to $250,000.

I heard during the hearings the concerns that were expressed by the gentleman from Indiana, Mr. Hostettler, and I concur with him. And I should emphasize that $250,000 I think is most generous, and refers clearly, obviously, to the equity that the debtor should have in his or her primary residence.

But in exchange, it eliminates the exemptions for transactions conducted within the 2 years preceding the bankruptcy filing, and for that—another condition that I found unacceptable, for transactions occurring prior to that time within a single state of residency.

Now, the rationale we had been given for the so-called needs-based provisions proposed in H.R. 333, is to eliminate abuses of the bankruptcy law, abuses which proponents of the legislation have characterized as the use of the bankruptcy code as a, quote, unquote, "financial planning tool." I want to be clear, I don't necessarily subscribe to that theory. Yet, while the bill focuses about whether small debtors can manage to pay $20 a month in chapter 13, it leaves untouched the most notorious abuse of the consumer bankruptcy system, the financial planning strategy, if you will, whereby debtors purchase expensive homes in states with unlimited homestead exemptions, declare bankruptcy, and continue to enjoy a life of luxury, while their creditors get zero or very little.

Now, if we are truly serious, if we are sincere about curtailing abuses, it seems to me that this is the place to start. For example, with the owner of the failed Ohio S&L who paid off only a fraction of 300 million in bankruptcy claims, while keeping his multimillion dollar ranch in Florida, or the convicted Wall Street financier, who filed bankruptcy while owing some 50 million in debts and fines, but still kept his $5 million Florida mansion, complete with 11 bedrooms and 21 baths, or the movie actor, Burt Reynolds, who declared bankruptcy in 1996, claiming more than $10 million in debt. Burt Reynolds kept a $2.5 million home, appropriately named Valhalla, while his creditors received less than 20 cents on the dollar.

If there is ever a case for a national standard, this is it. Without a national cap, debtors who live in the 37 States, rather, that cap the exemption at $40,000 or less, are free to locate to one of the five so-called debtors' paradises and have no cap at all.

If the amendment is adopted, it will have no effect on the 45, 45 states that cap the exemption at $250,000 or less, but it will discourage residents of those jurisdictions from moving to one of the

7 States with a higher cap or no cap at all in order to take care of this enormous loophole.

If we are serious about curbing this flagrant abuse of the bankruptcy system, my amendment, I would suggest, respectfully, is the only way to do it. I urge my colleagues to support it, and I would yield back the balance of my time.

[The Amendment offered by Mr. Delahunt follows:]

Amendment to H.R. 333

Offered by Mr. Delahunt

Page 169, line 3, strike "during the 2-year period".

Page 169, line 4, strike "$100,000" and insert "$250,000".

Page 169, strike lines 17 through 23 (and make such technical and conforming changes as may be appropriate).

Chairman SENSENBRENNER. For what purpose does the gentleman from Pennsylvania seek recognition?

Mr. GEKAS. I move to strike the last word.

Chairman SENSENBRENNER. Recognized for 5 minutes.

Mr. GEKAS. I have to say that if the gentleman from Massachusetts is really interested in curbing abuse in this particular segment of bankruptcy law, that he would support our bill enthusiastically because otherwise, he is supporting the status quo, which the status quo is the one that Burt Reynolds is flying high on and these millionaires. There is the abuse, the one that we are curbing, by permitting in our language only a 2-year period of new residence to qualify for any kind of an exemption, therefore, erasing for all time the abuse to which the gentleman refers. It is odd to me that he would not be clapping with enthusiasm that we have a homestead exemption that curbs Burt Reynolds forever. And therefore, I ask for a vote no on this provision. There is no question about serious——

Mr. DELAHUNT. If the gentleman would yield?

Mr. GEKAS. I am not yielding yet, Bill. I will yield to you. Don't worry, Bill.

Mr. DELAHUNT. Thank you.

Mr. GEKAS. This particular section has been debated and redebated and over debated since the beginning of the bankruptcy reform effort 5 years ago, and it is always a bone of contention.

We do have to take into consideration States' rights in these momentous decisions that we make, and on a political basis—I don't mean Republican or Democrat, but on a political basis for the purpose of bankruptcy, Texas and Florida are important keys to a continued overall broad support of this legislation. I acknowledge that. And I was willing to fight for originally retention of the current status of homestead exemption, but because of the good offices of the members from Florida and the members from Texas, who were willing to yield on this point, still preserving the overall State homestead exemption that they have enjoyed for so long, and which in the case of Texas at least is part of their constitution, we crafted this reform measure, which amply meets the challenge to which the gentleman from Massachusetts refers.

I urge him to remove the status quo, to get Burt Reynolds out of our hair and vote for our bill.

Mr. DELAHUNT. If the gentleman will yield, I will get Burt Reynolds out of his hair. Will the gentleman yield?

Mr. GEKAS. I yield.

Mr. DELAHUNT. I thank the gentleman for yielding, and I want to indicate to him that I do respect his acknowledgement that this is a political decision based upon the votes of members from Florida and Texas, because to be honest, that is really all that it is about, no more. To suggest that any individual can go to either one of those States and purchase a home for any amount of money, pay off any mortgage over a period of time, and live there without having the possibility of that particular residence being subject to a bankruptcy claim, I suggest to you is absolutely outrageous. And folks and debtors and creditors from all of the other 45 States in this Nation are paying for that particular abuse.

Now the gentleman talks about states' right, but I am sure that the gentleman would also acknowledge that Congress, pursuant to

the Constitution—I think it's article 1, section 8, has the authority to mandate uniform bankruptcy laws for this country. It is embraced within our Constitution. Now is the time to do it. The 2 years that the gentleman refers to that is in the current legislation would not in any way hinder the sophisticated, astute, deadbeat, scam artist that wanted to circumvent the system.

Mr. GEKAS. I yield—I seize back the balance of my time, and say anyone who wants to gain the system has a great opportunity to do so in every single line of this mammoth bill that we are proposing. What we are trying to do is the best we can to eliminate or to reduce the number of scams and the amount of impact it would have on our economic system. This is a good compromise that we have. Florida and Texas are to be commended in joining with us in the promulgation of this homestead exemption. I ask everybody to vote no on this amendment.

Chairman SENSENBRENNER. The time of the gentleman has expired.

For what purpose does the gentlewoman from Wisconsin seek recognition?

Ms. BALDWIN. Move to strike the last word.

Chairman SENSENBRENNER. The gentlewoman is recognized for 5 minutes.

Ms. BALDWIN. Yield to the gentleman from Massachusetts, Mr. Delahunt.

Mr. DELAHUNT. I thank my friend from Wisconsin for yielding.

You know, Mr. Chairman, and I think we really should reflect for a moment on what we're doing in terms of this particular amendment. As I'm sure most of my colleagues are aware, that IRA's, pension dollars are exempt under the provisions of H.R. 333, up to $1 million, $1 million. I think we can all imagine a scenario where, again, a sophisticated, astute, white-collar criminal, because that's really what these folks are, could go to one of these States and clearly, with the assistance of those who understand the system, purchase a primary residence without a mortgage and live very comfortable on the income, the income from the $1 million—the interest on the income from the $1-million pension asset that's exempted by this statute. That, I suggest to you, is just bad. It's bad public policy, and at the same time, simultaneously, there are other provisions in this bill where we end up chasing people who are lucky to be earning $40- or $50,000 a year and have a family to support. It is unconscionable, I respectfully suggest, and I think it will further, further bring into disrepute the bankruptcy system, and we should pass this particular amendment and save face.

Mr. WATT. Will the gentlelady yield, Ms. Baldwin?

Chairman SENSENBRENNER. The time belongs to the gentlelady from Wisconsin.

Mr. WATT. Will the gentlelady yield?

Ms. BALDWIN. Yes.

Mr. WATT. For the purpose of asking Mr. Delahunt a question, we debate this last year or whenever we did this bill before, and it's a very difficult issue. I agree with the gentleman that we ought to have a national standard, whether it's inside the 2 years or outside the 2 years. I'm not sure I agree with him that $250,000 is high enough to cover——

Mr. DELAHUNT. If the gentleman would yield.

Mr. WATT. I'm happy to yield. I was going to ask the gentleman whether he might entertain increasing that amount to $500,000.

Mr. DELAHUNT. You know, given the realities, and again, Mr. Gekas, I want to acknowledge the fact that he put it out on the record, this is a political decision. Of course, I would recognize it because I think we're putting ourselves in a situation, where the confidence of the American people and the integrity of this process is truly at risk when we can pass a bill that creates the potential scenario that I just described.

I'd be happy to entertain that as a motion, if that's an amendment offered by the gentleman.

Mr. WATT. Maybe you should just do it yourself, since you're willing to do it. I mean, I'm willing to author it.

Mr. DELAHUNT. I'd ask unanimous consent to raise the national cap from $250- to $500,000.

Chairman SENSENBRENNER. Without objection, the modification to the amendment is agreed to. Hearing none, so ordered.

Mr. WATT. Would the gentlelady continue to yield?

Chairman SENSENBRENNER. The time belongs to the gentlewoman from Wisconsin.

Mr. WATT. Thank you, Mr. Chairman.

This is where we are here. We are trying to get people to stop abusing the Bankruptcy Code. We're making a concerted effort to do that, but it's quite obvious that we have a different standard for rich people who abuse the Bankruptcy Code than we have for poor people who abuse the Bankruptcy Code.

Now, as I said in the hearing the other day, I have some concern about this whole means test provision because I think what we are doing with the means test is setting up two different systems, two different structures for——

Chairman SENSENBRENNER. The gentlewoman's time has expired.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman——

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman from North Carolina is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman, and I hope not to take the 5 minutes.

I think what we are going to end up with is, in effect, a pauper's court for—that handles chapter 7 bankruptcies,a need a higher-income bankruptcy court that handles chapter 13 bankruptcies. We are doing this in the name of getting rid of abuse in the system, but we are setting up two bankruptcy systems in this country under this bill. And I understand why the means test is in the bill. That was a political decision to buy support for the bill, but if somebody abuses the bankruptcy laws, and we can write a system to ferret out the abuses, and that's our objective, we ought to write a bill that does that and that ought apply to rich people, it ought to apply to poor people.

Mr. DELAHUNT. Would the gentleman yield?

Mr. WATT. I'll yield to the gentleman.

Mr. DELAHUNT. I thank the gentleman for yielding.

You know the gentleman from Pennsylvania talked about States' rights. And as he well knows, and as my colleagues on the committee know, that the States have been—have their own list of exemptions that can vary from the list of Federal exemptions, and in some cases, the differences are significant. I wonder how the gentleman from Pennsylvania would respond or react to a proposal to allow the States, not just simply to establish their own standards and their own levels, in terms of exemptions of assets, but income. If, for example, the people in the Commonwealth of Massachusetts wanted to opt out, I think that's the operative term, opt out of the means testing, would the gentleman, at that point in time, recognize, would he accept that amendment and recognize the right of the people of Massachusetts to make that decision, in terms of their debtors, the individuals that find themselves in dire financial straits through no fault of their own?

Mr. GEKAS. If the gentleman would yield, we've already provided that the people of Massachusetts can decide the figures of a median income. It's in our bill.

Mr. DELAHUNT. I understand that. I understand——

Mr. GEKAS. Every State can do that, and we honor that.

Mr. DELAHUNT. No, I'm talking about opting out of the so-called means test aspect of H.R. 333 and maintain their own calculation in terms of whether the debtor should go to—should stay in 7 or go to chapter 13.

Mr. GEKAS. I am in the process of trying to complete a process by which the Federal bankruptcy laws will be changed to try to—to try to minimize the abuses, as the gentleman from North Carolina said. We're going to fail in some respects. We're always going to have those who could game the system, but we're doing the best we can——

Mr. DELAHUNT. I understand we're going to have people who will always game the system. In fact, there's an interesting article, relative to the same use of the language "gaming the system" back in the 1930's, when concerns were expressed about the then-current Bankruptcy Act, but what I'm talking about is the gentleman who just moments ago spoke to the issue of States' rights in terms of homestead exemptions, willing to entertain a motion which would allow the individual States to opt out of the so-called means test that's being proposed in H.R. 333. I ask, just for the sake of consistency.

Mr. GEKAS. My answer is no, but it's not inconsistent.

Mr. WATT. Let me just finish the point I'm making. I think everybody understands now that this bill sets up a two-tier system, and I hope everybody understands that this is not really all about people who are abusing the system. Basically, we are providing much, much greater protections for rich people in this bill——

Chairman SENSENBRENNER. The gentleman's time has expired.

Mr. WATT [continuing]. Than we are for people who meet other criteria.

Mr. WEXLER. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida seek recognition?

Mr. WEXLER. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WEXLER. Thank you, Mr. Chairman. I will be brief. As Mr. Watt has said, this issue was discussed and debated ad nauseam last session.

I just, as a Member of Congress who represents Florida, who represents Palm Beach and Broward Counties, the issue of homestead protection is as important in my area of the country as any other. And I would just like to add that for every one scoundrel, for lack of a better word, that seeks to move from the Northeast or the Midwest or what have you to Florida to protect his or her assets in this million-dollar home that was referred to in Florida, and certainly there have been those characters, and undeniably there would be some in the future, but for every one of those, there are possibly 700/800/1,200/1,400, I don't know how many hundreds if not thousands of people that move to Florida with a moderate amount of savings or even a greater than moderate amount of savings, buy a home in their sixties or seventies, and then medical catastrophe strikes, and the only thing or one of the few things that protect them from having to move from their home or sell their home is a homestead exemption that was placed in the Florida Constitution.

So, while the depiction is of the scoundrel that's looking to escape whatever ills he or she has committed and moves to Florida or somewhere else where there's a constitutional, State constitutional protection, there are thousands of older people and others where economic catastrophe strikes, and that is the purpose of this kind of protection.

Now that does not get to the argument that Mr. Watt raises, which is this dual aspect of this bill. Mr. Watt may be entirely correct, but even if he is, I don't believe that that's a justification for striking from the State of Florida those that the citizens of Florida and other States have provided for their residence, so that the one asset they have can remain their one asset no matter what economic, health or other catastrophe may strike.

Mr. WATT. Will the gentleman yield?

Mr. WEXLER. Certainly.

Mr. WATT. I just want to point to the gentleman that's the very reason that I asked Mr. Delahunt to raise the limit from $250- to $500-. I'm still not sure that $500,000 is high enough. I agree, but I hope the gentleman will also agree that those same kind of medical catastrophes impact just as bad and worse on the poor people that we are relegating to a second class under this bill, and that's the only point that I'm having trouble with her. You know, I have no problem with trying to protect legitimate, people who are not gaming the bankruptcy system. I thought that's what we were setting out to accomplish.

Mr. DELAHUNT. If my friend would yield——

Mr. WATT. And this bill doesn't do that.

Mr. WEXLER. If I could just answer, at least from this one member's perspective, I agree with Mr. Watt. And I think in each instance, when the opportunity arises to protect those citizens in your State and others who are in those situations, I vote with you. What I'm asking is, in this instance, in this case, this amendment specifically would affect those residents of States like Florida, and I'm asking it doesn't help one iota that particular person that Mr. Watt is concerned about, and I concur with his concern, it doesn't

help them one bit if the 72-year-old in Palm Beach County who just got diagnosed with cancer and has now got enormous bills, gets thrown out of their home. It doesn't help that person——

Mr. DELAHUNT. If my friend would yield.

Mr. WEXLER [continuing]. One bit. Certainly.

Mr. DELAHUNT. I certainly wouldn't want to see anyone thrown out of their home. And if it would allay the concerns you expressed, I'm willing to go to a million dollars just to, for once, establish some sort of norm. Clearly——

Chairman SENSENBRENNER. Will the gentleman yield?

Mr. DELAHUNT. I yield.

Chairman SENSENBRENNER. May I use you as a reference in case I need to get an auctioneer's license in conducting this auction here today? [Laughter.]

Mr. DELAHUNT. Well, I definitely would serve as a reference——

Chairman SENSENBRENNER. I thank you.

Mr. DELAHUNT. And I would suggest this is an auction, Mr. Chairman. Thank you.

Mr. SCARBOROUGH. Property is expensive in Palm Beach, a million is not enough.

Chairman SENSENBRENNER. Does the gentleman yield back the balance of his time?

Mr. SCARBOROUGH. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Florida, Mr. Scarborough, seek recognition?

Mr. SCARBOROUGH. I concur with Mr. Wexler for once. I'm keeping my mouth shut. [Laughter.]

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia, Mr. Scott, seek recognition?

Mr. SCOTT. I move to strike the last word, Mr. Chairman.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, we're talking about throwing people out in the cold, out of their million-dollar mansions, some multimillion-dollar mansions. I remind the committee that we just threw poor single parents with children out in the street a few minutes ago, just for purposes of reference.

I'd like to ask the gentleman from Massachusetts, Bill, a question. As I understand the present law, your exemption under the homestead is limited only by State law and some States it's totally unlimited. Under the bill, you keep your State law for your unlimited exemptions, limited only by $100,000 for everything you've gotten within the last 2 years.

Mr. DELAHUNT. That's been amended now to $500,000.

Mr. SCOTT. And under your amendment you get to keep all of your State homestead exemptions, unlimited, except for an aggregate total of $500,000.

Mr. DELAHUNT. As it relates just simply to the primary residence.

Mr. SCOTT. Just simply to the——

Mr. DELAHUNT. If the gentleman will continue to yield, as I indicated, this is simply a homestead exemption. You know, in this bill there is also a provision for a million-dollar protection exemption on a pension fund. So combine that with the value of equity up to

$500,000, and with all due respect to my colleagues from Florida and Texas, I dare say no one is going to be tossed out on the street.

Mr. SCOTT. I would ask the gentleman some States have property exempt other than real estate. I don't see where the limitation under State and local law is limited in the bill to real estate. If you've got other things it may be exempt for other reasons, because it just says property under State or local law. It doesn't say real estate.

Mr. DELAHUNT. Well, again, this amendment is intended to refer specifically to the prime—the exemption that is provided by most States, in varying degrees of value of equity to the primary residence.

Mr. BACHUS. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Alabama seek recognition?

Mr. BACHUS. Mr. Chairman——

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. BACHUS. Now this amendment, now that it's been amended to a half-million dollars, it actually——

Chairman SENSENBRENNER. Could the gentleman speak into the mike because we've had some——

Mr. BACHUS. What you're saying is that now you could have a half-million-dollar exemption. And before it was a $100,000 exemption, but you're talking about the legislation——

Mr. SCOTT. Two years.

Mr. BACHUS. But that is, the 2-year limitation is designed to catch people from making transfers in anticipation of bankruptcy.

Mr. DELAHUNT. But if the gentleman would yield, what I would suggest that if we're serious, first, there should be a uniform national standard, but if that's unacceptable, I don't think anyone, in fact, I have in another, I have another amendment that I will offer at a different point in time, which would expand the 2-year look-back provision for transactions to 5 years because it's clear that those individuals who act most egregiously, who, in fact, those high-profile cases that I believe really undermine the confidence of the American people in the integrity of the system, with the resources available to them, their level of sophistication, they can drag it out for 2 years.

Mr. BACHUS. I understand, but you're actually increasing the exemption for these people. You've taken it from $100,000 to a half million——

Mr. DELAHUNT. No.

Mr. BACHUS [continuing]. Which I would think is doing the exact opposite of what you're arguing——

Mr. DELAHUNT. No, because the $100,000, okay, is subject to the 2-year limitation, but does not apply, okay, to transactions within the State. So, for example, if you lived in one community and wanted to—if—and you wanted to move to another community, that limitation would not be applicable.

Mr. BACHUS. I think we're moving in the wrong direction. I think this amendment——

Mr. DELAHUNT. I concur, but, again, I'm dealing with Mr. Gekas——

Mr. BACHUS. I understand you're pointing out——

Mr. DELAHUNT. [continuing]. Mr. Gekas said the political reality. In some ways, we're I think trying to present a picture that this is what it is.

Mr. BACHUS. I understand, but obviously it undermines the intent of the bill.

Chairman SENSENBRENNER. Does the gentleman yield back? Does the gentleman from Alabama yield back?

Mr. BACHUS. Yes.

Chairman SENSENBRENNER. The question is on the amendment, as modified, offered by the gentleman from Massachusetts, Mr. Delahunt.

Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it.

Mr. DELAHUNT. Roll call.

Chairman SENSENBRENNER. Roll call is requested.

Those in favor of the Delahunt amendment, as modified, will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no. Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no. Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no. Mr. Cannon?

[No response.]

The CLERK. Mr. Graham?

Mr. GRAHAM. No.

The CLERK. Mr. Graham, no. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. Mr. Bachus, no. Mr. Scarborough?

Mr. SCARBOROUGH. No.

The CLERK. Mr. Scarborough, no. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no. Mr. Green?

Mr. GREEN. No.

The CLERK. Mr. Green, no. Mr. Keller?

Mr. KELLER. No.

The CLERK. Mr. Keller, no. Mr. Issa?

Mr. ISSA. Absolutely no. [Laughter.]

The CLERK. Mr. Issa, absolutely no. Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no. Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no. Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye. Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. Pass.
The CLERK. Ms. Jackson Lee, pass. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
Mr. DELAHUNT. Aye.
The CLERK. Mr. Delahunt, aye. Mr. Wexler?
[No response.]
The CLERK. Mr. Wexler, no. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye. Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye. Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble?
Mr. COBLE. No.
The CLERK. Mr. Coble, no.
Ms. JACKSON LEE. How am I recorded, Mr. Chairman?
Chairman SENSENBRENNER. The gentlewoman from Texas, Ms. Jackson Lee?
Ms. JACKSON LEE. No.
Chairman SENSENBRENNER. Jackson Lee is a no.
The CLERK. Jackson Lee, no.
Chairman SENSENBRENNER. Are there other members who wish to record or to change their votes? If not, the clerk will report.
The CLERK. Mr. Chairman, there are 6 ayes and 18 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.

Are there further amendments? For what purpose does the gentlewoman from Wisconsin seek recognition?

Ms. BALDWIN. Thank you, Mr. Chairman. I have an amendment at the desk, Baldwin 003.

Chairman SENSENBRENNER. The clerk will report the amendment.

The CLERK. Three?

Ms. BALDWIN. Three.

The CLERK. Amendment to H.R. 333 offered by Ms. Baldwin.

Ms. BALDWIN. Mr. Chairman, I ask that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered, and the gentlewoman is recognized for 5 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman. I offer this amendment on behalf of myself and my colleague from Wisconsin, Mr. Kleczka. This amendment was adopted by this committee during last year's consideration of bankruptcy legislation in the form of H.R. 833. Unfortunately, this provision was not ultimately included in the conference report, and therefore was not made a part of H.R. 333 that's before us today.

The amendment is fairly simple. Under the current Bankruptcy Code, wages and benefits earned, even after a bankruptcy has been initiated, are payable as administrative expenses and are accorded first-priority treatment. However, this provision of current law has been interpreted by some courts to deny any priority treatment of payment awards of back pay, which accrues after a bankruptcy is filed, to workers who have been discharged in violation of Federal law.

What this means is that back pay awarded under Federal laws, such as whistleblower laws, the Family and Medical Leave Act, and Federal Mine Safety Act, the Uniformed Services Employment and Reemployment Act are all treated as general, unsecured claims in the corporation's bankruptcy. This, of course, means that workers who are entitled to back pay or other compensation may never actually receive it. I believe that awards of back pay, resulting from an employer's violation of Federal law, should be treated the same as other wages earned after bankruptcy has been initiated, and this amendment would do exactly that, making back pay part of the administrative expenses in a bankruptcy settlement.

Mr. Chairman, this loophole in current law should be fixed. The amendment would make it more likely that workers who are entitled to back pay actually receive it. It would treat back pay the same as other wages earned after bankruptcy, which is entirely fair.

Mr. Chairman, if there is no objection, I would like to submit a letter from Mr. Kleczka to be made a part of our record.

Chairman SENSENBRENNER. Without objection.

[The letter of Mr. Kleczka follows:]

JERRY KLECZKA
4TH DISTRICT, WISCONSIN

WAYS AND MEANS COMMITTEE
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February 14, 2001

The Honorable George W. Gekas
2109 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Gekas: George

As a cosponsor of H.R. 333, I am writing to express my support for Rep. Baldwin's amendment to add backpay awards granted under federal law to the administrative expenses category. As you know, administrative expenses are accorded first priority treatment in the repayment of debts by the employer.

Currently, backpay awards are considered unsecured claims in the corporation's bankruptcy and workers who are entitled to these awards typically never receive it. Backpay awarded by the federal government redresses a violation of law by the employer. Therefore, the employee's award would have been wages were it not for the employer's violation. Adding backpay awards to the administrative expenses category is simply a matter of fairness and I urge the Committee to approve the amendment.

I look forward to floor consideration of this much-needed reform of the bankruptcy system. Besides signing on as an original cosponsor of H.R. 333, I supported this legislation each time it was voted on in the House during the 106th Congress.

I thank you for your consideration of this request and congratulate you on your new Chairmanship.

Sincerely,

Jerry

JERRY KLECZKA
Member of Congress

GDK/sjc

Amendment to H.R. 333

Offered by Ms. Baldwin

Page 120, after line 16, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 231. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

"(A) The actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal or State law, without regard to when the original unlawful act occurred or to whether any services were rendered.".

Ms. BALDWIN. And I ask the committee's approval of this amendment, especially since we did it 2 years ago. I'd like to see it happen again.

Chairman SENSENBRENNER. Will the gentlewoman yield back?

Ms. BALDWIN. Yes.

Chairman SENSENBRENNER. The gentleman from Pennsylvania?

Mr. GEKAS. I thank the chair. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. I would join in the request to have the letter from Jerry Kleczka made part of the record. The lady is correct that 2 years ago we did adopt this amendment, and we were happy with it, but to explain my position here is that, similar to some other positions that I've undertaken, I want bankruptcy reform to pass. I want this bill to pass.

We have noted that this particular issue was a point of friction when the conference occurred twice now, and we succumbed to the entreaties of the other body to remove that portion of it because there were some questions on it for the rationale that impels us to move ahead in the adoption of this bill. So I will again here oppose the amendment, ask the people on the committee to reject it, to vote no, but here I extend again——

Ms. BALDWIN. Would the gentleman yield?

Mr. GEKAS [continuing]. After I extend to the lady the proposition that we, together, will seek out the truth in this particular amendment between now and the floor of the House, and perhaps confer with our Senate brethren to see where we stand on it. I don't know where we stand at the moment. I ask for a no vote. I will yield.

Ms. BALDWIN. Will the gentleman yield?

Mr. GEKAS. I'll yield.

Ms. BALDWIN. Thank you. In order to be fruitful in those discussions, it certainly would be helpful to me to have some light shed on why this particular provision was a point of friction in conference; after all, it passed unanimously in this committee and this House last time, and with no objection it went very smoothly.

Mr. GEKAS. Recalling my time. The moment I learn why the friction occurred, I will expose it fully to the lady. I will provide a memo and other evidence.

Ms. BALDWIN. In the meantime, I think a favorable vote in this committee would strength to our getting back into the final version.

Mr. GEKAS. I do believe you believe that. [Laughter.]

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. GEKAS. I do.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentlewoman from Wisconsin, Ms. Baldwin.

Those in favor will say aye.

Opposed no.

The noes appear to have it.

Ms. BALDWIN. Recorded vote.

Chairman SENSENBRENNER. A roll call is requested and will be ordered. The question is on the Baldwin amendment. Those in favor will, as your names are called, answer aye; those opposed, no, and the clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no.
Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
[No response.]
The CLERK. Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no.
Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. No.
The CLERK. Mr. Hutchinson, no.
Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. No.
The CLERK. Mr. Graham, no.
Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]

The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
[No response.]
The CLERK. Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Are there additional members in the room who wish to record or to change their vote?
The gentleman from North Carolina, Mr. Coble.
Mr. COBLE. No.
Chairman SENSENBRENNER. The gentleman from Ohio, Mr. Chabot.
Mr. CHABOT. No.
Chairman SENSENBRENNER. The gentleman from Florida, Mr. Keller.
Mr. KELLER. No.
Chairman SENSENBRENNER. The gentleman from Indiana, Mr. Hostettler.
Mr. HOSTETTLER. No.
Chairman SENSENBRENNER. Further members who wish to record or change their vote? If none, the Clerk will report.
The CLERK. Mr. Chairman, there are 3 ayes and 15 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Are there further amendments? The gentlewoman from Wisconsin, Ms. Baldwin.
Ms. BALDWIN. Thank you, Mr. Chairman.
I have an amendment at the desk. This would be Baldwin 2.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 333 offered by Ms. Baldwin, page 357——

Ms. BALDWIN. Mr. Chairman, I ask that the amendment be considered as read.

Chairman SENSENBRENNER. Without objection, so ordered, and the gentlewoman from Wisconsin is recognized for 5 minutes.

Ms. BALDWIN. Thank you, Mr. Chairman.

I am pleased to offer this amendment to update the definition of "family farmer" in the Bankruptcy Code in order to permit more farmers to file under chapter 12.

My amendment does three simple things in order to enable more of our family farmers to qualify for chapter 12 bankruptcy protections. Those protections, of course, help ensure that family farmers will not have to liquidate their farming operation, but will be able to continue to keep on with their family business.

First, the amendment will increase from 1.5 million to 3 million, the amount of aggregate debt that may be accrued by the family farmer. This is necessary primarily because we have not updated this limit to eligibility under chapter 12 since its enactment, and regrettably, many family farmers' debt exceeds the current statutory limit.

Second, the amendment will reduce from 80 percent to 65 percent the amount of debt that must be related to the farming operation. Again, this expanded definition will allow more families to keep their farms under chapter 12 rather than having to liquidate their farm assets, and this is particularly important, for example, when medical debt from injury or illness contributes to a bankruptcy filing.

Finally, under current law, the person or family must earn more than 50 percent of gross income from farming in the year immediately prior to the filing of the bankruptcy. This amendment, instead, would look at one of the last 3 years prior to the bankruptcy filing instead of limiting it self to the prior year. This change is very important because it is not at all unusual for one spouse to work in a non-farm job to secure health or other benefits for the entire family and, of course, extra income.

Additionally, in a year prior to declaring bankruptcy, non-farm income can easily exceed farm-related income since low prices such as low milk prices or crop failures can dramatically reduce gross income in any given year.

Looking at one of the 3 years prior to the bankruptcy filing will keep true farm families from being denied chapter 12 protections.

Thank you, Mr. Chairman, and I hope that we can help farm families by approving this amendment. I yield back any remaining time.

[The Amendment offered by Ms. Baldwin follows:]

Amendment to H.R. 333

Offered by Ms. Baldwin

Page 357, after line 18, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 1004. EXPANDED DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking "$1,500,000" and inserting "$3,000,000";

(B) by striking "80" and inserting "65"; and

(C) by striking "the taxable year preceding the taxable year" and inserting "at least 1 of the 3 taxable years preceding the taxable year"; and

(2) in subparagraph (B)— (ii)

(A) in clause ~~(i)~~, by striking "80" and inserting "65"; and

(B) in clause (ii), by striking "$1,500,000" and inserting "$3,000,000".

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I rise to speak in opposition to the amendment.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. GEKAS. This, too, as the previous amendment offered by the lady from Wisconsin, was the subject, and continues to be the subject, of great debate, but the final language that we have in our bill is as a result of a well-settled compromise and back-and-forth solution to this particular problem.

The result at conference was to eliminate the extra million and a half that the lady is alluding to in her amendment, and, thus, we are ready to support the compromise. It seems to fit all parties except perhaps the lady from Wisconsin.

So, rather than upset, again, the delicate balance that we have striven so fervently to accomplish, I ask the members to vote no, and I will, again, accord the lady the extra consultation that we might require to inquire whether or not this can be modified at a later stage.

Chairman SENSENBRENNER. The gentleman yield back? The gentleman yield back the balance of his time?

Mr. GEKAS. I do.

Chairman SENSENBRENNER. Question is on the amendment offered by the gentlewoman from Wisconsin. Those in favor will signify by saying aye.

Opposed, no.

The no appears to have it. Roll call will be ordered. The question is on the Baldwin Amendment No. 13. Those in favor will as your names are called answer aye; those opposed, no. And the Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

Mr. COBLE. No.

The CLERK. Mr. Coble, no.

Mr. Smith?

Mr. SMITH. No.

The CLERK. Mr. Smith, no.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

[No response.]

The CLERK. Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no.

Mr. Cannon?

[No response.]
The CLERK. Mr. Graham?
[No response.]
The CLERK. Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
[No response.]
The CLERK. Mr. Green?
[No response.]
The CLERK. Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.

Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. Additional members who wish to record or to change their votes?
The gentleman from Ohio, Mr. Chabot.
Mr. CHABOT. No.
Chairman SENSENBRENNER. The gentleman from South Carolina, Mr. Graham.
Mr. GRAHAM. No.
Chairman SENSENBRENNER. The gentleman from Georgia, Mr. Barr.
Mr. BARR. No.
Chairman SENSENBRENNER. Anybody else? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 4 ayes and 13 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
Further amendments?
For what purpose does the gentleman from California, Mr. Schiff, seek recognition?
Mr. SCHIFF. Reference to amendments at the desk.
Chairman SENSENBRENNER. Will the gentleman tell the Clerk which amendment he wishes to have read?
Mr. SCHIFF. The first is 004 offered by myself and Ms. Waters.
Chairman SENSENBRENNER. The Clerk will report the amendment.
Mr. SCHIFF. Amendment to H.R. 333 offered by Mr. Schiff and Ms. Waters, page 10, after line 17, insert the following, I–5, in addition——
Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the gentleman from California is recognized for 5 minutes.
Mr. SCHIFF. Thank you, Mr. Chairman and members.
This amendment exempts foster care expenses from the means test definition of disposable income. Foster care payments are meant to help the family pay for certain expenses related to accepting a foster child on a temporary basis, and while foster care is specifically addressed in the bill in certain places, it is excluded from those expenses exempted from the means test.
There is a very lengthy list of others which are not neglected in those sections; for example, care and support of the elderly, the chronically ill. We even, for example, exclude the expenses for a dependent child up to the age of 18 for $1,500 per year per child to attend a private, elementary, or secondary school, and I think if we are going to be excluded from a debtor's monthly expenses, expenses for up to $1,500 per child for a private school, we certainly ought to be excluding the expenses related to foster care. This amendment would ensure that expenses necessary to care for a foster child are included in the list. There are a lot of children, as this

committee well knows, in foster care, a lot of families that have difficulty meeting their financial commitments even with the foster care support, and, Mr. Chairman, I would ask that we include this amendment and yield back the balance of my time.

[The Amendment offered by Mr. Shiff and Mrs. Waters follows:]

Amendment to H.R. 333

Offered by Mr. Shiff and Mrs. Waters

Page 10, after line 17, insert the following:

"(V) In addition, the debtor's monthly expenses shall include expenses necessary for the care of foster children in the custody of the debtor.

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. I ask for 5 minutes.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. GEKAS. Move to strike the last word.

Mr. Chairman and members, I ask the members to vote no on this provision. For the gentleman's edification, it is our belief and, therefore, we assert that the phraseology that we use throughout the sections that are pertinent to his amendment cover other necessary expenses, and if that wouldn't be enough—we believe it is—to cover the care of foster children, the IRS standards that are employed do include foster children as well. So I ask for a no vote.

Mr. WATT. Mr. Chairman, could you yield on that point?

Chairman SENSENBRENNER. Yes.

Mr. WATT. Could you tell us where that provision is? I don't—I know where the other necessary expenses are, but I don't see anything in this bill that suggests that a foster child is counted as a child in the determination of expenses.

Mr. GEKAS. Naturally, you would not see it because what I tried to maintain is that by incorporating by reference the IRS standards, as we do in the——

Mr. WATT. But under IRS standards, is it—I mean, foster children are not children either, right?

Mr. GEKAS. Yes, they are.

Mr. WATT. I don't think so, Mr. Chairman, but——

Mr. GEKAS. That's the—that's the assertion that we have made throughout.

Mr. WATT. Will the gentleman yield?

Mr. GEKAS. Yes.

Mr. WATT. The gentleman has made a number of assertions throughout, a number of which I have disagreed with.

Mr. GEKAS. No question about that,

Mr. WATT. And this is—this is yet another one.

Mr. GEKAS. No question, and if any of my assertions——

Mr. WATT. I don't think that's the case.

Mr. GEKAS [continuing]. Can be disproved, we will meet that when the time comes. I am not hard-headed about it. I thank the gentleman.

I yield back the balance of my time.

Chairman SENSENBRENNER. The question is on——

Mr. SCOTT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from Virginia seek recognition?

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. And I would ask the gentleman from Pennsylvania, if we find out that the IRS regulations do not include foster children, would it be the intent of the gentleman from Pennsylvania to support this amendment somewhere between here——

Mr. GEKAS. If we find out that that's not the case, we will review it and act accordingly.

I thank the Chair.

Mr. SCHIFF. Will the gentleman yield?

Mr. GEKAS. I yield back the balance of my time.

Mr. SCHIFF. Will the gentleman yield?

Chairman SENSENBRENNER. The time belongs to the gentleman from Virginia. Only he can yield it.

The question is on the Schiff amendment.

Mr. SCOTT. Wait a minute.

Mr. SCHIFF. If the gentleman would yield for a moment?

Mr. SCOTT. I yield to the gentleman from California.

Chairman SENSENBRENNER. Okay. The gentleman recaptures his time even though the Chair has pushed the button, and go ahead.

Mr. SCHIFF. Thank you, Mr. Chairman.

As I understand it, there are references throughout the bill to foster care children, and I think if that is the case, then if you omit the reference to foster care in this paragraph, you are kind of begging the question about why references are made elsewhere and not provided for here. That might create a presumption if this ever came to litigation that it was intentionally excluded from this section.

And if, as you suggest, that it is included in the IRS regulations, then this would merely be redundant. If not, then it would serve a very useful purpose, particularly if it is excluded elsewhere and the presumption is that it was intentionally excluded from this section.

Mr. GEKAS. Who has the time?

Chairman SENSENBRENNER. The time belongs to the gentleman from Virginia.

Mr. GEKAS. Would the gentleman yield?

Mr. SCOTT. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. If, as I said, the references are made in other portions, the subject matter is so different where we use foster chil-

dren that they do not by virtue of the fact that you believe it is not in this particular section make it necessary to include this, but rather the subject matter is so different than we believe it is already covered as I have stated.

Chairman SENSENBRENNER. The question is on the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will signify by saying aye.

Opposed, no.

The noes appear to have it. The noes have it, and the amendment is not agreed to.

Are there further amendments?

For what purpose does the gentleman from California, Mr. Schiff, seek recognition?

Mr. SCHIFF. Mr. Chairman, Amendment 001.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 333 offered by Mr. Schiff, page 17, line 8, strike "and the debtor's spouse"——

Chairman SENSENBRENNER. Without objection, the amendment will be considered as read, and the gentleman from California will be recognized for 5 minutes.

Mr. SCHIFF. Mr. Chairman and members, this amendment provides a safe harbor to exclude a spouse's income from the means test.

Bankruptcy experts tell us that a large percentage of bankruptcy filings are the result of family problems, a separation, divorce, et cetera. Unfortunately, children often suffer under these circumstances, and the way the bill is currently drafted, even though the parents might be legally separated and one spouse files for bankruptcy, even though that spouse has no access to the income of the other spouse and may be estranged from the other spouse, the second spouse's income is nonetheless included in the means test. This can have a very direct and negative impact on the children, among others, in that family, and preclude that parent from the relief of bankruptcy. This appears to be an oversight in the current bill and can be remedied with this amendment.

I yield back the balance of my time and urge an aye vote on the amendment.

[The Amendment offered by Mr. Schiff follows:]

Amendment to H.R. 333

Offered by Mr. Schiff

Page 17, line 8, strike "and the debtor's spouse combined" and insert ", or in a joint case the debtor and the debtor's spouse"

Chairman SENSENBRENNER. The gentleman from Pennsylvania, Mr. Gekas.

Mr. GEKAS. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized.

Mr. GEKAS. I ask the members to vote no on this amendment, but I hasten to say that the gentleman may have struck a cord of error here in which, again, we became frozen in time, as it were, during the conference to preserve the unity of the bill. It may have been an oversight. We are not certain of that.

We are going to double-check. We are going to ask for a no vote. We are going to try to defeat your amendment, and then we will consult to see what the future holds for your proposed amendment.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. GEKAS. I yield back.

Chairman SENSENBRENNER. Question?

Mr. SCOTT. Mr. Chairman? Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from Virginia, Mr. Scott.

Mr. SCOTT. Move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. SCOTT. Mr. Chairman, the gentleman's amendment seems to me to make excellent sense. This is the original determination of presumption of abuse to determine whether or not a person's income is above or below the State median income to determine where they go in bankruptcy. It seems to me ridiculous to include in that calculation the income of a spouse that may have been—may be deserted, may be long gone, someone that you don't have any access to their money, and account that income to force a person out of chapter 7 into chapter 13 when the person filing has very little, if any, income at all. It seems to me absolutely ridiculous, and if this markup means anything, it seems to me that we would consider the amendment and not put everything off until such time as if this markup is meaningless.

Mr. GEKAS. If the gentleman would yield?

Mr. SCOTT. I will yield.

Mr. GEKAS. I am considering it. I just spoke to the fact that I am considering it.

Mr. SCOTT. Well, if it is a good amendment, let's adopt it.

Mr. GEKAS. I am asking you to consider my position of wanting to double-check, and, therefore, I am asking for a no vote. It is not being—I am not being cruel to you, but you are trying to be cruel to me. Therefore, I ask for a no vote. I pledge to the gentleman that we are going to look at this between now and the floor.

Chairman SENSENBRENNER. Does the gentleman yield back?

Mr. SCOTT. Well, I assume I will yield back. I mean, the point of the gentleman has been made, that we are not going to consider any amendment however meritorious until he can check with whoever.

I yield back.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

I have to say that this is extremely frustrating. We got a committee here that has—I don't know how many members we got. Thirty-seven members, I am told.

We are told that it is our responsibility to mark up a bill and to evaluate arguments for and against it, and, yet, time after time after time, we have been told that—and it has been demonstrated. In fact, I think Mr. Scarborough's lone vote for one amendment today is the sole and only vote from the other side for any amendment regardless of how meritorious it is.

It makes us wonder what it is we are doing here, and then if we stay here and try to do our job, then we get accused of being dilatory and, you know, trying to draw the—obstructive, whatever the words are, and trying to draw the process out, and at some point, I am sure somebody is going to get angry because tomorrow we are going to be here going through what appears to be a charade. It is a charade.

I don't think I have seen this. I mean, obviously, the committee has worked its will throughout all the 8-plus years I have been on this committee, but I don't think I have ever seen a bill come to our committee and have the person who is controlling the bill say over and over again——

Mr. GEKAS. Move to strike that phrase from the record.

Chairman SENSENBRENNER. The gentleman—the gentleman will suspend. If the gentleman from Pennsylvania asked that the gentleman's words be taken down, the gentleman will——

Mr. GEKAS. Well, no, I have never used that word except in conjunction with Boulder. That is the only time I ever used that word.

Chairman SENSENBRENNER. With what? Without objection, the word "damn" will be stricken from the record. Hearing none, so ordered, and the gentleman from North Carolina may continue.

Mr. WATT. There is something offensive to me about being told—and I don't think I have ever seen this happen in this committee over and over again by the person who is controlling the bill; that I don't give a darn how much—I don't give a darn how much sense or merit your amendment has. Either I have some deal with somebody else or I'm not bright enough myself to evaluate what is being proposed, and to have over and over again just absolute misrepresentations made about what the state of the law is—I mean, I hope you are going to go back now, Mr. Gekas, and look at—I finally did get the definition of "child." Under the Income Tax Code, it says nothing about step—foster children. You know, you just represent stuff as if we are just stupid, and you are treating us now as if we are stupid and you are right on the verge, I would tell you, of getting me to start treating you all the same way.

Mr. GEKAS. Would the gentleman yield for a moment?

Chairman SENSENBRENNER. The time belongs to the gentleman from North Carolina.

Mr. WATT. I am happy to yield to him.

Mr. GEKAS. I have always felt, and I still continue to feel—and I think the gentleman will agree that part of the legislative process and the committee work is when confronted with a provision or a set of words or a comma or other parts of a proposed piece of legislation that we pause, we look around, we say would you withdraw that amendment or I will accept it on the condition that—and we do this constantly. It is part of the process, and it is part of the

give-and-take. Any illusion to the contrary is abusive on your part as to what we are trying to do for——

Mr. WATT. Well, I'm sure we were—I was sure we were going to get to the point where this whole process was my fault all of a sudden. I had no doubt about that.

Mr. GEKAS. And we're all on the same——

Chairman SENSENBRENNER. The time of the gentleman has expired.

Mr. WATT. Okay. Well, I'm getting ready to make it my fault now.

Chairman SENSENBRENNER. And the question is on the adoption of Schiff Amendment No. 15. Those in favor will say aye.

Those opposed will say no.

Chairman SENSENBRENNER. The noes appear to have it.

Mr. WATT. I ask for a recorded vote.

Chairman SENSENBRENNER. A recorded vote is ordered. The question is on Schiff Amendment No. 15. Those in favor will as your names are called answer aye; those opposed, no. And the Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. No.

The CLERK. Mr. Gekas, no.

Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. No.

The CLERK. Mr. Chabot, no.

Mr. Barr?

Mr. BARR. No.

The CLERK. Mr. Barr, no.

Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

[No response.]

The CLERK. Mr. Cannon?

[No response.]

The CLERK. Mr. Graham?

Mr. GRAHAM. No.

The CLERK. Mr. Graham, no.

Mr. Bachus?

[No response.]

The CLERK. Mr. Scarborough?

[No response.]

The CLERK. Mr. Hostettler?

Mr. HOSTETTLER. No.

The CLERK. Mr. Hostettler, no.

Mr. Green?

Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
[No response.]
The CLERK. Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. The gentleman from Alabama.
The CLERK. Mr. Bachus?

Mr. BACHUS. No.

The CLERK. No.

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.

Mr. COBLE. No.

Chairman SENSENBRENNER. The gentleman from Arkansas.

The CLERK. Mr. Coble, no.

Mr. HUTCHINSON. No.

The CLERK. Mr. Hutchinson, no.

Chairman SENSENBRENNER. Any further members who wish to record or to change their votes? If not, the Clerk will report.

The CLERK. Mr. Chairman, there are 5 ayes and 13 nays.

Chairman SENSENBRENNER. The amendment is not agreed to.

Are there further amendments? For what purpose does the gentleman from Virginia, Mr. Scott, seek——

Mr. SCOTT. Mr. Chairman, I think the gentleman from California had one additional amendment.

Chairman SENSENBRENNER. For what purpose does the gentleman from California seek recognition?

Mr. SCHIFF. Mr. Chairman, at the risk of provoking other Boulder Dam good debate, I have one last amendment to offer, 003.

Chairman SENSENBRENNER. The Clerk will report the amendment.

The CLERK. Amendment to H.R. 333 offered by Mr. Schiff, page 19, line 23, strike——

Chairman SENSENBRENNER. Without objection——

Mr. WATT. I object.

Mr. SCHIFF. Mr. Chairman, members, this amendment would——

Chairman SENSENBRENNER. The Clerk will continue to read.

The CLERK. And insert "studies," page 120, after 16, insert the following. C. Study. Not later than 1 year after the date of enactment of this act, the Controller General of the United States shall conduct a study to determine any effects of the bankruptcy bill on the ability of a parent to pay child support or the ability of a parent to collect child support. This study shall include cases where custodial parents are the debtors in bankruptcy cases and where child support obligers are the debtors in bankruptcy cases. D. Report. Not later than 1 year after the date of enactment of this act, the Controller General shall submit to the President Pro Tem of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by Subsection (c).

Chairman SENSENBRENNER. The gentleman from California is recognized for 5 minutes.

[The Amendment offered by Mr. Schiff follows:]

Amendment to H.R. 333

Offered by Mr. Schiff

Page 119, line 23, strike "**STUDY**" and insert "**STUDIES**".

Page 120, after line 16, insert the following:

(c) STUDY.—Not later than one year after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study to determine any effects of the bankruptcy bill on the ability of a parent to pay child support or the ability of a parent to collect child support. This study shall include cases where custodial parents are the debtors in bankruptcy cases and where child support obligors are the debtors in bankruptcy cases.

(d) REPORT.—Not later than one year 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 (c).

Mr. SCHIFF. Thank you, Mr. Chairman.

This amendment would authorize the—a study by the GAO to determine any effects that the bill will have on an ability of a parent to pay child support or an ability of the parent to collect child support. Probably the most—one of the most significant concerns about the bill is a collateral consequence of the bill where those trying to collect child support will be placed in either indirect or direct competition with credit card companies or others who are in a much stronger position to collect on outstanding debts than those that are entitled to child support. This amendment would merely require the conduct of a study so we can determine after a suitable period of time elapses if there has been an adverse impact. I know that the author feels that many of the amendments in the bill will help those attempting to collect child support, and I think that is probably true, but on the whole, I think it is still unclear what the impact will be on those who rightfully have a child support and have not been able to collect on it. So this would give us a good and an objective analysis and help us determine whether subsequent legislation as a follow-up would be prudent.

I will yield back the balance of my time and thank the chairman for allowing me to offer the amendment.

Mr. GEKAS. Mr. Chairman, I ask for a no vote.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Watt.

Mr. WATT. Thank you, Mr. Chairman.

Chairman SENSENBRENNER. For what purpose do you rise?

Mr. WATT. I move to strike the last word.

Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.

Mr. WATT. Thank you, Mr. Chairman.

I suppose the gentleman who is controlling the bill can't entertain the notion of a study either or perhaps we don't care what impact the bankruptcy laws and the changes we are making are going to have on the people of America. Perhaps that is what we are saying to the American people today that we don't really care about doing our job, that some people have gotten together behind closed doors, outside the committee process, and worked a deal and that the powerful interests of this country are going to proceed regardless of what the people say about the equity of the bankruptcy laws of our country.

Perhaps we are saying we don't care about having two systems of bankruptcy in this country, one for the poor and one for the rich.

Perhaps we don't—we are saying to the American people we don't care that we are now going to send a resounding message that it is all right for rich people to abuse the system, but when poor people start to abuse the system, we got to draw the—draw the curtains down.

This is—you know, we—I don't know how we are supposed to react here, you know, and I'm sure—I understand you all are getting ready to call the question. Call it because we are engaged in a charade. At least the question being called will—will let the American people know that you all don't care about the process, but understand sometime during this term, you are going to have to consider a bill unless you are going to call the question every

time. I am going to be here. I am not going anywhere. I have no desire to get off the Judiciary Committee. I haven't asked to get off the Judiciary Committee. I will be here, and if this is the way we are going to conduct the business of this committee, let me assure each and every one of you now that every time the gavel is rapped, I will be sitting right here, and every time you call the previous question, I am going to be sitting right here, but between those times, if that is the way we are going to conduct the business of this committee, then you can expect me to play by those same kind of rules, and if you don't understand that, I will say it over again because I got two or three more minutes, since I ain't got nothing to do but filibuster here.

Let the word go out right now. If we can't operate and do our jobs in this committee, I will not participate in this charade that you are playing, and so understand it, and if you don't understand it, I think you will before long.

I yield back.

Chairman SENSENBRENNER. The time of the gentleman has expired. The question is on the amendment offered by the gentleman from California, Mr. Schiff. Those in favor will signify by saying aye; those opposed, no. The noes appear to have it.

Mr. WATT. Record the vote.

Chairman SENSENBRENNER. A recorded vote is ordered. The question is on Schiff Amendment No. 16. Those in favor will as your names are called answer aye; those oppose, no. And the Clerk will call the roll.

The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. No.
The CLERK. Mr. Gekas, no.
Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
Mr. SMITH. No.
The CLERK. Mr. Smith, no.
Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?
Mr. CHABOT. No.
The CLERK. Mr. Chabot, no.
Mr. Barr?
Mr. BARR. No.
The CLERK. Mr. Barr, no.
Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
[No response.]
The CLERK. Mr. Cannon?
Mr. CANNON. No.
The CLERK. Mr. Cannon, no.
Mr. Graham?
Mr. GRAHAM. No.

The CLERK. Mr. Graham, no.
Mr. Bachus? Mr. Bachus?
Mr. BACHUS. No.
The CLERK. Mr. Bachus, no.
Mr. Scarborough?
[No response.]
The CLERK. Mr. Hostettler?
Mr. HOSTETTLER. No.
The CLERK. Mr. Hostettler, no.
Mr. Green?
Mr. GREEN. No.
The CLERK. Mr. Green, no.
Mr. Keller?
Mr. KELLER. No.
The CLERK. Mr. Keller, no.
Mr. Issa?
Mr. ISSA. No.
The CLERK. Mr. Issa, no.
Ms. Hart?
Ms. HART. No.
The CLERK. Ms. Hart, no.
Mr. Flake?
Mr. FLAKE. No.
The CLERK. Mr. Flake, no.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
[No response.]
The CLERK. Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
Ms. WATERS. Aye.
The CLERK. Ms. Waters, aye.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.

The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. No.
The CLERK. Mr. Chairman, no.
Chairman SENSENBRENNER. The gentleman from North Carolina, Mr. Coble.
Mr. COBLE. No.
Chairman SENSENBRENNER. The gentleman from Arkansas, Mr. Hutchinson.
Mr. HUTCHINSON. No.
Chairman SENSENBRENNER. Any further members in the room who wish to record or to change their votes? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 5 ayes and 16 nays.
Chairman SENSENBRENNER. And the amendment is not agreed to.
For what purpose does the gentleman from Alabama wish to seek recognition?
Mr. BACHUS. Mr. Chairman, I think that you know that I——
Chairman SENSENBRENNER. Move to strike the last word?
Mr. BACHUS. Move to strike the last word.
Chairman SENSENBRENNER. The gentleman is recognized for 5 minutes.
Mr. BACHUS. I think that you know that I am not someone who just goes along to get along, and on occasions, I have had my differences with proposals on both sides of the aisle.
However, I do want to say, and I feel constrained to say, that I think the conduct of this hearing at least, unless I have missed something, has been very orderly. I think it has been very business like. We—this hearing, we have moved along. We have allowed everyone to have their 5 minutes. We have played by the rules. We hadn't bent the rules for anyone. In fact, I find it quite refreshing, and I would say to the members on the other side of the aisle—and I mean this in all sincerity—I must have missed something because I thought that we were conducting a very orderly and courteous hearing, and the only time that the Chair has intervened is when somebody violated the rules.
Having said that, I want to speak very briefly in favor of the need for amendments to the netting and the commercial banking, bankruptcy provisions of the act before us. I think it is an issue that needs to be addressed. These amendments are primarily concerned with the cross-product netting and commercial bankruptcy provisions of the bill, and several of the amendments have been made necessary by enactment this year of the Commodity Futures Modernization Act, but in each case, these are issues that are matters of concern not only for this committee, but also for the Financial Services mmittee. And as a member of both committees, I have a particular interest in seeing that these issues are addressed.
And, Mr. Chairman, I think that these technical and confirming amendments will make important improvements to the legislation,

and I want to say that the chairman of the Financial Services Committee, Mr. Oxley, shares my desire to see them included.

So I would simply ask that you work with us and with Chairman Oxley to see that these issues are addressed, not that a referral is made to Financial Services. We said earlier we wanted to avoid that and——

Chairman SENSENBRENNER. Will the gentleman from Alabama yield?

Mr. BACHUS. I yield.

Chairman SENSENBRENNER. Let me say that the staff has already been working with the staff of the Financial Services Committee. I certainly do wish to work in very close conjunction with Chairman Oxley to prevent a sequential referral of this legislation, and I appreciate the good offices of the gentleman from Alabama to accomplish that goal.

Mr. BACHUS. Thank you, and with that, I would like to introduce my written statement in that regard and yield back the balance of my time.

Chairman SENSENBRENNER. Without objection, the written statement will be included as a part of the record.

[The prepared statement of Mr. Bachus follows:]

PREPARED STATEMENT OF HON. SPENCER BACHUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. Chairman, I would just like to take a moment to speak in favor of amendments to the Netting Commercial Bankruptcy Provisions in the Bankruptcy Reform Act. This is an issue that needs to be addressed.

There are additional conforming amendments to this legislation that I believe we should adopt for several reasons. Some are necessary in order to address issues that have been raised by bankruptcy experts, and others would improve the legislation by taking into account new developments since the legislation was first introduced. In each case, these are issues that are matters of concern for both this Committee and the Committee on Financial Services. As a member of both committees, I have a particular interest in seeing these issues addressed.

These amendments are principally concerned with the cross-product netting and commercial bankruptcy provisions of the bill. Several of the amendments were made necessary by enactment last year of the Commodity Futures Modernization Act.

Mr. Chairman, I think that these technical and conforming amendments will make important improvements in this legislation and I believe that the Chairman of the Financial Services Committee, Mr. Oxley, shares my desire to see them included.

Mr. Chairman, I'd like to ask if you would allow me to work with you and Chairman Oxley to see that these issues are addressed.

Thank you.

Chairman SENSENBRENNER. The Chair now recognizes himself and has an amendment at the desk, and the Clerk will report the amendment.

The CLERK. Amendment to H.R. 333 offered by Mr. Sensenbrenner, page 174, line 5, strike "30.76" and insert "33.87"; page 316, strike line 16 and insert the following, one, by redesignating section 407 as 407(a); beginning on page 330, strike line 19 and all that follows through line 10 on page 331 and make such technical and conforming changes as may be appropriate; page 356, beginning on line 5, strike "and amendment by this act is reenacted" and insert "is hereby reenacted and as here reenacted is amended by this act"; page 356, line 20, strike "2001" and insert "2004"; page 368, line 4, strike "and (38)" and insert "(38)" and "54A"; page 380, strike lines 19 through 21 and insert the following, E, effective dates, one, except as provided in paragraph 2, this section and the

amendments made by this section shall take effect on the date of the enactment of this act, two, with respect to the temporary bankruptcy judgeship authorized by the District of South Carolina under paragraph 8 of the Bankruptcy Judgeship Act of 1992, 28 USC 152 Note Subsection (c)(1) as it applies to the extension specified in subparagraph (d) of such subsection shall take effect immediately before December 31, 2000.

[The Amendment offered by Mr. Sensenbrenner follows:]

Amendment to H.R. 333

Offered by Mr. Sensenbrenner

Page 174, line 5, strike "30.76" and insert "33.87".

Page 316, strike line 16 and insert the following:

(1) by redesignating section 407 as 407A;

Beginning on page 330, strike line 19 and all that follows through line 10 on page 331 (and make such technical and conforming changes as may be appropriate).

Page 356, beginning on line 5, strike "and amended by this Act, is reenacted." and insert "is hereby reenacted, and as here reenacted is amended by this Act.".

Page 356, line 20, strike "2001" and insert "2004'.

Page 368, line 4, strike "and (38)" and insert ", (38), and (54A)".

Page 380, strike lines 19 through 21, and insert the following:

(e) EFFECTIVE DATES.—(1) Except as provided in paragraph (2), this section and the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) With respect to the temporary bankruptcy judgeship authorized for the district of South Carolina under paragraph (8) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note), subsection (c)(1) as it applies to the extension specified in subparagraph (D) of such subsection shall take effect immediately before December 31, 2000.

Chairman SENSENBRENNER. The Chair recognizes himself for 5 minutes.

The amendment makes four types of conforming revisions to H.R. 333, and this language has been given to the minority last night.

The first revision pertains to section 325(c) of the bill which amends section 406(b) of the Judiciary Appropriations Act. The section, however, was amended by Public Law 106–113 with respect to the stated percentage of fees. The amendment simply conforms the percentage figure in the bill to that which is specified under current law.

The second set of revisions consists of a series of conforming amendments necessitated by the enactment of the Commodity Futures Modernization Act of 2000 on December 21st of 2000. It is my understanding that those revisions are acceptable to the Financial Services Committee, and we look forward to continuing cooperation with Chairman Oxley and that committee.

The third set of revisions is necessitated only because of the passage of time. The amendment to section 1001 of the bill which reenacts chapter 12 of the Bankruptcy Code, it makes it a permanent form of bankruptcy relief for family farmers, revises the language of this provision to take into account that chapter 12 expired as of July 1, 2000. The amendment to section 1002 which is key to a provision in the Bankruptcy Code that requires certain dollar amounts in the Code to be automatically adjusted at specified 3-year inter-

vals extends a specified date so that the provision does not have a retroactive effect.

The final revision concerns section 1224 of the bill which in pertinent part extends five existing temporary judgeships including one in the District of South Carolina. As the term of the South Carolina judgeship expired on December 31, 2000, the bill would not have its intended effect with respect to that judgeship. My amendment simply reinstates the judgment position and extends it retroactively.

And I yield back the balance of my time.

Mr. WATT. Mr. Chairman?

Chairman SENSENBRENNER. For what purpose does the gentleman from North Carolina seek recognition?

Mr. WATT. Mr. Chairman, I ask for a separate vote on each section of the amendment.

Chairman SENSENBRENNER. The Chair says that the gentleman is able to do that as a matter of right. However, how does the gentleman from North Carolina wish to divide the question?

Mr. WATT. I wish to divide it the first line, the second two lines, the next three lines, the next three lines, the next one line, the next two lines, the next two lines, and then all of page 2.

Chairman SENSENBRENNER. I don't think that works. The last two lines——

Mr. WATT. I'm sorry. That's—that's right.

Chairman SENSENBRENNER. The last two lines on the bottom of page——

Mr. WATT. The last two lines and all of page 2. I'm sorry.

Chairman SENSENBRENNER. Okay. The question is on the first part of the technical amendment which relates to page 174, line 5. Those in favor will signify by saying aye.

Opposed, no.

The ayes have it, and the amendment is——

Mr. WATT. I ask for a recorded vote.

Chairman SENSENBRENNER. Okay. The Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas, aye.

Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

Mr. SMITH. Aye.

The CLERK. Mr. Smith, aye.

Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

[No response.]

The CLERK. Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Mr. Barr?

[No response.]

The CLERK. Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson, aye.
Mr. Cannon?
[No response.]
The CLERK. Mr. Graham?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye.
Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Aye? Mr. Bachus, aye.
Mr. Scarborough?
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough, aye.
Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye.
Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?
Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]

The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff? Mr. Schiff?
Mr. SCHIFF. Aye.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Additional members? The gentleman from Georgia, Mr. Barr.
Mr. BARR. No. [Laughter.]
Aye.
The CLERK. Mr. Barr, aye.
Chairman SENSENBRENNER. The gentleman from Utah, Mr. Cannon.
Mr. CANNON. Aye.
Chairman SENSENBRENNER. More enlightened.
The gentleman from Virginia, Mr. Goodlatte.
Mr. GOODLATTE. Aye, aye.
Chairman SENSENBRENNER. Aye, aye.
Anybody else?
The Clerk will report.
The CLERK. Mr. Chairman, there are 22 ayes, no nays.
Chairman SENSENBRENNER. And the—and part one of the amendment is agreed to.
The question is on page two which relates to page 316. Those in favor will say aye.
Opposed, no.
The ayes appear to have it. The ayes have it and——
Mr. NADLER. I ask for a recorded vote.
Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor will vote aye. Those opposed will vote no. And the Clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas, aye.
Mr. Coble?
[No response.]
The CLERK. Mr. Smith?
[No response.]
The CLERK. Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
[No response.]
The CLERK. Mr. Chabot?

Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Mr. Barr?
Mr. BARR. Aye.
The CLERK. Mr. Barr, aye.
Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson, aye.
Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye.
Mr. Graham?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye.
Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Aye.
Mr. Scarborough?
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough, aye.
Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye.
Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler? Mr. Nadler?
Mr. NADLER. Aye.
The CLERK. Mr. Nadler, aye.
Mr. Scott?
Mr. SCOTT. Aye.
The CLERK. Mr. Scott, aye.
Mr. Watt?

Mr. WATT. Aye.
The CLERK. Mr. Watt, aye.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. Aye.
The CLERK. Ms. Baldwin, aye.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. Aye.
The CLERK. Mr. Schiff, aye.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Additional members in the room who wish to record or to change their votes? If not, the Clerk will report.
Mr. GOODLATTE. Mr. Chairman, have I been recorded?
Chairman SENSENBRENNER. Mr. Goodlatte.
The CLERK. Mr. Goodlatte, aye.
Mr. Chairman, there are 21 ayes and no nays.
Chairman SENSENBRENNER. And part two is agreed to.
The question is now on the adoption of part three of the technical amendment which relates to the language beginning on page 330.
Mr. NADLER. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman from——
Mr. NADLER. I am not sure if this should be a motion or a unanimous consent request that we take the other section of this amendment en bloc.
Mr. WATT. Mr. Chairman, I will withdraw, and Mr. Cannon says he has a plane to catch. So I will—I will withdraw my request to——
Chairman SENSENBRENNER. Without objection, the question is on the remaining parts of the technical amendment. Those in favor will signify by saying aye.
Opposed, no.
The ayes have it, and the remaining parts of the technical amendment are adopted.
For what purpose does the gentleman from Pennsylvania seek recognition?
Mr. GEKAS. Mr. Chairman, I have a motion at the desk.
[The information referred to follows:]

Previous Question

Mr. Chairman, I move the previous question on the bill.

*Non debatable motion

PREPARED STATEMENT OF HON. SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Mr. Chairman, I am submitting this statement to express my displeasure and strong opposition to the motion that was presented by the Republican Judiciary Committee Leadership to "move the previous question" which prevented me and other Democrats from offering amendments that would improve the bill.

Mr. Chairman, throughout the day, you and Chairman Gekas stated that you supported a number of amendments that were offered to improve the Bankruptcy Reform Bill, such as the amendment I offered to strike language in the bill that would bar the enforcement of certain foreign judgments. You stated however, Mr. Chairman, that while you supported my amendment, you would not vote in favor of it during the mark-up because you did not want to tamper with the bill. I agreed to withdraw this amendment, with assurances from you and Chairman Gekas that you would work with me to ensure it is included in the rules to be debated on the floor.

While I appreciate your commitment to protect this amendment for debate on the floor, I believe that the work ethic that has been the pride of the committee throughout the years was undermined today when good amendments that would better the bill were defeated with the excuse that the bill should be preserved "as-is."

The political process that the legislative body has followed for years promotes the offering of amendments, and the robust debate that follows to better craft and reshape legislation to benefit all Americans. Mr. Chairman, the Gestapo tactics that were used during the mark-up of the bankruptcy bill destroyed not only the minority party who sought to improve the bill, but also the American people, whose interests we represent.

Mr. Chairman, I was only allowed to offer 2 amendments to the Bankruptcy Reform Bill before the motion was passed to move the previous question, which prevented further amendments and further debate on this very important bill. Had an opportunity been allowed to adequately analyze, debate and amend H.R. 333, I had 8 additional crucial amendments to offer to the bill. They may not have been accepted, but a true democratic process would have allowed for a robust full debate and scrutiny by all interested members of the Judiciary Committee. The additional amendments I would have offered are as follows:

1. an amendment to include an exception from limitation on "cramdowns" for domestic support obligations,
2. an amendment to include an exception from the reaffirmation provisions on "cramdowns" for domestic support obligations.
3. an amendment striking the economically biased means test from the bill,
4. an amendment to expand the means test to apply to business debts,
5. amendment to make public school expenses an allowable expense under the means test,
6. an amendment to page 15 line 2 of HR 333 striking (the court) "may" and inserting (the court) "will," to make the courts responsibility stronger if creditors bring frivolous actions against creditors,
7. an amendment modifying the burden of proof creditors must shoulder to "substantially justified," to fairly proportion the prima facie case a creditor must prove bring a cause of action against a debtor.

8. an amendment to include disaster relief benefits as a recognizable income in the "means test,"

Mr. Chairman, the amendments I would have offered to the reaffirmation and limitation provisions of H.R. 333 would have provided protection to domestic support for women and children taking them out of the field of competition with creditors.

H.R. 333 places economically vulnerable women and children who are forced into bankruptcy, and those who are owed support by men who file for bankruptcy at greater risk by increasing the rights of many creditors, including credit card companies, finance companies, auto lenders and others over that of the women and children. Thousands of women and children will be held hostage by H.R. 333 because this bill effectively increases the rights of creditors over these vulnerable women and children, and sets up a competition for scarce resources between parents and children owed support and commercial creditors both during and after bankruptcy. Therefore, single parents facing financial crises often caused by divorce, nonpayment of support, loss of a job, uninsured medical expenses or domestic violence would find it harder to regain their economic stability through the bankruptcy process.

This fact is not something new, whose light has recently been cast over the dark future of bankruptcy reform that would follow H.R. 333. The fact that H.R. 333 would effectively place women and children in a gladiator's arena with creditors to do battle for child support money owed by former spouses who file bankruptcy has been articulated by national organizations such as the National Women's Law Center, the National Association of Consumer Bankruptcy Attorney's, the National Organization for Women, a coalition of bankruptcy professors and bankruptcy judges and the National Association of Attorney's General's to name but a few. How, anyone could argue against the drastic effects and hardships that the language in this bill will cause on the vulnerable women and children in this country is beyond me.

I have consistently said that the greatest challenge before us in the bankruptcy reform efforts is solving the widely recognized inadequacies of the law in the area of consumer bankruptcy. As it has always been in the Congress, the key to this process, is, of course, successfully balancing the priorities of creditors, who desire a general reduction in the amount of debtor filing fraud, and debtors, who desire fair and simple access to bankruptcy protections when they need them. H.R. 333 does not accomplish this goal.

I would have also offered an amendment replacing the means-testing standard in the legislation with a standard that more accurately reflects current law or, better put, least hurts those consumers who earnestly need to file for bankruptcy.

The means-testing standard is inadequate for those who are least equipped to conform to such a drastic alteration from current law and would be a disaster for middle-income and low-income families in America. The principal problem with the means test is that the rigid one-size-fits-all test in determining eligibility for Chapter 7 and the operation of Chapter 13 will often operate in an arbitrary fashion.

Access to bankruptcy would be more difficult, especially for low-income filers without legal assistance. The means test within HR 333 would make filings more complex, and the IRS formula it incorporates discriminates against lower-income individuals and families. The "safe harbor" provision that is supposed to protect some low-income families from the application of the IRS standards will not protect many single mothers, because it is based on the combined income of the debtor and the debtor's spouse—even if they are separated and the mother who is filing for bankruptcy is receiving no support from the non-debtor spouse from whom she is separated.

Mr. Chairman, under my amendment, a more flexible standard would have allowed the debtor to have the ability to repay debts from future debts, which is not possible under the legislation as written. I think such a change in the standard would have been warmly welcomed for middle-income and low-income filers.

Mr. Chairman, I would have also offered an amendment to expand the "means test" to apply to business debts to ensure that business debtors are treated as favorably as non-business debtors within the framework of the means-testing standard contained in the bill. My amendment essentially expands the means-test to apply to business debts.

Let me explain a few of the glaring difficulties with treatment of business debtors under HR 333. First, the bill relies upon IRS collection standards, which lay out no comprehensive or specific standards for the deduction of living expenses. In fact, the bill even fails to provide specific guidance concerning the appropriateness of deducting part or all of the funds a debtor may expend for items such as health care (both medical expenses and health insurance), taxes, and accounting and legal fees, among other things.

The 1973 Commission on Bankruptcy Laws similarly considered and rejected industry calls for mandatory Chapter 13s, noting that Congress itself rejected similar

proposals in 1967, and observed: "[b]usiness debtors are not subject to any limitation on the availability of straight bankruptcy relief, including discharge from debts, and it was pointed out, quite apart from bankruptcy, *business debtors are able to incorporate and to limit their liability to their investments in corporate assets . . .*" *See* Report of the Commission on Bankruptcy Laws, H.R. Doc. No. 137, Part I, 93rd Congress, 15859 (1973) (citations omitted) (emphasis added).

The bottom line is that business debtors incur a windfall if the legislation is not amended. There are several consumer provisions in the bill that will exact hardships on all debtors, regardless of income level or degree of culpability. This will harm consumers, especially low-income filers and place them on an unfair playing field when compared to business debtors.

Mr. Chairman, the approach regarding business and non-debtors within HR 333 must be revisited if bankruptcy reform is realized this year.

Mr. Chairman, I would have also offered an amendment to page 10, line 14 of H.R. 333 to merely add a debtor's monthly public school expenses as an allowable expense under the means test. My amendment would put public school expenses at an equal footing with that of private school expenses which is already included in the bill.

The principal problem with the means test is that the rigid one-size-fits-all test in determining eligibility for Chapter 7 and the operation of Chapter 13 will often operate in an arbitrary fashion.

Access to bankruptcy would be more difficult, especially for low-income filers who are not able to meet the requirements because they cannot list public school expenses as an allowable expense as would their private school counterparts. The "safe harbor" provision that is supposed to protect some low-income families from the application of the IRS standards will not protect many single mothers, because it is based on the combined income of the debtor *and* the debtor's spouse—even if they are separated and the mother who is filing for bankruptcy is receiving no support from the non-debtor spouse from whom she is separated. As the Committee knows, the majority of low-income families send their children to public schools (as opposed to higher-income people) because they cannot afford the private school tuition. It would seem that if the true intent of this bill were to assist all Americans, a provision recognizing public school tuition would have accompanied the recognition of private school tuition as an allowable expense under the "means test," however, this is not the case.

Under my amendment, low-income people will have a more flexible standard (that is consistent with that of high-income people) that would allow the debtor to have a fair opportunity to financial recourse, which is not possible under the legislation as written. I think such a change in the standard would be warmly welcomed for middle-income and low-income filers. We cannot in good conscience allow such an unbalanced approach to prevail.

Mr. Chairman, I would have also offered two amendments that would curtail frivolous law suits by creditors against debtors. The first amendment would have struck the word "may" and insert "shall" on page 15, line 2, of the bill, and the second amendment would have struck the words "violated" and all that followed through "procedure," and insert "was not substantially justified" to page 15, line 10, of the bill.

Mr. Chairman, these two very important amendments would have given American courts direction by specifically mandating that they must act strongly against creditors who bring frivolous actions for the sole purpose of coercing debtors into payment agreements on the creditors terms.

H.R. 333 currently increases the burden that a debtor must shoulder while tearing down the checks that are in place to prevent creditors from engaging in abusive practices. Consumer bankruptcy expert Henry Somber has stated that the provisions of H.R. 333 increase the opportunity for creditors to file the types of abusive fraud complaints which have been found by many courts to be baseless and unjustified attempts to coerce reaffirmation's by debtors who cannot afford to defend them.

The burden to defend against these actions will fall mainly upon low income debtors who are unsophisticated, do not have the time, budget flexibility, or attorney advice to defeat such frivolous actions.

My amendment would have given a force of action to the courts by placing checks on debtors seeking to abuse the judiciary by filing frivolous suits.

Mr. Chairman, I would have also offered an amendment to include "disaster relief" as a recognizable expense under the "means test." Disaster relief is not recognizable as something you can write off in HR 333 as income. That is simply ill conceived. We should be able to deduct disaster relief as a recognizable expense under the means-test because it is just as important as other considerations that were placed worked together in the bill.

This would have restored some fundamental fairness to the legislation, particularly when we think of the tragic accidents that occur with regular frequency in America.

Mr. Chairman, if means-testing and other consumer provisions will harm low-income and middle-income people, then HR 333 is sure to have an undesirable effect on consumers that are victims of disasters. While it is unclear whether how such costs will affect the overall bankruptcy system, it is clear that excluding disaster assistance from allowable expenses under the means-test in HR 333 is an unfortunate and unnecessary component of the bill.

Mr. Chairman, as I stated at the opening of my statement, I believe that justice did not prevail during the mark-up of this very important bill. The political process and American democracy was trampled on when amendments and the robust debate that would have followed to better craft and reshape this legislation was prevented. Mr. Chairman, for the good of the political process within the Judiciary Committee, the U.S. House of Representatives, and the American people, I implore you to ensure that this not happen again.

Mr. Chairman, in closing I reiterate my displeasure and strong opposition to the motion that was presented by the Republican Judiciary Committee Leadership's to "move the previous question" which prevented me and other Democrats from offering amendments to improve this very important bill.

Chairman SENSENBRENNER. The Clerk will report the motion.

The CLERK. Motion——

Mr. WATT. I reserve point of order, Mr. Chairman.

Chairman SENSENBRENNER. The Clerk will report the motion.

Mr. WATT. I reserve a point of order, Mr. Chairman.

Chairman SENSENBRENNER. As I said, the Clerk will report the motion.

The CLERK. Motion by Mr. Gekas, previous question.

Chairman SENSENBRENNER. Read the—read the motion.

The CLERK. Mr. Chairman, I move the previous question on the bill.

Chairman SENSENBRENNER. The question is on ordering the previous question.

Mr. NADLER. Parliamentary inquiry.

Chairman SENSENBRENNER. The gentleman will state his parliamentary inquiry.

Mr. NADLER. Is the maker of the motion aware there are other amendments here to be offered which you would deny the opportunity of?

Chairman SENSENBRENNER. That is not a parliamentary inquiry.

Mr. NADLER. It is an inquiry of the——

Chairman SENSENBRENNER. The motion for the previous question——

Mr. NADLER. Mr. Chairman, further parliamentary inquiry.

Chairman SENSENBRENNER. The motion for the previous question is——

Mr. NADLER. Mr. Chairman, parliamentary inquiry.

Chairman SENSENBRENNER. The gentleman from New York State's inquiry.

Mr. NADLER. Can we expect this to be the bipartisanship on this committee from now on?

Chairman SENSENBRENNER. That is not——

Mr. NADLER. Is this the way we are setting off this session?

Chairman SENSENBRENNER. That is not—that is not a parliamentary inquiry.

Mr. NADLER. To hobble and silence the minority?

Chairman SENSENBRENNER. That is not a parliamentary inquiry.

Mr. BACHUS. Regular order.

Chairman SENSENBRENNER. That is not a parliamentary inquiry. The motion is non-debatable. Those in favor of ordering the previous question will say aye.

Opposed, no.

The ayes appear to have it.

Mr. WATT. I ask for a recorded vote.

Chairman SENSENBRENNER. The Clerk will call the roll. Those in favor of ordering the previous question will as your names are called answer aye; opposed, no. And the Clerk will call the roll.

The CLERK. Mr. Hyde?

[No response.]

The CLERK. Mr. Gekas?

Mr. GEKAS. Aye.

The CLERK. Mr. Gekas, aye.

Mr. Coble?

[No response.]

The CLERK. Mr. Smith?

[No response.]

The CLERK. Mr. Gallegly?

[No response.]

The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.

The CLERK. Mr. Goodlatte, aye.

Mr. Chabot?

Mr. CHABOT. Aye.

The CLERK. Mr. Chabot, aye.

Mr. Barr?

Mr. BARR. Aye.

The CLERK. Mr. Barr, aye.

Mr. Jenkins?

[No response.]

The CLERK. Mr. Hutchinson?

Mr. HUTCHINSON. Aye.

The CLERK. Mr. Hutchinson, aye.

Mr. Cannon?

Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.

Mr. Graham?

Mr. GRAHAM. Aye.

The CLERK. Mr. Graham, aye.

Mr. Bachus?

Mr. BACHUS. Aye.

The CLERK. Mr. Bachus, aye.

Mr. Scarborough?

Mr. SCARBOROUGH. Aye.

The CLERK. Mr. Scarborough, aye.

Mr. Hostettler?

Mr. HOSTETTLER. Aye.

The CLERK. Mr. Hostettler, aye.

Mr. Green?

Mr. GREEN. Aye.

The CLERK. Mr. Green, aye.

Mr. Keller?

Mr. KELLER. Aye.

The CLERK. Mr. Keller, aye.

Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye
Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Conyers?
[No response.]
The CLERK. Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
[No response.]
The CLERK. Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.

Chairman SENSENBRENNER. Members in the room who wish to record or change their vote? The gentleman from North Carolina.

Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye.

Chairman SENSENBRENNER. Other members who wish to record or to change their vote? If not, the Clerk will report.

Mr. NADLER. Mr. Chairman? Mr. Chairman?
Chairman SENSENBRENNER. The——
Mr. NADLER. Mr. Chairman?
Chairman SENSENBRENNER. The Chair will recognize the gentleman from Michigan to change his vote.
Mr. CONYERS. No.
Mr. NADLER. Mr. Chairman?
The CLERK. Mr. Conyers, no.
Chairman SENSENBRENNER. The gentleman from New York.
Mr. NADLER. I wish to change my vote to aye.
The CLERK. Mr. Nadler changes his vote to aye.
Chairman SENSENBRENNER. The Clerk will report.
The CLERK. Mr. Chairman? Mr. Chairman, there are 18 ayes and 5 nays.
Chairman SENSENBRENNER. And the previous question is ordered——
Mr. NADLER. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman from New York seek recognition?
Mr. NADLER. Move to reconsider the vote by which the motion passed.
Mr. GEKAS. Mr. Chairman, I move to lay the motion on the table.
Chairman SENSENBRENNER. The question is on tabling the motion to reconsider the vote ordering the previous question. Those in favor will say—those in favor will as your names are called vote aye. Those opposed will vote no, and the Clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas, aye.
Mr. Coble?
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye.
Mr. Smith?
Mr. SMITH. Aye.
The CLERK. Mr. Smith, aye.
Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?
Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye.
Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Mr. Barr?
Mr. BARR. Aye.
The CLERK. Mr. Barr, aye.
Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson, aye.
Mr. Cannon?
Mr. CANNON. Aye.

The CLERK. Mr. Cannon, aye.
Mr. Graham?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye.
Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. Scarborough?
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Scarborough, aye.
Mr. Hostettler?
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Mr. Issa?
Mr. ISSA. Aye.
The CLERK. Mr. Issa, aye
Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
[No response.]
The CLERK. Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Watt, no.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.
Ms. Waters?
[No response.]
The CLERK. Mr. Meehan?
[No response.]

The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there any members in the room who wish to either record or to change their votes? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 18 ayes and 7 nays.
Chairman SENSENBRENNER. The motion to table the motion to reconsider is agreed——
Mr. NADLER. Mr. Chairman, could the Clerk report that, please? What was that? Repeat that. What was that figure?
Chairman SENSENBRENNER. The Clerk will repeat the——
The CLERK. Eighteen ayes and 7 nays.
Chairman SENSENBRENNER. And the motion to table the motion to reconsider is agreed to.
The question now occurs on the motion to report the bill H.R. 333 favorably as amended.
Mr. SCOTT. Mr. Chairman?
Chairman SENSENBRENNER. Those in favor——
Mr. SCOTT. Mr. Chairman?
Chairman SENSENBRENNER. For what purpose does the gentleman seek recognition? The previous question has been ordered.
All in favor will say aye.
Opposed, no.
The ayes appear to have it. The ayes have it.
Mr. WATT. Mr. Chairman, I ask for a recorded vote.
Chairman SENSENBRENNER. A recorded vote will be ordered. Those in favor of ordering the bill favorably reported will signify by saying aye; those opposed, no. And the Clerk will call the roll.
The CLERK. Mr. Hyde?
[No response.]
The CLERK. Mr. Gekas?
Mr. GEKAS. Aye.
The CLERK. Mr. Gekas, aye.
Mr. Coble?
Mr. COBLE. Aye.
The CLERK. Mr. Coble, aye.
Mr. Smith?
Mr. SMITH. Aye.
The CLERK. Mr. Smith, aye.
Mr. Gallegly?
[No response.]
The CLERK. Mr. Goodlatte?

Mr. GOODLATTE. Aye.
The CLERK. Mr. Goodlatte, aye.
Mr. Chabot?
Mr. CHABOT. Aye.
The CLERK. Mr. Chabot, aye.
Mr. Barr?
Mr. BARR. Aye.
The CLERK. Mr. Barr, aye.
Mr. Jenkins?
[No response.]
The CLERK. Mr. Hutchinson?
Mr. HUTCHINSON. Aye.
The CLERK. Mr. Hutchinson, aye.
Mr. Cannon?
Mr. CANNON. Aye.
The CLERK. Mr. Cannon, aye.
Mr. Graham?
Mr. GRAHAM. Aye.
The CLERK. Mr. Graham, aye.
Mr. Bachus?
[No response.]
The CLERK. Mr. Scarborough?
Mr. SCARBOROUGH. Aye.
The CLERK. Mr. Bachus?
Mr. BACHUS. Aye.
The CLERK. Mr. Bachus, aye.
Mr. Hostettler?
I got you.
Mr. HOSTETTLER. Aye.
The CLERK. Mr. Hostettler, aye.
Mr. Green?
Mr. GREEN. Aye.
The CLERK. Mr. Green, aye.
Mr. Keller?
Mr. KELLER. Aye.
The CLERK. Mr. Keller, aye.
Mr. Issa?
Mr. ISSA. Finally, aye.
The CLERK. Mr. Issa, aye
Ms. Hart?
Ms. HART. Aye.
The CLERK. Ms. Hart, aye.
Mr. Flake?
Mr. FLAKE. Aye.
The CLERK. Mr. Flake, aye.
Mr. Conyers?
Mr. CONYERS. No.
The CLERK. Mr. Conyers, no.
Mr. Frank?
[No response.]
The CLERK. Mr. Berman?
[No response.]
The CLERK. Mr. Boucher?
Mr. BOUCHER. Aye.
The CLERK. Mr. Boucher, aye.

Mr. Nadler?
Mr. NADLER. No.
The CLERK. Mr. Nadler, no.
Mr. Scott?
Mr. SCOTT. No.
The CLERK. Mr. Scott, no.
Mr. Watt?
Mr. WATT. No.
The CLERK. Mr. Scott—Watt, no.
Ms. Lofgren?
[No response.]
The CLERK. Ms. Jackson Lee?
Ms. JACKSON LEE. No.
The CLERK. Ms. Jackson Lee, no.
Ms. Waters?
Ms. WATERS. No.
The CLERK. Ms. Waters, no.
Mr. Meehan?
[No response.]
The CLERK. Mr. Delahunt?
[No response.]
The CLERK. Mr. Wexler?
[No response.]
The CLERK. Ms. Baldwin?
Ms. BALDWIN. No.
The CLERK. Ms. Baldwin, no.
Mr. Weiner?
[No response.]
The CLERK. Mr. Schiff?
Mr. SCHIFF. No.
The CLERK. Mr. Schiff, no.
Mr. Chairman?
Chairman SENSENBRENNER. Aye.
The CLERK. Mr. Chairman, aye.
Chairman SENSENBRENNER. Are there additional members in the room who wish to record or to change their votes? If not, the Clerk will report.
The CLERK. Mr. Chairman, there are 19 ayes and 8 nays.
Chairman SENSENBRENNER. And the motion is agreed to. The bill is favorably reported.
Without objection——
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER [continuing]. The bill will be favorably——
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER [continuing]. Reported——
Mr. WATT. Mr. Chairman, I object.
Chairman SENSENBRENNER. The objection is heard. We will take care of that in the Rules Committee.
Mr. WATT. Mr. Chairman?
Chairman SENSENBRENNER. Without objection, the chairman has authorized to move to go to conference.
Mr. WATT. I object.
Mr. SCOTT. Mr. Chairman? Mr. Chairman, reserving the right to object.

Chairman SENSENBRENNER. The objection is heard. The Chair—the gentleman from Texas, Mr. Smith.

Mr. SMITH. Mr. Chairman, pursuant to——

Chairman SENSENBRENNER. Will you turn your mike on, please?

Mr. SMITH. I'm sorry.

Mr. Chairman, pursuant to Clause 1 of House Rule 22, I move that the chairman be authorized to make such motions in the House as may be necessary to go to conference with the Senate on H.R. 333.

Mr. SCOTT. Mr. Chairman, reserving the right to object.

Chairman SENSENBRENNER. This is a motion. The question is on the adoption——

Mr. SCOTT. Move to strike the last word.

Mr. WATT. Mr. Chairman, I move to strike the last word.

Mr. SCOTT. Last word on the amendment—on the motion.

Chairman SENSENBRENNER. The gentleman from Virginia.

Mr. SCOTT. Mr. Chairman, I oppose the motion because I was not able to offer amendments, one of which would have exempted from monthly expenses new illnesses or disabilities incurred by family members, another—allow making sure that it was the trustee to determine private school expenses, another that would have limited small businesses exemption from frivolous and coercive litigation, another to put renter-own contracts on the same level as other installment contracts, a study of the effect of this bill on homicide, suicide, and civil commitments. A reasonable expense limitation is in the bill at 10 percent. That is unreasonable, particularly for small estates, and, again—and in calculating the—your current income to exclude in the last 6 months that receipt of lump sum—non-recurring lump sums such as gifts inheritances and litigation recoveries. None of these have been considered because of the motion to close debate on the previous question, and, therefore, I would oppose the motion of the gentleman from Texas.

I yield back.

Ms. JACKSON LEE. Mr. Chairman? Mr. Chairman? Mr. Chairman? This way, Mr. Chairman. Look this way. Mr. Chairman?

Mr. SMITH. Mr. Chairman, I would like to withdraw the motion.

Chairman SENSENBRENNER. The motion is withdrawn. All members will be given 2 days as provided by House Rules in which——

Ms. JACKSON LEE. Mr. Chairman?

Chairman SENSENBRENNER [continuing]. To submit additional dissenting supplemental or minority views.

We have another bill that——

Ms. JACKSON LEE. Mr. Chairman, can you object at this time or is the objection ongoing?

Chairman SENSENBRENNER. For the 2 days that is provided in House Rules, it does not require unanimous consent, but does have to be stated by the Chair at the time the bill is reported.

Ms. JACKSON LEE. And so, Mr. Chairman, for clarification sake, understanding the rule, if you want to submit your basis for objections, can I submit them in writing into the record?

Chairman SENSENBRENNER. They will be within 2 days. If they are submitted within 2 days, every member has the right to submit whatever they would like to, and that is printed as a part of the committee report.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I would like to continue my objection to the bill.

Chairman SENSENBRENNER. Okay. We duly note it.

Ms. WATERS. Mr. Chairman?

Mr. NADLER. Mr. Chairman?

Chairman SENSENBRENNER. All members will be given 2 days as provided by House Rules in which to submit additional dissenting supplemental or minority rules.

For what purpose does the gentleman from New York seek recognition?

Mr. NADLER. To make a statement, Mr. Chairman.

Mr. Chairman, this markup session was noticed for 2 days, today and tomorrow. I have no objection to shortening it to 1 day. I would like to go home. But what was done to destroy the rights of the minority and the rights of the American people that we represent by moving the previous question so that amendments could not be offered; amendments, the contents of which you don't know.

One amendment I would have offered would have been to correct a technical correction. The way the bankruptcy bill reads now in educational loan fraud section, the debts of the victims of the fraud are non-dischargeable, but the debts of the criminals are dischargeable. That was a simple drafting error. I am sure no one meant it. It was upside-down. It should have been the other way around. That amendment could not be offered.

I would have offered an amendment to substitute Mr. Gekas' language from last year where we had a reasonable definition of household goods in last year's bill to the unreasonable definition in this year's bill.

I would have offered an amendment to remove the language in this year's bill that was not in last year's bill that we never saw until the conference committee that applies all of the non-discharge provisions of chapter 7 to business bankruptcies in chapter 11 with no good reason and with disastrous effects on small businesses.

Now, the fact is in my 8 years of service here, I don't recall the previous question having been called in this committee except 4 years ago on the same bill, and the chairman then was apologetic and said that he was under orders from the Speaker to get the bill out by a date certain and we had had about 6 or 7 days of markup by then. And he made a promise to us to go to the Rules Committee and ask that amendments that haven't had a chance be offered because of that motion would be made an order on the floor.

Now, this is the first major bill of the session. The majority trampled over the rights of the minority by calling the previous question. So we couldn't even offer the amendments. I hope this will not happen again. If it does happen again, then we are obviously going to have a war in this committee, and I hope that won't happen.

Chairman SENSENBRENNER. The Chair will respond to the gentleman from New York and others.

The Chair and the members of this committee have been very patient, and we went through 16 amendments that were offered by the minority where there was a full and a fair debate.

We got to the sixteenth amendment, and one of the members of the committee objected to the standard motion that an amendment be considered as read and open for amendment at any point. At

that time, the Chair told the minority party staff that if this was to be continued, we would move the previous question.

I was informed by the minority party staff that the member who objected intended to continue objecting to waiving the readings of amendments that were offered. This committee is going to do its business. This committee is not going to be subjected into dilatory tactics. I would hope that the bipartisan olive branch that I as chairman have offered to the minority on a lot of procedural things will be reciprocated by all of the members of the minority party, and if that is the case, we can move on fairly smoothly, but if it is not the case, then the majority will have to do its job alone.

The committee stands adjourned.

[Whereupon, at 5:13 p.m., the committee was adjourned.]

DISSENTING VIEWS

Although we would support a responsible and balanced bankruptcy reform effort that remedies debtor and creditor abuses in a balanced manner, we cannot support H.R. 333 in its present form. We believe the bill, while modestly improved from the legislation reported by the committee last Congress, remains flawed. We oppose the bill because it is likely to harm low income consumers, women and children reliant on alimony and child support, and employees of troubled businesses, among other vulnerable groups. The risks that this legislation poses are far too grave, particularly at a time when our nation is experiencing an economic slowdown, if not an outright recession.

We would also note that the legislation is being brought to the floor under a continuing specter of procedural abuse. Although 2 days were scheduled for markup, the majority called the previous question on the first day, blocking the ability of the Democrats to offer more than two-thirds of their proposed amendments.[1] Of the amendments that Democrats did offer, every single one, including those proposing only studies or curing obvious technical flaws in the bill, were voted down on purely partisan lines. This comes on top of the egregious breach in procedures last Congress, when the majority inserted the bankruptcy bill into a defunct State Department authorization conference (H.R. 2415) without the benefit of a single meeting of conferees.[2]

H.R. 333 is an omnibus bankruptcy bill that includes titles concerning consumer bankruptcy, business bankruptcy, municipal bankruptcy, tax, and bankruptcy administration. Although some of the bill's titles and provisions are non-controversial and stem from recommendations of the congressionally-created National Bankruptcy Review Commission (which completed its 2-year review of the bankruptcy laws in October 1997), provisions in the titles relating to consumer and business bankruptcies and tax matters constitute a significant and dangerous departure from historical bankruptcy procedures.

The legislation has engendered widespread opposition among groups concerned about bankruptcy policy. Groups which have opposed, or have expressed serious concerns with, H.R. 333 or its predecessor versions, include the following:

(1) groups concerned about the preservation of jobs and the rights of workers, including the AFL–CIO; the American Federation of State, County, and Municipal Employees; the United Auto Workers; the Union of Needletrades, Indus-

[1] This is the second time in the history of this legislation, which is now in its third Congress, that the majority has cut off consideration by calling the previous question while Democratic amendments were pending at the desk.

[2] Notwithstanding a unanimous vote by the House instructing the conferees to hold a meeting, the conference report was filed with the Rules Committee a few hours after the vote.

trial and Textile Employees; the Service Employees; the United Steel Workers; and the Teamsters;[3]

(2) groups of non-partisan bankruptcy lawyers, judges, and academics, including the Judicial Conference of the United States, National Bankruptcy Conference , the American Bankruptcy Institute, the National Conference of Bankruptcy Judges, the National Association of Chapter 13 Trustees, the National Association of Bankruptcy Trustees, the Commercial Law League of America, the American College of Bankruptcy, and the National Association of Consumer Bankruptcy Attorneys;[4]

(3) groups concerned about the rights of women, children, seniors, and victims of crimes and torts, including the National Women's Law Center, the National Partnership for Women and Families, the National Organization for Women, the Association for Children for Enforcement of Support, the California Women's Law Center, Mothers Against Drunk Driving, the National Organization for Victim Assistance, the National Abortion and Reproductive Rights Action League, the National Victim Center, the National Council of Senior Citizens, and the Committee to Preserve Social Security and Medicare;[5] and

(4) consumer and civil rights organizations, including the Leadership Conference on Civil Rights, National Consumer Law Center, Consumers Union, the Consumer Federation of America, U.S. Public Interest Research Group, Public Citizen, the Alliance for Justice, and the National Council of Senior Citizens.[6]

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[3] Written statement of Damon Silvers, Office of the General Counsel, AFL–CIO, *Feb. 8 Hearing on H.R. 333, the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2001 before the House Jud. Comm.*, (February 8, 2001)(Hereafter: "February 8, 2001 Hearing"); Letter from Charles M. Loveless, Director of Legislation, AFSCME, to Members of Congress (Apr. 19, 1999); Letter from Alan Reuther, Legislative Director, UAW, to Members of Congress (Apr. 26, 1999); Letter from Ann Hoffman, Legislative Director, UNITE, to the Honorable John Conyers, Jr., Ranking Member, House Comm. on the Judiciary (May 4, 1998).

[4] Written statement of Edward R. Becker on behalf of the Judicial Conference of the United States, *Feb. 8, 2001 Hearing on S. 220, the Bankruptcy Reform Act of 2001*; statement of Ralph Mabey, National Bankruptcy Conference, *Feb. 8, 2001 Hearing*; written statement of the Honorable William Houston Brown, ABI; *Hearing on H.R. 833, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commercial and Admin. Law*, 106th Cong., 1st Sess. (Mar. 17, 1999) [hereinafter, "March 17, 1999 Hearing"]; (written statement of the Honorable Randall J. Newsome, NCBJ; *Id.* (written statement of Henry E. Hildebrand, III, NACTT); *Id.* (written statement of Robert H. Waldschmidt, NABT); Letter from Mark Sheriff, President of the Commercial Law League of America, to Members of the House and Senate (Feb., 2001); Letter from Raymond L. Shapiro, Chair, American College of Bankruptcy, to Members of Congress (Apr. 26, 1999); Letter from Norma Hammes, President, NACBA, to Members of Congress (Apr. 26, 1999).

[5] Letter from Patricia Ireland, President, NOW, to the Honorable John Conyers, Jr., Ranking Member, House Comm. on the Judiciary (May 15, 1998); Letter from Geraldine Jensen, President, ACES, to the Honorable George W. Gekas, Chair, House Subcomm. on Commercial and Admin. Law (Mar. 17, 1999); Letter from Abby J. Leibman, Executive Director, California Women's Law Center, to the Honorable Dianne Feinstein, Senate Comm. on the Judiciary (Apr. 27, 1998); Letter from Karolyn V. Nunnallee, National President, MADD, to Members of Congress (Apr. 26, 1999); Letter from Marlene A. Young, Executive Director, NOVA, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 26, 1999); Letter from David Beatty, Director of Public Policy, The National Center for Victims of Crime, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Apr. 28, 1999); Letter from Dan Schulder, Director Legislation, National Council of Senior Citizens, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (June 9, 1998); Letter from Martha A. McSteen, President, National Committee to Preserve Social Security and Medicare, to the Honorable Jerrold Nadler (Feb. 14, 2001); Letter from Deborah Briceland-Betts, Executive Director, OWL, to the Honorable Melvin L. Watt, Ranking Member, Subcommittee on Commercial and Administrative Law (Feb. 14, 2001).

[6] Letter from the Leadership Conference on Civil Rights to Members of Congress (Apr. 21, 1999); Letter from Gary Klein, Senior Attorney, National Consumer Law Center, to Members

Section I of these Dissenting Views describes our concerns regarding the lack of empirical justification for the legislation. Section II describes concerns with the consumer provisions, including, most notably, the means test. Section III discusses flaws in the business provisions, and Section IV turns to the tax sections of H.R. 333.

I. LACK OF EMPIRICAL JUSTIFICATION

Close scrutiny of the quantitative evidence concerning the causes, costs, and effects of bankruptcy reveals that at best, the proponent's empirical justifications are overblown, and at worst, they are misstated. H.R. 333's proponents have sought to justify the bill's enactment based on claims (1) the United States is experiencing a dramatic growth in the number of bankruptcy filings, and (2) credit industry-funded studies by Professor Michael Staten of Georgetown University's Credit Research Center (CRC),[7] Ernst & Young,[8] and the WEFA[9] group that purport to demonstrate that the bankruptcy laws allow many relatively high income individuals to avoid debts they could otherwise pay and that this avoidance imposes substantial costs on the economy. However, the vast weight of the data and studies contradict the proponents' rationales and instead shows that non bankruptcy law factors are the root cause of increased bankruptcy filings.

Analysts with the Congressional Budget Office,[10] the General Accounting Office,[11] and the Federal Deposit Insurance Corporation all have called into question the conclusions of studies cited by the bill's supporters. These critiques are based on a number of grounds,

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of Congress (Apr. 23, 1999); Press Release of National Consumer Law Center, Consumer Federation of America, Consumers Union, and U.S. PIRG (Apr. 19, 1999); Press Release of Consumers Union and the Consumers Federation of America (Feb. 14, 2001); Letter from Frank Clemente, Legislative Director, Public Citizen, to House Comm. on the Judiciary (May 11, 1998); Letter from Nan Aron, President, Alliance for Justice, to Members of the Senate Comm. on the Judiciary (Apr. 23, 1998); Letter from Dan Schulder, Director Legislation, National Council of Senior Citizens, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (June 9, 1998).

[7] JOHN M. BARRON & MICHAEL E. STATEN, PURDUE UNIVERSITY CREDIT RESEARCH CENTER, PERSONAL BANKRUPTCY: A REPORT ON PETITIONERS' ABILITY TO PAY (Oct. 1997) (concluding that 5% of chapter 7 debtors could repay all of their non-priority, non-housing debt over 5 years, 10% could repay at least 78% of such debt, and 25% could repay 30% of their debt).

[8] Policy Economics and Quantitative Analysis Group, *Chapter 7 Bankruptcy Petitioner's Ability to Repay: Additional Evidence from bankruptcy Petition Files*, Ernst & Young LLP (Feb. 1998).

[9] WEFA Group Resource Planning Service, *The Financial Costs of Personal Bankruptcy* 4 (Feb. 1998) (calculated that "financial losses due to 1997 personal bankruptcies totaled more than $44 billion. . . . Unsecured nonpriority losses totaled almost $35 billion in 1997 . . . [and] passing such financial losses on to consumers in terms of higher prices would cost the average household over $400 annually;" and that the needs based proposal in the bill "should decrease financial costs due to bankruptcy . . . from 8% to 17% annually").

[10] Kim J. Kowalewski, *Evaluations of Three Studies Submitted to the National Bankruptcy Review Commission* 4 (Oct.6, 1997). Kim Kowalewski of the Congressional Budget Office, at the request of the National Bankruptcy Review Commission, conducted a review of three economic analyses of this question. Kowalewski concluded that a 1996 VISA study did not support such a conclusion and, in fact, "because the social trends variable is flat during 1995 and early 1996 . . . social factors played no role behind the increase in personal bankruptcies in that period."

[11] At the request of Senators Charles Grassley and Richard Durbin, the General Accounting Office examined the CRC study and found five areas of concern: (1) data supplied by the debtors regarding their income expenses, and debts and the stability of their income and expenses over a 5-year period were not validated, (2) the report did not define the universe of debts for which it estimated debtors' ability to pay, (3) payments on non-housing debts that debtors stated they intended to reaffirm were not included in debtor expenses in determining the net income debtors had, (4) the CRC did not account for the considerable variation among the 13 locations used in the analysis, and (5) a scientific random sampling methodology was not used to select the 13 bankruptcy locations or the bankruptcy petitions used in the analysis. GENERAL ACCOUNTING OFFICE, PERSONAL BANKRUPTCY: THE CREDIT RESEARCH CENTER REPORT ON DEBTORS' ABILITY TO PAY, GAO/GGD–98–47 (Feb. 1998).

including numerous flaws in the analysis and the assumptions underlying the studies. These analyses indicate that the rise in bankruptcies is more properly attributable to a number of changes unrelated to the bankruptcy laws, such as unexpected medical costs, family crises like divorce, loss of high paying full time jobs, and most notably, the deregulation of credit card interest rates and the dramatic increase in credit card solicitations and overall consumer debt.[12] It also has been shown that the average income of persons filing for bankruptcy has declined from the 1980's, further contradicting assertions of widespread abuse by high-income individuals.[13]

One of the most revealing studies was performed by the non-partisan American Bankruptcy Institute, which commissioned Professors Marianne B. Culhane and Michaela M. White of the Creighton University School of Law to conduct a study a comprehensive database of chapter 7 cases.[14] The study estimated that a mere 3.6% of the debtors had sufficient income, after deducting allowable living expenses, to pay all of their non-housing secured debts, all of their unsecured priority debts, and at least 20% of their unsecured nonpriority debts. Moreover, in making their calculations, Professors Culhane and White assumed that 100% of the debtors in chapter 13 would complete a 5-year repayment plan even though more than two-thirds of voluntary chapter 13 plans currently do not complete.

The American Bankruptcy Institute study also showed that, while the credit industry estimates it may be eligible recover $4 billion under the rigid standards of the means test, creditors would receive only $450 million in actual collections. The Executive Office of United States Trustees in the Justice Department conducted a study that reached similar results, estimating that passage of the legislation probably would have netted creditors no more than 3% of the $400 per household they claim to be losing. These figures indicate that the credit industry funded studies may have overstated the "problem" by as much as 500%.

It is also important to note we have never received any evidence that the credit card industry likely would pass on any of the "savings" from bankruptcy law changes to individual consumers. Instead the evidence shows that credit card companies, which represent by far the most profitable sector of the commercial banking business,[15] tend to maintain high interest rates, even when their

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[12] The Federal Deposit Insurance Corporation ("FDIC") contested many of assertions made in the above-noted studies. FEDERAL DEPOSIT INSURANCE CORP., Bank Trends (Mar. 1998); Lawrence M. Ausubel, *Credit Card Defaults, Credit Card Profits, and Bankruptcy*, 71 American Bankruptcy L.J. 249 (1997). The FDIC observed a strong correlation between credit card default rates and personal bankruptcies, both of which increased in the 1990's. The FDIC found that, because of and following interest rate deregulation in 1978, credit card companies became more profitable and credit card lenders were able to extend more unsecured credit to less creditworthy borrowers. See also, David A. Moss, *The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both*, Spring, American Bkcy L. J, Spring 311 (1999) (review of empirical evidence indicates that increased availability of credit, rather than declining stigma, are the most likely source of the recent increase in bankruptcy filings).

[13] AMERICAN BANKRUPTCY INSTITUTE, 18 ABI JOURNAL 1 (Apr. 1999); LAWRENCE M. AUSUBEL, UNIVERSITY COLLEGE LONDON, A SELF-CORRECTING "CRISIS": THE STATUS OF PERSONAL BANKRUPTCY IN 1999 1 (Mar. 10, 1999).

[14] *March 17, 1999 Hearing* (written statement of Marianne B. Culhane); MARIANNE B. CULHANE & MICHAELA M. WHITE, TAKING THE NEW CONSUMER BANKRUPTCY MODEL FOR A TEST DRIVE: MEANS-TESTING REAL CHAPTER 7 DEBTORS (Mar. 8, 1999).

[15] In 1993, credit card banks were nearly four times as profitable as all commercial banks. Despite the slight decrease in the average credit card interest rate, credit card banks remain

own cost of credit declines.[16] The lack of competition in this industry has caught even the Justice Department's attention, which has brought an antitrust suit against VISA and MasterCard in the Southern District of New York.[17]

II. CONSUMER PROVISIONS

A. Current Law and Proposed Changes

Under current law, individuals facing financial difficulty may seek a variety of forms of relief under the bankruptcy laws, with chapter 7 (liquidation) being by far the most common form of relief sought. Under this chapter, debtors are required to forfeit all of their property other than their "exempt" assets (*i.e.*, deemed necessary for the debtor's maintenance, as determined under Federal or State law, at the State's option) in exchange for receiving a discharge of their unsecured debts. Creditors are entitled to receive any net proceeds from the sale of the debtor's nonexempt property, subject to the statutory priority schedule.[18] The Bankruptcy Code does not permit the discharge of certain debts whose payments are considered to be important to society. Some of this debt is of the same nature as priority debt (*e.g.*, family support obligations and taxes), but the law also excepts from discharge debts incurred through the debtor's misconduct, such as debts arising from fraud and intentional injuries.[19]

While there are no specific financial criteria for determining who may seek chapter 7 relief, § 707(b) of the Bankruptcy Code grants the court the discretion to deny relief where the filing is found to be a "substantial abuse."[20] Under § 707(b), however, there is a presumption *in favor* of granting relief to the debtor. This stems in part from the costs and potential hardships associated with developing excessive barriers to chapter 7 eligibility, the belief that the "honest but unfortunate debtor"[21] should be entitled to a "fresh start," the importance of encouraging risk-taking and entrepreneurship, and avoiding situations where it is impossible for individ-

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twice as profitable as commercial banks. *March 16, 1999 Hearing* (written statement of the Honorable Joe Lee) (citing FEDERAL RESERVE BOARD, THE PROFITABILITY OF CREDIT CARD OPERATIONS OF DEPOSITORY INSTITUTIONS (Aug. 1997)).

[16] In 1996, Professor James Medoff, the Meyer Kestnbaum Professor of Labor and Industry at Harvard University, pointed out that, between 1980 and 1992, when the Federal funds rate (the interest that banks charge for overnight loans) fell from 13.4% to 3.5%, a drop of nearly 10 percentage points, the average credit card interest rate rose from 17.3% to 17.8%. Professor Medoff suggests that during the 1980's, when interest rates were high, lenders learned a valuable lesson; consumer debtors in general pay very little attention to interest rates. *March 16, 1999 Hearing* (written statement of the Honorable Joe Lee at 1) (citations omitted).

[17] Kenneth N. Gilpin, "ANTITRUST SUIT FILED AGAINST VISA AND MASTERCARD," N.Y. TIMES, Oct. 8, 1998, at C1.

[18] For example, the costs of administering the estate are entitled to the first priority, and payments of alimony, child support, and taxes are entitled to later priorities, with general unsecured debt entitled to any residual assets left over. 11 U.S.C. § 507(a).

[19] 11 U.S.C. § 523(a).

[20] The Code does not define the term "substantial abuse," which is used in § 707(b), although, some courts have found that the ability to pay an appreciable proportion of one's debts over 3 years, using future income, could constitute "substantial abuse." See, e.g., *Fonder* v. *United States*, 974 F.2d 996 (8th Cir. 1992) (debtor could pay 89% of unsecured debts in 3 years); In re Krohn, 886 F.2d 123 (6th Cir. 1989) (ability to pay portion of debts from "ample income" in excess of $80,000 per year); In re Walton, 866 F.2d 981 (8th Cir. 1989) (ability to pay two thirds of debts in 3 years).

[21] *Local Loan* v. *Hunt*, 292 U.S. 234 (1934).

uals to escape aggressive creditor collection tactics.[22] Section 707(b) is not the only provision in the Bankruptcy Code that prevents individuals from misusing chapter 7. For example, creditors may request that certain debts be held nondischargeable under § 523(a) or that the debtor be denied a discharge altogether under § 727.

A separate bankruptcy alternative available to individual debtors is chapter 13, formerly known as a wage earner's plan.[23] Under chapter 13, a debtor is permitted to retain his or her property, but is required to pay to creditors over a 3–5 year period out of future income at least as much as the creditors would have received under a chapter 7 liquidation, and is also required to pay all priority debts in full. To accomplish this, the debtor must propose a plan, administered by a trustee, that pays creditors in full or that devotes the debtor's "disposable income" after accounting for necessary support of the debtor, his or her family, or a business. In order to encourage the use of chapter 13 plans, which are currently voluntary to the debtor, Congress determined that persons who meet their chapter 13 obligations are entitled to a broader discharge of their unpaid debts than is available under chapter 7. This "superdischarge" results in the discharge of several types of debt that chapter 7 does not discharge. In addition, debtors are permitted to retain property whether or not the property is encumbered by liens and the debtor committed a prepetition default, so long as the chapter 13 plan cures any arrearages. In this manner, debtors can use chapter 13 to save their homes from foreclosure. In addition, in chapter 13 a debtor is permitted to bifurcate a loan on personal property, such as an automobile, into secured and unsecured portions based on its present value, and treat only the secured portion as a secured claim that must be paid in full with interest.[24] Also, chapter 13 plans can provide for the payment of priority debts, such as taxes and family support obligations, before payment on general unsecured debts.

H.R. 333 would institute a number of major changes to consumer bankruptcy, in general, and chapter 7 and 13 in particular, that may reduce the number of bankruptcy filings (but will not reduce the number of cases of financial hardship) and that are designed to increase pay-outs to non-priority unsecured creditors, particularly credit card companies, as well as to certain secured lenders, especially those extending credit for automobile loans.

1. Means Testing

The most far-reaching change, set forth in section 102 of the bill, would institute a so-called "means testing" approach to consumer

[22] There are a number of disincentives to filing for bankruptcy, such as the fact that a person filed for a chapter 7 bankruptcy will be disclosed on a debtor's credit report, and the law's prohibitions on repeat chapter 7 filings for 6 years.

[23] The eligibility requirements for chapter 13 may be found in 11 U.S.C. § 109(e). To be eligible for chapter 13, an individual must have regular income and unsecured debts of less than $269,250 and secured debts of less than $807,750. These numbers were indexed for inflation in April 1998. Individuals who exceed these thresholds may reorganize their affairs under chapter 11.

[24] This is known as a "stripdown." Specifically, except for certain home mortgages, a debtor in chapter 13 may be able to bifurcate a debt to a secured creditor, treating only the *current value* of the collateral as secured, even if it is less than the full amount of the loan, and treating the remaining debt as unsecured.

bankruptcy.[25] This new standard would create a presumption of abuse of the bankruptcy system and deny chapter 7 relief to debtors who fail a "means test." The means test applies only to debtors with primarily consumer debts. The means test in general works as follows:

First, the debtor's "current monthly income" is computed. This is the average of the debtor(s)' monthly income over the last 6 months before the bankruptcy, excluding Social Security benefits and war crimes reparations.

Second, the following are subtracted from the current monthly income:

a. total priority debts divided by 60

b. the scheduled payments on secured debts over the next 60 months, divided by 60

c. arrears on secured debts such as mortgages and car payments

d. monthly expenses permitted by the Internal Revenue Service collection guidelines, with possible 5% increase for food and clothing allowances if demonstrated to be "reasonable and necessary", long-term care expenses for the elderly or disabled, expenses due to domestic violence, and private school expenses up to $1500 per child annually[26] if there is an explanation of why they are reasonable and necessary.

e. if debtor is eligible for chapter 13, hypothetical administrative expenses for chapter 13, but only up to 10% of projected plan payments.

All of the calculations must be done as part of the debtor's schedules. If after deducting the allowed expenses, the debtor has enough "disposable income" over 60 months to pay $10,000 ($166.67 per month) or 25% of the nonpriority unsecured debts (unless the disposable income is less than $100 per month), the debtor is presumed to be abusing chapter 7.

If a debtor is presumed to be abusing chapter 7, the U.S. trustee must move to dismiss or file a report about why no motion is filed. Any creditor may also move to dismiss under the means test. However, no motion under § 707(b) may be filed if the current monthly income of the debtor and the debtor's spouse is less than the State median income.[27] If a motion is filed under the means test, the court has little discretion to deny it. The presumption of abuse can be overcome only if there are "special circumstances" that can be

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[25] Subsection (a) of section 102 amends section 707(b) of the Bankruptcy Code to permit a court, on its own motion, or on motion of the United States trustee, private trustee, bankruptcy administrator, or party in interest, to dismiss a chapter 7 case for abuse if it was filed by an individual debtor whose debts are primarily consumer debts.

[26] The bill discriminates against public education by failing to allow parents to deduct comparable public school expenses (such as for enrichment programs, books and the like). Representative Jackson Lee had intended to offer an amendment to cure this disparity, but she was prevented from offering the amendment when the majority moved the previous question.

[27] However, due to a drafting error, the income of the debtor's spouse is counted regardless of whether the case is a joint case, and even if the spouse is separated and contributing nothing to the debtor's household. To address this clear drafting error, Representative Schiff offered an amendment to ensure that the spouse's income is not counted if the couple is legally separated. Representative Gekas voiced his opposition to correcting the error at the markup: "I hasten to say that the gentleman may have struck a cord of error here in which, again, we became frozen in time, as it were, during the conference to preserve the unity of the bill. It may have been an oversight." Nevertheless, the amendment was rejected on a straight party-line vote.

documented that require adjustment of the debtor's income or expenses for which there is "no reasonable alternative."

Although the means test is only applicable above median income,[28] all debtors must complete the means test calculations. This gives rise to the possibility that trustees or U.S. trustees will bring motions for abuse under § 707(b)'s new looser standard ("totality of the circumstances" or "bad faith") and use the means test calculations to support the argument that the debtor could afford to pay creditors, especially since chapter 7 trustees could receive compensation under the chapter 13 plan.

The bill also converts the Chapter 13 plan requirements for debtors with income above the State median into a mandatory approach based upon IRS expense standards rather than a flexible approach under the current section 1325 to determine disposable income. Accordingly, under section 102(h) of the bill, debtors would be required to dedicate all of their available income to unsecured debt, again after allowing deductions for secured and priority debts and living expenses per the means test and its IRS collection standards, *even if* the debtor's actual expenses are reasonable but exceed the IRS permitted, but arbitrarily-created, expenses.[29] Although the provisions clarifying the means test allow for adjustments in currently monthly income and expenses for "special circumstances" this requires the debtor to file a motion with the court, which may be challenged by the trustee or any creditor, with the burden of proof lying with the debtor.[30]

The bill also goes on for these debtors to calculate the means test using expenses over 5 years rather than 3 years. This guarantees that, if the means test pushes a debtor into chapter 13, the repayment capacity assumptions would force the debtor into a 5-year repayment plan. This legislation also greatly curtails the broader discharge currently available to debtors who have successfully completed a chapter 13 plan, eliminating a significant inducement for voluntary debtor participation in chapter 13.

2. Exceptions to Discharge & Loan Bifurcations

H.R. 333 would make two significant additions to the types of debts that a debtor may not discharge under chapters 7 or 13 and proscribes a debtor's ability to bifurcate a loan into secured and unsecured portions based upon the value of the collateral.

Section 310 would allow a creditor to presumptively challenge the dischargeability of debts of $250 or more in the aggregate (as opposed to $1,075 under current law) or more owed to a single creditor for "luxury goods or services" incurred within 90 days prior to the bankruptcy filing (as opposed to 60 days under current

[28] Two forms of "safe harbors" are recognized under section 102(a). One provides that only a judge, United States trustee, bankruptcy administrator, or private trustee may bring a motion under section 707(b) of the Bankruptcy Code if the chapter 7 debtor's income (or in a joint case, the income of debtor and the debtor's spouse) does not exceed the State median family income for a family of equal or lesser size (adjusted for larger sized families), or the State median family income for one earner in the case of a one-person household. The second safe harbor provides that no motion under section 707(b)(2) may be filed by a judge, United States trustee, bankruptcy administrator, private trustee, or other party in interest if the debtor and the debtor's spouse combined have income that does not exceed the State median family income for a family of equal or lesser size (adjusted for larger sized families), or the State median family income for one earner in the case of a one-person household.

[29] H.R. 333, § 102(h) (proposed amendment to 11 U.S.C. § 1325(b)).

[30] H.R. 333, § 102 (proposed amendment to 11 U.S.C. § 707).

law).[31] Additionally, § 310 also makes presumptively nondischargeable cash advances aggregating at least $750 incurred within 70 days before the order for relief, to one or more creditors in an open-ended credit plan. This means that, if a debtor uses several cards to purchase basic household needs (there is no requirement that these cash advances be used for luxury goods) over a 70 day period, even if the debt to each creditor is a fraction of the $750 threshold, all the debts would be nondischargeable. (Current law makes cash advances aggregating more than $1075 nondischargeable if they are incurred more than 90 days before the filing.[32]

Section 314 adds another exception to discharge when the "debtor incurred the debt to pay a tax to a governmental unit that would be nondischargeable."[33] Therefore, regardless of the debtor's intent, any debts incurred to pay a nondischargeable tax debt—for example, by electronic tax filing—would be nondischargeable.[34]

Section 306 would also largely eliminate the possibility of loan bifurcations in chapter 13 cases. As noted above, under current law a debtor is permitted to bifurcate a loan between the secured and unsecured portions, and to treat only the secured portion as a priority debt. The legislation prevents such bifurcations (including with regard to interest and penalty provisions) with respect to any loan for the purchase of a vehicle in the 5 years before bankruptcy, as well as all loans secured by other property incurred within 1 year before bankruptcy.

3. Domestic Support

Sections 211–219 of the bill make a number of changes to current law purportedly intended to enhance the status of child support and alimony payments in bankruptcy. These changes are presumably being made in an effort to offset the considerable criticism the legislation has received from child and spouse support advocates. However, the most significant effect is to give priority to child support debts assigned to the State.[35]

Section 211 creates a new definition of "domestic support obligation." In addition to applying to debts owed on account of child support and alimony, which are largely covered by current law, the new definition includes alimony and child support debts owed or recoverable to a governmental unit. This definition is in turn relevant to new sections of the Bankruptcy Code that give certain enhanced rights to the holders of domestic support obligations in terms of priorities, payments, automatic stay, preferences, and foreclosure.

Section 212 grants alimony and child care creditors a first priority in bankruptcy (they are currently seventh, although most of the higher priority debts are seen rarely in consumer bankruptcy cases). Section 213 prevents the confirmation of a reorganization plan unless the debtor has paid all domestic support obligations. Section 214 provides that the automatic stay does not prevent legal actions enforcing wage orders for domestic support obligations and

[31] H.R. 333, § 310 (proposed amendment to 11 U.S.C. § 523(a)(2)(C)).
[32] 11 U.S.C. § 523(a)(2)(C).
[33] H.R. 333, § 314 (proposed amendment to 11 U.S.C. § 523(a)).
[34] H.R. 333, § 315.
[35] Under current law, such debts are non-dischargeable, but are not a priority.

similar actions. Section 215 makes nondischargeable all domestic support obligations, including obligations owed to government support agencies. Section 216 permits nondischargeable domestic support obligations to be collected from property—notwithstanding State laws making that property exempt from collection or attachment—after bankruptcy. Section 217 makes clear that a transfer that was a bona fide payment for a domestic support obligation will not be considered a fraudulent prepetition transfer. Section 218 specifies that alimony and child support payments are not included in the definition of disposable income in chapter 12 and 13 cases. Finally, section 219 of the bill requires chapter 7 and chapter 13 trustees to send written notice to recipients of alimony and child support payments, and to the local and State child support agencies, notifying them that a debtor of such payments has filed for bankruptcy.

4. Other Anti-Debtor Provisions

The legislation makes a host of additional changes to the consumer provisions of the bankruptcy laws. The majority of the provisions are designed to increase creditor pay outs and would greatly harm low- and middle-class debtors. As Harvard Law Professor Elizabeth Warren writes, the bill "has more than 120 pages of amendments affecting consumer cases, and they all head in the same direction: They give a few creditor interests more opportunities to try to recover from their debtors while they reduce the protection for other creditors and debtors."[36] Last Congress, Chairman Hyde himself noted that the bill contains at least 75 provisions detrimental to debtors and favorable to creditors. Among other things, the bill extends the period permitted between chapter 7 filings from 6 years (under current law) to 8 years;[37] expands the ability of residential landlords to evict tenants without seeking permission from the court;[38] and significantly narrows the definition of household goods exempt from repossession in bankruptcy.[39]

B. Principal Problems with Proposed Changes

1. H.R. 333's Means Testing is Arbitrary and Unworkable in Practice

It is important to recall that the National Bankruptcy Review Commission's majority specifically rejected the so-called "means testing" approach,[40] observing:

> The credit industry has sought means testing consistently for at least 30 years, but Congress has consistently refused to change the basic structure of the consumer bankruptcy laws. . . . Access to chapter 7 and to chapter 13, the cen-

[36] *March 11, 1999 Hearing* (written statement of Professor Elizabeth Warren).
[37] H.R. 333, § 312.
[38] H.R. 333, § 311.
[39] H.R. 333, § 313.
[40] Only two members of the National Bankruptcy Review Commission signed onto a dissenting statement supporting the consideration of various means testing options. NATIONAL BANKRUPTCY REVIEW COMMISSION, FINAL REPORT: BANKRUPTCY—THE NEXT TWENTY YEARS (Oct. 20, 1997) (Chapter 5, Additional Dissent to Recommendations for Reform of Consumer Bankruptcy Law Submitted by the Honorable Edith H. Jones and Commissioner James I. Shepard).

> tral feature of the consumer bankruptcy system for nearly 60 years, should be preserved.[41]

The 1973 Commission on Bankruptcy Laws similarly considered and rejected industry calls for mandatory chapter 13's, noting that Congress had itself rejected similar proposals in 1967, and observed:

> [B]usiness debtors are not subject to any limitation on the availability of straight bankruptcy relief, including discharge from debts, and it was pointed out that, quite apart from bankruptcy, business debtors are able to incorporate and to limit their liability to their investments in corporate assets. To force unwilling wage earners to devote their future earnings to payment of past debts smacked to some of debt peonage, particularly when business debtors could not be subjected to the same kind of regimen under the Bankruptcy Act. . . . The Commission concluded that forced participation by a debtor in a plan requiring contributions out of future income has so little prospect for success that it should not be adopted as a feature of the bankruptcy system.[42]

The principal problem with the means test is that the rigid one-size-fits-all test used in determining eligibility for chapter 7 and the operation of chapter 13 will often operate in an arbitrary fashion. Many of these flaws were highlighted last Congress by Chairman Hyde when he unsuccessfully sought to delete the use of the rigid IRS standards and instead substitute a more fact specific test based on the court's assessment of the facts and circumstances. First, the bill relies upon IRS collection standards, which lay out no comprehensive or specific standards for the deduction of living expenses. Part of the problem arises from the fact that the IRS standards referenced by the bill are not automatic in many cases. Although the IRS does set forth national standards for some expenses, such as food and clothing,[43] and local standards for expenses such as housing and transportation,[44] it leaves the determination of "other necessary expenses" to the discretion of the relevant IRS employee.[45] This means that the bill fails to provide specific guidance concerning the appropriateness of deducting part or all of the funds a debtor may expend for items such as health care (both medical expenses and health insurance), taxes, and accounting and legal fees, among other items. As a result, the means test could have the effect of requiring the payment of unsecured debt before allowing for payment of certain necessities such as health care.

Even more importantly the bill allows the court no discretion to take into account the circumstances which led to the filing in determine whether abuse should be presumed and the debtor forced into a chapter 13 repayment plan. Thus an individual facing financial

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[41] *Bankruptcy: The Next Twenty Years*, National Bankruptcy Review Commission Final Report 90–91 (Oct. 20, 1997).

[42] *Report of the Commission on Bankruptcy Laws*, H.R. Doc. No. 137, Part I, 93rd Congress, 158–59 (1973) (citation omitted).

[43] IRS Manual § 5323.432.

[44] IRS Manual § 5323.433.

[45] IRS Manual § 5323.12.

problems because he or she lost her job or suffered the death of a spouse is treated in the same manner as someone who has deliberately incurred excessive debts. Even a person who has incurred large debts because of an unexpected health care emergency will be forced into chapter 13 without any court discretion if he or she has income above the applicable State median.

Moreover, where the IRS has specific local expense standards, those standards do not always provide adequately for normal expenses. For example, the permitted automobile expense in the San Francisco Bay area for two cars is only $373 per month, even though most families could barely cover the cost of automobile insurance, let alone car payments, gasoline, tolls, and insurance under this amount.[46] Ironically, Congress *itself* has recognized the inadequacy of such collection standards. The Internal Revenue Service Restructuring and Reform Act of 1998 directs the IRS to "determine, on the basis of the facts and circumstances of each taxpayer, whether the use of the schedules . . . is appropriate" and to ensure that they not be used "to result in the taxpayer not having adequate means to provide for basic living expenses."[47]

The seemingly arbitrary allowances for such expenses points to another problem with the means test under H.R. 333—its bias against debtors without secured debts. This is because the bill allows all secured debt payments to be deducted from monthly income, but limits rental and lease payments to the amount permitted by the IRS standards. This means that persons renting apartments and leasing cars may not be able to deduct the full amount of their housing and transportation costs in bankruptcy, while persons with mortgages and automobile debt will be able to do so.[48] There is no legitimate policy rationale for this discrepancy, which appears to punish personally-responsible individuals who tightened their belts and tried to live modestly within their means and nonetheless had to resort to bankruptcy.

Also, it is important to note that the IRS collection standards can change the manner in which the bankruptcy laws are applied. The collection standards serve as internal guidelines for the IRS; they are not regulations that are subject to the Administrative Procedures Act. As such, the IRS does not need to provide notice and comment when introducing new standards or when changing the existing ones. If the bankruptcy law was amended to incorporate the collection standards, as H.R. 333 proposes, and IRS were to change the collection standards in the future, the alteration in the standards would completely change how the Bankruptcy Code is applied. In effect, H.R. 333 would delegate authority to the IRS to change the Bankruptcy Code.

It is no answer to assert, as the legislation's proponents have done, that the "glitches" in the collection standards can be resolved through the bill's allowance that "the presumption of abuse may

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[46] *Hearing on H.R. 3150, the "Bankruptcy Reform Act of 1998," Before the House Subcomm. on Commercial and Admin. Law*, 105th Cong., 2d Sess. (Mar. 10, 1998) (written statement of the Honorable Randall J. Newsome, U.S. Bankruptcy Judge, Northern District of California).

[47] Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105–206, § 3462 (1998).

[48] Higher income debtors can also easily plan around the means test by, for example, purchasing a new expensive car shortly before bankruptcy, or deferring tax and child support payments, thereby increasing priority claims.

only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative."[49] This is a new standard with no clear definition. It is unclear how the courts will apply it. Establishing "special circumstances" will not be simple or cost or risk-free. Special circumstances may be established only upon a debtor's motion to the court.[50] It is the debtor's burden to show special circumstances. The debtor must present detailed documentation for expenses for adjustments to income and a detailed explanation of the special circumstances which make such expenses or adjustment to income the only reasonable alternative for the debtor. These requirements make it very difficult for debtors to claim special circumstances, since many expenses are paid in cash and cannot be documented. This risk provides a tremendous disincentive for debtors to claim special circumstances, let alone incur the legal costs the debtor himself is required to pay to bring the motion.

There are also several serious interpretive problems caused by the drafting of the means test, which combines debt payment amounts with IRS allowances. For example, it is not clear whether a debtor who has two payments remaining on a secured car loan is allowed the IRS car ownership allowance for the remaining 58 months. If not, the debtor may have no funds to replace a car that is already seven or 8 years old at the outset of the 5 year period and is essential for a long commute to work. Also, the IRS home ownership allowance includes mortgage and utility payments. If a debtor's mortgage payment exceeds the IRS allowance, it is not clear whether any amount is allowed for utility payments.

Finally, the current chapter 13 completion rate is less than one-third[51] for voluntary plans which are voluntary and with disposable income tests that are less rigid than that proposed in this bill. By making chapter 13 the only avenue for bankruptcy relief for some individuals and imposing the bill's strict income and expense tests, the bill will undoubtedly result in an even smaller proportion of successful chapter 13 plans.

2. Means Testing Will be Costly and Bureaucratic

The bill's attempt to impose rigid financial criteria on debtors' eligibility for chapter 7 and the operation of chapter 13 will impose substantial new costs on the bankruptcy system—both the portions paid for by private parties (through payment for private chapter 7 and chapter 13 trustees and higher attorneys' fees) and the Federal Government (through the bankruptcy courts and the U.S. Trustees Program). These costs may well exceed the presumed savings under the bill.

The Congressional Budget Office's evaluation of last Congress' version of this legislation indicated that over the next 5 years the legislation could cost the private sector over $3 billion. The lion's share of the costs would be imposed on private trustees who administer bankruptcy estates, providers of debt relief counseling serv-

[49] H.R. 333, § 102, (proposed new 11 U.S.C. § 707(b)(2)(B)(i)).
[50] H.R. 333, § 102 (proposed amendment to 11 U.S.C. § 707(b)(2)(B)).
[51] NATIONAL BANKRUPTCY REVIEW COMMISSION, FINAL REPORT: BANKRUPTCY—THE NEXT TWENTY YEARS 90–91 (Oct. 20, 1997).

ices, and attorneys. Much of this is attributable to the complexity and paperwork burdens associated with the means test.

In addition, the CBO estimated that the bill's cost to the Federal Government would be $333 million over the next 5 years. Again, part of this cost estimate derives from implementing the complex and paperwork heavy means testing program. Henry E. Hildebrand, Chair of the Legislative Committee of the National Association of Chapter Thirteen Trustees, highlighted these costs when he estimated that:

> Assuming that one out of nine cases filing for chapter 7 relief would be contested and further assuming that the contest would require about 2 hours of pretrial preparation and 1 hour of court time, the litigation would require 276,000 additional hours, about 90,000 of which would occupy the court.[52]

A related concern is the many, many new opportunities for litigation and confusion created by the bill. Judge Randall Newsome testified on behalf of the National Conference of Bankruptcy Judges that at least 16 potential sources of litigation are contained in the means testing provisions alone, and that another 42 litigation points have been identified in the other consumer provisions, noting that "[t]his is probably only the tip of the iceberg."[53]

Another source of higher costs for the government is the requirement that one in every 250 cases in each Federal district be randomly audited by independent certified public accountants or independent licensed public accountants, at taxpayer expense under generally-accepted auditing standards.[54] CBO estimated it will cost the Federal Government $58 million over 5 years to effectuate this requirement. It is unclear whether such costs will yield any comparable benefits. For example, the Honorable William Houston Brown, a U.S. Bankruptcy Judge in the Western District of Tennessee, testified on behalf of the ABI that the audits required "are likely to be very expensive, and such formal audits are likely unnecessary to determine significant misstatements in debtors' petitions and schedules."[55]

3. Means Testing and the Other Consumer Provisions Will Harm Low- and Middle-Income People

a. Concerns Regarding the Means Test It is incorrect to assume that the effect of H.R. 333's harmful provisions would be limited to individuals seeking bankruptcy relief who earn more than the regional median income. First, there are numerous, significant flaws in the manner in which State median income is calculated. For a variety of reasons the median income figure required under H.R. 333 will be outdated and understated. The first problem is that the bill states that household income is to be based on the most recent Census Bureau figures available as of January 1. But as of January 1, the Census has information available for only the second

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[52] Henry E. Hildebrand, *The Hidden Costs of Bankruptcy Reform* 2 (1998)(unpublished manuscript on file with the Committee on the Judiciary, minority staff).

[53] *March 17, 1999 Hearing* (written statement of the Honorable Randall J. Newsome, President, National Conference of Bankruptcy Judges at 1).

[54] H.R. 333, § 602.

[55] *March 17, 1999 Hearing* (testimony of the Honorable William Houston Brown).

year prior to the date. Accordingly, during this year, 2001, census figures are available for only 1999, not 2000. At times of inflation, this 2-year lag could result in a significant increase in the number of individuals who are the subject of motions to dismiss or convert and who may earn more than the outdated median income figure being used. In addition, the starting point for the calculation of median income may be overstated.

An even more serious problem derives from the fact that the State median income information is currently only published by the census bureau once per decade, meaning the median income information could be as much as 10 years out of date. This is why Representative Meehan offered an amendment to allow for upward adjustment of the Census figures to reflect changes in the Consumer Price Index. Despite agreement by members of the majority with the amendment in principle, Representative Gekas opposed the measure, contending that the Census Bureau's ability to adjust the figure upward was sufficient to address the concern, and the amendment was defeated on a party-line vote.

In addition, Representatives Waters and Watt offered amendments designed to relieve individuals in poverty from having to demonstrate their median income falls well below the threshold in the means test and allowing such individuals to avoid the associated paperwork requirements. To ensure that this provision would not be abused, Representative Watt modified Ms. Waters original amendment to require the debtor to declare under penalty of perjury that the debtor's income fell below the poverty line for the year preceding the filing. This amendment was again defeated on a mostly party line vote, with only Rep. Scarborough voting for the amendment—the only Republican vote cast during the entire mark-up for a Democratic amendment.

Another flaw in the median income formula is that the test measures a debtor's income based upon how much the debtor earned in the 6 months prior to bankruptcy. If the debtor lost a good job in month three and has been working at a low-wage job ever since, the income from that good job, and help from family members, would be counted as if that is what his future income would be. The debtor would be expected to pay out of income that may no longer exist. Also, the means test will pickup a variety of revenue sources—such as disaster assistance, and Veterans' benefits—which will result in lower- and middle-income individuals being cast as bankruptcy "abusers" with income above the median. Also, due to an apparent drafting error, under the definition of "projected income" used in chapter 13, a debtor is required to use his or her previous 6 months income in determining the amount of payments he or she can make, regardless of whether or not that income stream is still available, even if the debtor's income is below the applicable median income.

In addition, due to the fact that H.R. 333, unlike current law, will permit creditors and other parties-in-interest to bring motions to dismiss or convert, more aggressive and well-funded creditors will have extremely wide latitude to use such motions as a tool for making bankruptcy an expensive, protracted, and contentious process for honest debtors, their families, and other creditors. Creditors could use such motions as leverage to obtain reaffirmation agree-

ments so that their unsecured debts survive bankruptcy.[56] These threats will not be limited to individuals with income above the median.

Collectively, provisions forcing large number of individuals from chapter 7 into forced repayment plans under chapter 13 will have the effect of relegating large numbers of otherwise middle-income families into poverty level subsistence. This is because they will have no way of avoiding their crushing debt load, whether it was derived from a medical emergency or irresponsible credit card borrowing aggravated by high interest and penalty rates. Such individuals will actually be much worse off than other impoverished families because their nominal income is higher than the median income level and they cannot qualify for programs such as the earned income tax credit, school lunch programs, food stamps, or other subsistence provided to families with income below the poverty level.[57]

b. Other Concerns As noted above, the bill grants nondischargeable status to a wider range of cash advances and debts incurred for so-called luxury goods and debts incurred to pay nondischargeable tax debts. These new exceptions from discharge obviate many of the benefits that debtors may realize from filing for bankruptcy under chapter 7 or 13 and increase the opportunity for creditor abuse. In a communication to the Congress, the Clinton administration wrote that it is "generally inappropriate to make post-bankruptcy credit card debt a new category of nondischargeable debt. . . . We remain skeptical that the current protections against fraud and debt run-up prior to bankruptcy are ineffective and that the additional debts made nondischargeable by [the legislation] meet the standard of an overriding public purpose."[58]

Consumer bankruptcy expert Henry Sommer also has explained that such provisions:

> increase the opportunity for creditors to file the types of abusive fraud complaints which have been found by many courts to be baseless and unjustified attempts to coerce reaffirmations by debtors who cannot afford to defend them. The new presumptions of nondischargeability will fall mainly on low income debtors who are unsophisticated, do not have the time, budget flexibility, or attorney advice to

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[56] It is also important to note that the sanctions against creditors who file abusive motions against debtors under § 707(b) are weak. The court may grant attorney's fees and costs only under a rule 9011 standard or if the motion was brought *solely* to coerce a debtor to waive bankruptcy rights, an almost impossible standard to meet. (If the motion was brought both for illegally coercive purposes and other purposes, fees would not be awarded.) Moreover, in motions brought by small businesses with small claims, no fees are awarded even if rule 9011 is violated. H.R. 333, Sec. 102 (proposed amendments to 11 U.S.C. Sec. 707(b)(2)(B)).

[57] A recent study, by the University of Maryland Department of Economics, illuminates the phenomenon of "informal bankruptcy", whereby debtors, especially those who are difficult to find or those with few attachable assets, may choose simply to stop making payments altogether and enter the underground economy. Amanda E. Dawsey and Lawrence M. Ausubel, *Informal Bankruptcy*, U. MD. Dept. Econ., Jan. 2001, at 2. This then puts the burden on the creditors to collect. While informal bankruptcy lacks the legal protections afforded by (formal) bankruptcy, the incentives of informal bankruptcy cannot be underestimated, not the least of which is the lack of any administrative or legal costs initially. Importantly, little consideration has been given to informal bankruptcy with respect to legislation, yet in 1996 some 65.2 % of credit card loans were charged off for reasons other than bankruptcy. 1997 Annual Bankruptcy Survey, Visa U.S.A. Inc., September 1998.

[58] Letter from Jacob J. Lew, Director, Office of Management and Budget, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law 2 (Mar. 23, 1999).

> plan their bankruptcy cases carefully, have to file on short notice to prevent utility shutoffs or other impending creditor actions and will not have the funds to defend dischargeability complaints." [59]

The new ban on loan bifurcations for car loans less than 5 years old will further obviate the possibility of obtaining a fresh start through bankruptcy. Many creditors with security interests in household goods on credit extended in the year before bankruptcy will similarly be able to threaten repossession if they are not paid in full. Since an automobile depreciates rapidly when it leaves the showroom, it typically declines below its value and secured debt by several thousand dollars the day after it is bought. In essence, a lender with a secured loan which is underwater would be unjustly enriched by being able to treat the unsecured portion of that loan as fully secured to the detriment of other unsecured creditors. Such a prohibition on automobile bifurcation is likely to render many chapter 13 plans unfeasible because a debtor may be able to repay the entire secured value, but not the entire purchase price of the car along with penalties. The provision also permits the lender to come out of the bankruptcy in a superior position than if it had foreclosed on the loan, the usual rule that applies in bankruptcy cases.

Several other consumer provisions also will exact significant hardships on all debtors, regardless of income level or degree of culpability. For example, by allowing landlords to continue eviction or unlawful detainer actions, and exempting them from the automatic stay regardless of the circumstances, the bill will force many battered women and families with children and seniors out on to the streets, without ever having an opportunity to use bankruptcy to catch up on their rent.[60]

To cite but a few additional examples of new restrictions the bill imposes on consumers, section 106 makes pre-bankruptcy credit counseling mandatory regardless of the causes; section 302 imposes new limits on repeat filing; section 304 prohibits "ride through" of secured claims; section 305 authorizes new automatic stay relief for secured creditors or lessors of personal property; section 309 allocates all payments made to under secured creditors in chapter 13 cases first to the unsecured portion of the debt and makes other pro-creditor changes; section 312 extends the period between bankruptcy filings from six to 8 years; section 313 sets forth a new narrower definition of exempt household goods; sections 315 and 316 impose new notice and tax return filing obligations along with

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[59] *Hearing on Consumer Bankruptcy Issues in H.R. 3150, the "Bankruptcy Reform Act of 1999," Before the House Subcomm. on Commercial and Admin. Law*, 105th Cong., 2d Sess. (Mar. 10, 1998) (written statement of Henry J. Sommer).

[60] Because the bill's automatic stay provision could lead to the eviction of low-income individuals who are in bankruptcy, Representative Waters offered an amendment that would exempt senior citizens or single parents with minor children, either of whose incomes fall below the applicable median, and battered spouses, whose physical well-being would be threatened if relief from the stay is granted. Representative Gekas opposed the amendment, stating that "her language vitiates, removes, erases what we have put in as combatants to the automatic stay in the previous portion of the statute." On the contrary, the amendment did not operate to exempt anyone other than the named individuals from the exclusion, and Representative Waters offered to clarify her amendment to clarify the point. Nonetheless, the amendment was defeated on a party-line vote. Representative Scott had intended to offer an amendment to eliminate the automatic stay provision entirely, but he was prevented from offering his amendment due to the Majority's abrupt termination of the markup.

mandatory dismissal requirements; section 327 values secured claims at higher amounts than current law; section 1230 denies discharge or plan confirmation for failing to file tax returns; and section 1232 includes special protections for pawn brokers.

4. The Consumer Provisions Will Have a Significant, Adverse Impact on Women, Children, Minorities, and Seniors, as well as Victims of Crimes and Severe Torts

a. Women and Children H.R. 333 will have an adverse impact upon single mothers and their children, both as debtors and as creditors. On the debtor side, the means test will make it far more difficult for women to access the bankruptcy system. For example, women whose average income was at the median during the last 180 days, before the support checks stopped, may be denied access to chapter 7 and forced into restrictive chapter 13 repayment plans. In addition, the bill will also make it more difficult for women to hold onto the car they need to get to work if it was purchased or used as collateral in the last 5 years if a creditor claims a security interest in such items. The new nondischargeability categories also are problematic—even if a single mother filing for bankruptcy believes they do not apply, it will be more difficult for her to litigate a credit card company's claim of nondischargeability.

On the creditor side, the bill will have a particularly adverse impact on the payment of domestic support to women and children. The basic problem arises from the fact that bankruptcy and insolvency are by definition a zero-sum game. There is only so much money available to be divided among the creditors. Since H.R. 333 provides new advantages to large corporate creditors such as credit card companies, it will work to the ultimate disadvantage of single parents with children as they come into contact with the bankruptcy system as creditors seeking alimony and child support payments. These problems are by no means insignificant given that an estimated 243,000–325,000 bankruptcy cases involved child support and alimony orders during the most recent years.[61]

Under current law, alimony and child support are treated as priority debt and are not subject to discharge.[62] This preferential treatment dates from as early as 1903 and is based on Congress' determination that the payment of these debts is so important to society that it should come ahead of most general creditors. Although H.R. 333 does not revoke this special treatment, viewed as a whole, the legislation will have the effect of diminishing the likelihood of full payment of alimony and child support. This arises as a result of several features of the bill: its creation of significant new categories of nondischargeable debt, provision of additional leverage for creditors to obtain reaffirmation of debts, the extension of the length and onerousness of chapter 13 plans, and the bill's general limitations on the availability of chapter 7 relief.

Collectively considered, these changes will help foster an environment where unsecured and credit card debt is far more likely to compete against alimony and child support obligations in the State law collection process post-discharge, where bankruptcy priorities

[61] Teresa Sullivan et al., *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981–91*, 68 AM. BANKRUPTCY L.J. 121 (1994).
[62] 11 U.S.C. §§ 507(a)(7) & 523(a)(5).

have no effect.[63] As a Congressional Research Service Memorandum analyzing predecessor legislation concluded under [a predecessor] bill "child support and credit card obligations could be 'pitted against' one another. . . . Both the domestic creditor and the commercial credit card creditor could pursue the debtor and attempt to collect from post-petition assets, but not in the bankruptcy court."[64]

Of course, outside of the bankruptcy court is precisely the arena where sophisticated credit card companies have the greatest advantages. While Federal bankruptcy court provides a strict set of priority and payment rules and generally seeks to provide equal treatment of creditors with similar legal rights, State law collection is far more akin to "survival of the fittest." Whichever creditor engages in the most aggressive tactic—be it through repeated collection demands and letters, cutting off access to future credit, garnishment wages or foreclose on assets—is most likely to be repaid.

It is for these reasons that groups concerned about the payment of alimony and child support have expressed their strong opposition to the bill and its predecessors. Professor Karen Gross of New York Law School stated succinctly that "the proposed legislation does not live up to its billing; it fails to protect women and children adequately."[65] Joan Entmacher, on behalf of the National Women's Law Center, testified that "the child support provisions of the bill fail to ensure that the increased rights the bill would give to commercial creditors do not come at the expense of families owed support."[66] Marshall J. Wolf, , the past Chair of the Family Law Section of the American Bar Association recently wrote, "[t]he means testing, credit card nondischargeability, reaffirmation provisions, and limits on dischargeability features of . . . 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 . . . 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!"[67]

Assertions by the legislation's supporters that any disadvantages to women and children under H.R. 333 are offset by supposedly pro-child support provisions are not persuasive. It is useful to recall the context in which these provisions were added. First, in the 105th Congress, the bill's proponents adamantly denied that the bill created any problems with regard to alimony and child support.[68] Although the proponents have now changed course, the child support and alimony provisions included do not respond to the provisions in the bill causing the problem—namely the provi-

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[63] As the President of the American Academy of Matrimonial Lawyers observed, "[i]f a Chapter 7 case the nondischargeability 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. 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-rate payment only while under existing law they have a priority." Letter from Charles C. Schoenberg to Rep. Gerald Nadler (Feb. 7, 2001).

[64] CONGRESSIONAL RESEARCH SERVICE, IMPACT OF CONSUMER BANKRUPTCY REFORM PROPOSALS ON CHILD SUPPORT OBLIGATIONS (May 13, 1998).

[65] *March 18, 1999 Hearing* (written statement of Karen Gross, New York Law School).

[66] *Id.* (written statement of Joan Entmacher, National Women's Law Center).

[67] Letter from Marshall J. Wolf to Sen. Edward Kennedy (Feb. 6, 2001).

[68] Letter from Representative George W. Gekas, et al., to Members of Congress (Apr. 29, 1998).

sions limiting the ability of struggling, single mothers to file for bankruptcy; enhancing the bankruptcy and post-bankruptcy status of credit card debt; and making it more difficult for debtors to eliminate debts and focus on domestic support obligations. In some instances, the new sections are even counterproductive in furthering the goal of payment of support obligations to ex-spouses and children.

For example, section 211 provides a definition of "domestic support obligation" that includes funds owed to government units. If the government is acting as the debt collector for a woman or child, this is appropriate; the benefits of this inure to women and children directly. However, if the government is collecting for its own benefit (say, for example, the woman recipient is on welfare and the government is collecting arrearages to reimburse State or Federal expenditures), then the result may be to put the government collection agency in direct competition with single mothers and children, particularly in chapter 13.

Section 212 purportedly increases to first priority from seventh priority obligations for domestic support, including debts owed to the government. It is misleading to suggest that moving up to "first priority" to "seventh priority" makes a significant difference: the debts that have second through sixth priorities almost never appear in consumer cases.[69] However, knocking out the first priority for administrative expenses incurred by the trustee could have the unintended effect of thwarting the original purpose of the provision. Putting support claims ahead of administrative expenses in priority may prevent trustees from liquidating assets because trustees need to use estate funds to liquidate property. If the trustee is not assured that the estate can cover the expenses of liquidating property, the trustee may have to abandon the property back to the debtor, resulting in the domestic support obligations receiving no distribution—the opposite of bill's intent.[70]

Section 213, which requires that chapter 13 plans provide for child support owed to the State as well as to families before the debtor receives any bankruptcy discharge, may reduce the likelihood that a feasible plan can be confirmed. When combined with the other increased payments that must be made to secured creditors under Chapter 13, the requirement that State arrears as well as family arrears must be paid in full if the plan does not extend to 5 years would make it more difficult for a debtor to get a Chapter 13 plan confirmed and successfully completed, and could, therefore, adversely affect the family.

Section 214 creates additional exceptions to the automatic stay that, like other provisions in the bill, have the potential of placing women and children at a disadvantage. First, these provisions apply only to income withholding orders issued by government agencies under the Social Security Act, even though an estimated 40–50% of all child support cases, and all alimony-only cases, are enforced privately, not by government child support agencies. Sec-

[69] Those priorities—which would likely apply in less than 1% of all cases—deal with debts of grain storage facility operators, debts of fishermen, employee wage claims, retail layaway claims, and the like. 11 U.S.C. § 507(a).

[70] Rep. Waters had planned to offer an amendment on this issue, but was prevented because the Majority unilaterally cut off debate.

ond, income withholding is helpful only if such orders are placed against debtors with regular income. Yet, in 1997, more than four out of ten cases in State child support systems across the country lacked a support order.[71]

Section 215, which makes all property settlement obligations nondischargeable, also could have unintended consequences in practice. For example, under this provision, a financially-troubled ex-spouse who is owed alimony and child support could be forced to compete with another ex-spouse who is not in need of support but had a settlement agreement dealing with business debts. Alternatively, a financially-needy ex-spouse who files for bankruptcy may be left with nondischargeable debt owed to her wealthier ex-spouse because of a property settlement. Again, the result is the needy spouse and child could be placed at a disadvantage by these changes.

Section 216, which allows domestic support creditors to levy otherwise exempt homesteads and other exempt property, also does not go far enough. Like the other provisions, it is effective only if a single mother goes to the time and expense of hiring an attorney to enforce her new rights. It also grants State and local governments the right to pursue claims in possible competition with the single mother.

Finally, section 217's insulation of payments to the government from preference actions also may hurt an ex-spouse and child of the debtor. This is because those funds, which were preferentially paid to the government, otherwise may have been available for ongoing support payments.

Representatives Conyers and Waters sought to mitigate these concerns when they offered an amendment to section 310 to ensure that this new dischargeability for luxury goods and ATM cash advances would not apply if these new limitations on discharge would impair the debtor's ability to pay domestic support obligations. In opposing the amendment, Representative Gekas incorrectly asserted that the amendment does not "enhance the situation we've already cured." On the contrary, section 310 would place the single mother seeking money for food into direct competition with credit card debt. The amendment was defeated on a party-line vote.

The legislation also totally ignores another very serious problem facing women as a result of the Bankruptcy Code—the fear that violent and reckless individuals will be able to bomb abortion clinics and eliminate their liability from that action through the bankruptcy process. Although the current bankruptcy laws prevent discharge for "willful and malicious injuries,"[72] it is unclear whether this standard applies to a clinic bombing where a particular victim was not targeted.[73] It is also unclear whether the law applies to damages resulting for barricading clinic entrances. At the same time, notorious clinic bomber and "Operation Rescue" found Randall Terry has specifically filed for bankruptcy in order to void a $1.6 million judgment he owed to the National Organization for

[71] *March 18, 1999 Hearing* (written statement of Joan Entmacher, National Women's Law Center) (citing U.S. DEPT. OF HEALTH AND HUMAN SERVS., OFFICE OF CHILD SUPPORT ENFORCEMENT, PRELIMINARY DATA REPORT: CHILD SUPPORT ENFORCEMENT FY 1997 (Aug. 1998).

[72] 11 U.S.C. § 523(a)(6).

[73] *Kawaauchau* v. *Geiger*, 523 U.S. 57 (1998) (holding that the actor must intend the consequences of the act, injury to someone or something, not just the act, itself).

Women and Planned Parenthood,[74] and many of the notorious "Nuremberg files" defendants have filed for bankruptcy.

No appellate court has considered the issue of dischargeability of these debts. However, victims who have achieved Federal court judgments for violations of the clinic access law have been compelled to chase convicted criminals who have deliberately and publicly used the bankruptcy laws to avoid payment. According to one representative of a abortion clinic violence, it took more than 3,000 hours of attorney time to pursue such a claim in bankruptcy court.[75]

We believe it is irresponsible to allow the Bankruptcy Code to be used to void debts of this nature committed by violent individuals in violation of Federal law. As the National Abortion and Reproductive Rights Actions League has written, "[d]ebtors whose debts arise from their own clinic violence are not honest debtors and should not be able to escape the financial liabilities incurred by their illegal conduct."[76] Senator Hatch (R–UT) also noted in defending the confirmation of the Attorney General, that even a staunch anti-abortion advocate such as Senator Ashcroft supported the amendment, which passed the Senate by a vote of 80–17.

b. Minorities, Seniors, and Victims of Crimes and Severe Torts

H.R. 333 will also have a disparate impact upon minorities and victims of crimes and torts. The Leadership Conference on Civil Rights has warned that, under the predecessor legislation, "African American and Hispanic American families, suffering from discrimination in home mortgage lending and in housing purchases and facing inequality in hiring opportunities, wages, and health insurance coverage [will be less able to] turn to bankruptcy to stabilize their economic circumstances."[77] We know this because the economic struggle for Hispanic American and African American homeowners is harder than for any other group. While 68% of whites own their own homes, only 44% of African Americans and Hispanic Americans own their homes. Both African American and Hispanic American families are likely to commit a larger fraction of their take-home pay for their mortgages, and their homes represent virtually all their family wealth. It is no surprise, then, that African American and Hispanic American homeowners are six hundred percent more likely to seek bankruptcy protection when a period of unemployment or uninsured medical loss puts them at risk for losing their homes.[78] Experience has also shown that minorities are also particular targets of predatory lenders.

Similar concerns have been raised on behalf of seniors, who could lose their retirement savings if forced into chapter 13 plans. The National Council of Senior Citizens has warned that legislation of this nature:

> would have a harsh impact on a group of people who are often subject to job loss or catastrophic health costs; instead of ameliorating these problems, this bill will only ex-

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[74] *Operation Rescue Founder Files for Bankruptcy due to Lawsuits,* WASH. POST, Nov. 8, 1998, at A29; *An Anti-Abortion Leader Files for Bankruptcy,* N.Y. TIMES, Nov. 8, 1998, at 45.

[75] See statement of Maria T. Vullo, *Feb. 8, 2001 Hearing on S. 220, the Bankruptcy Reform Act of 2001 before Sen. Jud. Comm.*

[76] Memorandum of NARAL 8 (Mar. 30, 1999).

[77] Letter from LCCR to Members of Congress (Apr. 21, 1999).

[78] *Id.*

> acerbate them. . . . Since 1992, more than a million people over the age of 50 have filed for bankruptcy; in 1997, an estimated 280,000 older Americans filed. For them it is particularly hard. If they are forced into prolonged repayment schedules, they may not be able to maintain or accumulate savings for retirement. As you know, approximately two third of voluntary, Chapter 13 workout plans fail, and we believe that retirement savings must be protected for that purpose.[79]

With regard to the concerns of victims' groups, it is important to note that current law provides for the nondischargeability of debts for obligations arising out of willful or malicious injury, death or personal injury caused by the operation of a motor vehicle, or criminal restitution payments.[80] However, making more credit card debt nondischargeable, encouraging more reaffirmations of general unsecured debt, and discouraging more financially-troubled individuals from seeking debt relief will place these individual creditors at a relative disadvantage. As the National Organization for Victim Assistance has written, "more exempted creditors with rights to the same finite amount of resources means lower payments to all. Inevitably, for victim-creditors, that means either a smaller return on the restitution owed, or a longer period of repayment, or both."[81] The National Center for Victims of Crime has similarly observed, "to equate contractual losses of a commercial creditor with . . . personal obligations [for victim claims as the legislation does] is to belittle their importance and to directly reduce the likelihood that crime victims will ever be financially restored, despite obtaining an order of restitution or a civil judgment."[82] Mothers Against Drunk Driving ("MADD") has also complained that if "individuals [whose lives] have been shattered financially and emotionally by the death or serious injury of their family members . . . have to compete with credit card debt holders for the limited post-discharge income of debtors available [as the predecessor legislation requires], they may themselves end up in bankruptcy."[83] MADD also noted that in contrast to crash victims, "lending institutions have the ability to provide some degree of protection to themselves when they issue credit cards to individuals and they are in a better financial position to absorb losses, which to them is a cost of doing business."[84]

5. The Bill Does not Address Abuses of the Bankruptcy System by Creditors

Perhaps the bill's most glaring omission is its failure to fully address the problem of abusive lending practices. At the same time the legislation responds to every conceivable debtor excess—wheth-

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[79] Letter from Dan Schulder, Director Legislation, National Council of Senior Citizens, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (June 9, 1998).

[80] 11 U.S.C. §§ 523(a)(6), (9), (13).

[81] Letter from Marlene A. Young, Executive Director, NOVA, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 26, 1999).

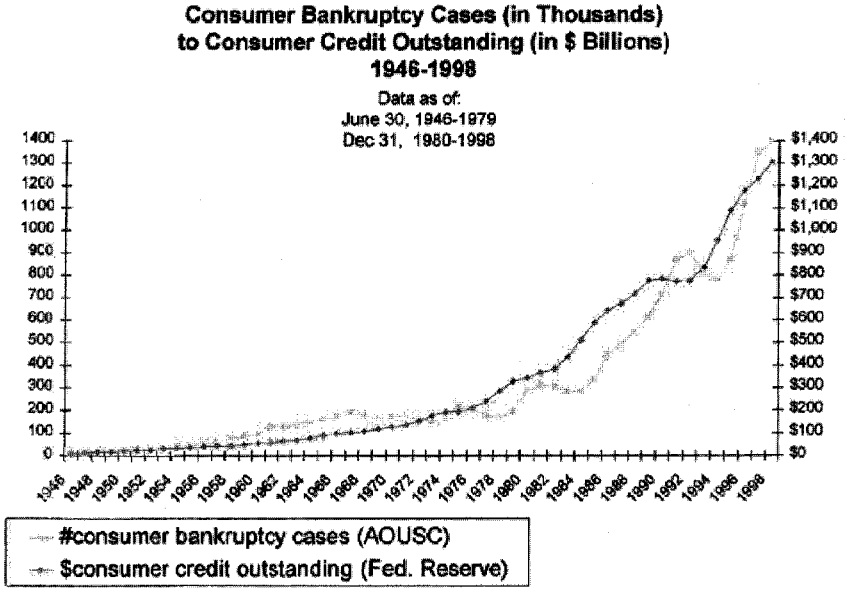
[82] Letter from David Beatty, Director of Public Policy, The National Center for Victims of Crime, to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Apr. 28, 1999).

[83] Letter from Karolyn V. Nunnallee, National President, MADD, to Members of Congress (Apr. 26, 1999).

[84] *Id.*

er real or imagined—it largely ignores the transgressions of the credit industry. The only significant "reform" with regard to lending industry disclosure is that requirement that credit card companies provide the consumer with an "800" number to call to ascertain payment information along with unrealistic examples of credit card debt paydowns (which may not reflect the actual situation of the debtor and thus prove misleading), and as a series of boilerplate warnings regarding real estate loans and teaser rates.[85]

As noted at the outset, the overwhelming weight of authority establishes that it is the massive increase in consumer debt, not any change in bankruptcy laws, which has brought about the increases in consumer filings. Indeed, there is an almost perfect correlation between the increasing amount of consumer debt and the number of consumer bankruptcy filings. For example, between 1993 and 1998, bank credit card loans in the United States more than doubled from $223 billion to nearly $500 billion, and personal bankruptcy filings increased accordingly.[86] The same basic correlation holds from 1946 through 1998, as the below chart indicates:



Review of this data indicates that the primary factor that led to the increase in bankruptcy filings after 1978 was not the enactment of the revised bankruptcy laws, but the deregulation of credit. The deregulation resulted from the Supreme Court decision in *Marquette National Bank of Minneapolis* v. *First Omaha Service Corp.*,[87] which held that out-of-state banks were not subject to the

[85] H.R. 333, Title XIII.

[86] *March 16, 1999 Hearing* (written statement of Joe Lee, Charts 5–6). In 1993, banks issued credit card loans in the amount of $223 billion; in the same year, there were approximately 900,000 consumer bankruptcy filings. *Id.* (citing the FDIC and the Administrative Office of the U.S. Courts). In 1998, banks issued $455 billion in credit card loans; that year, there were 1.4 million consumer bankruptcy filings. *Id.*

[87] 439 U.S. 299 (1978).

usury laws of the State where the consumer was located. This decision led credit card concerns to relocate to States with lax usury laws that gave banks the ability to charge exorbitant interest rates in all 50 States. Subsequently, other legal changes permitted a broad range of new entities to get into the ever-growing, and lucrative, credit card business.[88] Among other things, we know that it was this unprecedented increase in high-cost credit, not the changed bankruptcy laws, that led to the change by virtue of Canada's experience. In Canada, bankruptcy filings began to explode in the late 1960's, simultaneous with the entry of VISA and MasterCard into that nation and the growth in credit card lending. There was no change in Canada's laws that could account for the increase.

This deregulation of credit and the accompanying explosion in credit availability—the number of credit card solicitations in 1998 reached 3.5 billion, an increase of 15 percent from the prior year[89]—and consumer debt, have been accompanied by a wide variety of credit card abuses. For example, solicitations of minors and college students are a particular problem. Credit card companies purposefully solicit students and other minors who have little ability to pay their debts. Illustrative of the seriousness with which credit card companies target students is the following topic from the 1998 Card Marketing Conference:

> Targeting Teens: "You Never Forget Your First Card!" Most teens never forget their first love. Nor do they forget the issuer who dares to accept their application. Their brand loyalty and propensity to spend make consumers in their mid- to late-teens priced prospects for many card issuers.[90]

The credit card tactics are myriad, including offering gifts such as mugs, Slinkees, T-shirts, and Frisbees.[91] Campus groups managing credit card tables receive large cash payments from credit card companies.[92] Such tactics apparently work, as 61% of students responsible for their own bills have indicated that they received credit cards at college.[93] Some colleges have become so fed up with card marketing practices that they banned the credit card companies from their campus[94]—although they cannot stop mail solicitations.

To make matters worse, credit card companies even go so far as to solicit business from the developmentally disabled.[95] One developmentally-disabled man, aged 35, has the reading and

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[88] *See March 16, 1999 Hearing* (written statement of Joe Lee at 1–3).

[89] Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999).

[90] *Id.* (quoting Agenda for Card Marketing Conference "98 (Nov. 9–11, 1998)). Between 1990 and 1995, the average student credit card debt more than doubled from $900 to $2,100. By 1997, graduate students averaged seven cards and carried a total balance of $5,800. That is in addition to school loans, which are increasingly being used to pay off students' credit card debt. To support average post-college debts and other expenses, graduates need to earn more than $38,000—$4,000 more than the national average. "Bankrupt at 24, Susan Carpenter, LA Times January 24, 2001.

[91] *Id.*

[92] *Id.*

[93] U.S. PUBLIC INTEREST RESEARCH GROUP, THE CAMPUS CREDIT CARD TRAP: RESULTS OF A PIRG SURVEY OF COLLEGE STUDENTS AND CREDIT CARDS (Sept. 1998).

[94] Press Release of the National Consumer Law Center, Consumers Union, Consumer Federation of America, and U.S. PIRG (Apr. 19, 1999).

[95] Dan Herbeck, *Where Credit Isn't Due: Developmentally-Disable Become Victims,* BUFFALO NEWS, Apr. 7, 1998, at 1A.

mathematic skills of a second-grader and an annual income of $7,000 from Social Security disability benefits; nevertheless, he has thirteen credit cards, generating a debt of $11,745.[96] When his counselor asked the bank to lower his credit limit to $500, his limit was instead raised to $4,900.[97] Credit card companies have no answer for how this occurs other than to say that they screen all applicants to ensure they can handle the risk;[98] clearly, however, credit card companies have not been doing a sufficient job of screening their applicants. Unfortunately, H.R. 333 does nothing to meaningfully discourage any of these practices.

The bill also ignores the problem of credit card companies lending to individuals with already substantial debts and little prospect of repayment. Gary Klein of the National Consumer Law Center noted "offering additional credit . . . to families already struggling to pay their debts hurts not only borrowers, but also the borrowers' honest creditors if the new credit pushes the family over the edge. Similarly, failure by one creditor to seriously consider payment arrangements outside bankruptcy for families facing hardship may lead to a bankruptcy filing which affects all creditors."[99] One credit card company goes so far as to solicit debt counselors and offers them $10 for each chapter 7 client who requests a VISA card.[100]

A particularly pernicious credit card practice occurs in the so-called "subprime" market, where lenders seek out riskier borrowers and offer home equity financing at loan to value ratios in excess of 100%. Another lending abuse targets low income and minority neighborhoods with "serial" refinancing loans that carry high interest rates and other onerous terms.[101] In essence this causes poor individuals to place their homes at risk in order to finance their credit card purchases.

These problems are compounded by the fact that credit card companies fail to disclose clearly on their account statements the total amount and total time it would take to pay off balances if only the minimum amount due was paid each month. Unlike mortgage loans and car loans, credit card loans do not disclose the amortization rates or the total interest that will be paid if the cardholder makes only the minimum monthly payment. As a result, using a typical minimum monthly payment rate on a credit card, it could take 34 years to pay off a $2,500 loan, and total payments would exceed 300 percent of the original principle. This is why many lenders encourage minimum payments that do not pay down the loan.

Finally, the legislation fails to address adequately the problem of abuse in the area of reaffirmation agreements, by for example, banning their use with respect to unsecured and dischargeable loans. Although it requires lengthy and confusing "disclosures" intended to assure that debtors entering into a reaffirmation agreement un-

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[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] *March 11, 1999 Hearing* (written statement of Gary Klein, National Consumer Law Center).
[100] Letter from American Bankruptcy Service to Michael Schwartz (Dec. 18, 1998).
[101] March 18, 1999 Hearing (written statement of Damon A. Silvers, AFL–CIO, n.9 (citing Debra Nussbaum, *"Lenders Laud the Value of Home Sweet Equity,"* N.Y. TIMES, Mar. 22, 1998, §3 at 10; Richard W. Stevenson, *"How Serial Refinancings Can Rob Equity,"* N.Y. TIMES, Mar. 22, 1998, §3 at 10. See also Julia Patterson Forrester, *"Mortgaging the American Dream: A critical Evaluation of the Federal Government's Promotion of Home Equity Financing,"* 69 TULANE L. REV. 373 (1994))).

derstand all aspects of signing the agreement, it allows creditors to refuse to disgorge funds received even in many cases of illegality and exempts credit unions from all the disclosure requirements and from any restrictions on unduly burdensome reaffirmations. This failing is especially glaring in view of the fact that the bill will provide numerous opportunities for creditors to coerce reaffirmations making the provisions of this bill, which will render it more difficult to obtain effective remedies against abusive creditors like Sears, even less defensible.[102]

III. BUSINESS PROVISIONS

Under current law, businesses may use chapter 11 of the Bankruptcy Code in an effort to obtain relief from the creditors while they seek to develop a plan to reorder their affairs and pay as much of their debts as their operations will allow. Under this chapter, businesses obtain an "automatic stay," which forestalls creditor collection efforts. During this time period, debtors have an opportunity to examine their contracts and leases and determine which ones to assume and which ones to reject (with rejection leading to a claim for damages). Debtors are subject to a number of requirements during this period, such as the formation of creditor committees and various ongoing financial disclosures.

The goal of chapter 11 is to determine whether there is ongoing business value that can be preserved to pay off creditors while maintaining as many jobs and contractual relationships as possible. To this end, the debtor is given an exclusive 120-day period (unless lengthened or shortened for cause) in which to develop a reorganization plan that satisfies a host of statutory requirements and convince a majority of the creditors that the plan is in their best interests and is preferable to a liquidation "fire sale."

In 1994, Congress enacted two exceptions to the general rules of chapter 11. The first related to "small businesses," defined as entities engaged in commercial or business activities whose aggregate debts do not exceed $2 million. Debtors that voluntarily elect to be treated as small businesses are permitted to dispense with creditor committees, receive only a 100-day plan exclusivity period, and are entitled to more flexible provisions for disclosure and solicitation for acceptances of their proposed reorganization plan. In 1994, Congress also developed a special set of rules applicable to "single asset real estate," generally defined as cases in which the principal asset is a single piece of real estate subject to debt of no more than $4 million. In cases falling within this definition, secured creditors are permitted to foreclose on their collateral unless the debtor files a reorganization plan which is likely to be confirmed or commences payment on the secured loan within a 90-day period. This exception to chapter 11 procedures was justified on the grounds that single asset real estate cases were seen as essentially private two-party loan disputes, which did not implicate ongoing businesses or jobs.

[102] See Leslie Kaufman, *Sears to Pay Fine of $60 Million in Bankruptcy Fraud Lawsuit*, N.Y. Times, Feb. 10, 1999, at C2.

A. General Business Concerns

The business provisions of the bill would effectuate a number of changes in the manner in which corporations, partnerships and other business entities are permitted to reorganize their financial affairs. Groups such as the AFL–CIO and the National Bankruptcy Conference have raised numerous concerns regarding the business titles of the legislation and their likely negative impact on financially troubled businesses, particularly during an economic downturn as we are presently experiencing. These include concerns about the expansion of remedies available to secured creditors in the transportation industry;[103] the imposition of mandatory deadlines for extensions of "exclusivity";[104] amendments regarding asset securitization limiting the assets available to a debtor during a bankruptcy case;[105] limits on repeat filings for troubled small businesses,[106] and provisions giving utility companies an enhanced position in bankruptcy.[107] In general, the AFL–CIO has warned:

> When this committee last considered by 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 State 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. Hundred 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, such as these firms' futures depends on the successful functions 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.[108]

Similar concerns relate to the power of creditors who lease retail property. Section 404 grants lessors of commercial property the ability to coerce debtor-tenants into deciding prematurely whether to assume or reject a lease. In a retail insolvency, a debtor may need to wait beyond the 210-day period—120 days with the ability to gain a 90-day extension upon a motion for cause and with the lessor's consent—until the holiday season is complete to determine which locations have a realistic chance to succeed; a trustee or debtor in possession may decide to assume and reject some of the

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[103] *March 18, 1999 Hearing* (written statement of Damon A. Silvers, AFL–CIO); *March 17, 1999* Hearing (written statement of Kenneth Klee, National Bankruptcy Conference).
[104] H.R. 333, § 411.
[105] H.R. 333, § 912.
[106] H.R. 333, § 441.
[107] H.R. 333, § 417.
[108] *Feb. 8, 2001 Hearing* (written statement of Damon Silvers, Associate General Counsel, AFL–CIO).

leases based upon this practical experience. If the trustee or debtor in possession assumes a nonresidential lease in chapter 11, and the case subsequently converts to chapter 7, under the bill, the rent due for a 1-year period following rejection of the lease becomes an administrative expense for compensation, gaining priority over all other unsecured claims and limiting the opportunity for other unsecured creditors to receive compensation. By giving the lessor veto power at the end of 210 days, as the bill now does, the legislation would have the effect of giving a single creditor inordinate bargaining power among creditors and with the debtor.

Another significant problem stems from language added in last year's conference which vastly expands the opportunity of creditors to assert that their debt is nondischargebable in a corporate reorganization. Section 321(d) of the bill subjects corporations to the same exceptions to discharge rules as individuals are under section 523 of the Bankruptcy Code. The section 523 exceptions to discharge were drafted with individuals, not corporations, in mind, and many of the provisions involve matters—such as specific intent—which are not appropriate for a large business. The changes made by section 321(d) could have the effect of making it much more difficult for companies to be able to restructure debts involving, for example, liability actions where fraud may be alleged. In turn, this would make reorganization far more difficult, costing many innocent workers their jobs.

B. Small Business Provisions

With respect to small business, H.R. 333 would expand the definition of covered small business to those companies having debts of less than $3 million,[109] subsuming more than 80% of all chapter 11 cases.[110] It would also make the small business requirements mandatory (rather than optional) and mandate the operation of numerous additional requirements on debtors.[111] For example, under H.R. 333, small business debtors would be required to provide balance sheets, statements of operations, cash-flow statements, and income tax returns within 3 days after filing a bankruptcy petition, the time period the debtor has the exclusive right to file a plan of reorganization would be modified (to 180 days without the possibility of extension), and the standards for being able to seek an extension of this time period would be substantially narrowed.[112]

It is for these reasons that both the AFL–CIO and a number of other organizations representing both debtor and creditor interests are opposed to, or have serious concerns with, the small business provisions of the bill. The AFL–CIO testified:

> 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-re-

[109] H.R. 333, § 432 (proposed amendment to 11 U.S.C. § 101(51D)).
[110] See *March 18, 1999 Hearing* (written statement of Jere W. Glover, Chief Counsel for Advocacy, SBA).
[111] H.R. 333, § 436 (proposed 11 U.S.C. § 1116).
[112] H.R. 333, § 437 (proposed amendment to 11 U.S.C. § 1121(e)).

> organization 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 limiting 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.[113]

It is important to recall that Congress has previously enacted laws that have made it far more difficult for debtors to unduly delay filing a plan of reorganization, and these appear to have had a salutary effect. The proposed rigid deadline in the bill go much farther and will undoubtedly work to detriment of debtors involved in complex reorganizations and force unnecessary liquidations and job losses. In turn, these changes will lead to the premature liquidation of small businesses with the attendant loss of jobs.

C. Single-Asset Real Estate Provisions

A similar concern relates to single-asset real estate ("SARE") debtors. The legislation would significantly expand the definition of SARE by eliminating the $4 million debt cap pursuant to a "technical correction" in section 1201(5) of Title XIII of H.R. 333, would take in SARE bankruptcies below that cap and treat them as small businesses.

As a result of these changes, a much wider range of real estate operations would be required to conform with the SARE and small business requirements when they seek to reorganize, notwithstanding the fact that those requirements were drafted with a much smaller and simpler entity in mind. Large operating entities such as Rockefeller Center, as well as hotels and nursing homes or any business with a significant real estate component, could be considered SARE and put back on the track set forth in § 362(d)(3) of the Bankruptcy Code. It would also create new incentives for lenders to require that all of their real estate borrowers place their holdings in the single asset form in order to avoid ordinary bankruptcy rules in the future. The AFL–CIO noted, "the significant limiting factor in the application of these rules has been the $4 million cap. [Eliminating] the cap would place a wide variety of properties . . . 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." [114]

By design, the SARE changes will "broaden[] the scope of single asset real estate debtors subject to rules which increase the threat

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[113] *Feb. 8, 2001 Hearing* (written statement of Damon Silvers, Associate General Counsel, AFL–CIO).

[114] *March 18, 1999 Hearing* (written statement of Damon A. Silvers, Associate General Counsel, AFL–CIO).

of disruptive summary foreclosures of commercial property."[115] This, in turn, would likely lead to significant job losses. Even if a hotel or nursing home remains in existence, the new owner would not necessarily be required to honor any previously negotiated collective-bargaining agreements applicable to employees at the facility. In the case of a large real estate operation, premature foreclosure could also allow the new owner to terminate many leases, leading to further job losses to the extent the business is relying on these leases.

IV. TAX PROVISIONS

The Bankruptcy Code seeks to effectuate a delicate balance between the rights of the Internal Revenue Service and State tax agencies to the repayment of any taxes, interest, and penalties owed them, and the rights of other creditors and the ability of individuals and corporations to be financially rehabilitated for the benefit of all parties. Title VII of the bill, on balance, manifests a strong preference for the IRS and other taxing authorities to the detriment of other participants in the bankruptcy system. Concerns have been expressed that, not only does H.R. 333 generally enhance the rights and position of the IRS and State authorities in bankruptcy, but the bill grants the IRS certain rights in bankruptcy cases that it does not enjoy outside of bankruptcy, and vests the IRS with new enforcement powers that ordinary creditors do not posses. Of particular concern is the fact that the bill varies in many significant respects from the nonpartisan, and often unanimous, recommendations of the Bankruptcy Commission and its Tax Advisory Committee.

Arguably one of the bill's most important provisions affecting business bankruptcies appears in Section 708 of Title VII. This section provides that a corporation will not be discharged from a tax or customs duty where the debtor made a fraudulent return or willfully attempted to evade or defeat the tax or duty. More significantly, by referencing any debt in section 523(a)(2) of the Code, the provision could even encompass claims that were fraudulently incurred that are not tax claims. In its critique of section 708, the National Bankruptcy Conference wrote:

> A rule such as the one proposed in § 708 advantages one creditor at the expense of others. It is a recipe for certain mischief, especially in large reorganizations. There is no public policy reason to grant this kind of leverage to some creditors as the purpose in making these assertions transparently will likely be to obtain a better deal that other creditors.[116]

In addition, Paul Asofsky, who served as the Chair of the Task Force on the Tax Recommendations of the National Bankruptcy Review Commission of the American Bar Association's Tax Section, testifying about predecessor legislation on behalf of the American Bar Association's Section on Taxation, observed that: "[T]here are

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[115] Letter from Peggy Taylor, Director of Legislation, AFL–CIO, to the Honorable Henry J. Hyde, Chair, House Comm. on the Judiciary (Apr. 20, 1999).

[116] National Bankruptcy Conference, Report on H.R. 2415, 106th Cong., 2d Sess (H. Rept. 106–970) at 16 (2001).

many provisions in this legislation with which we agree as a matter of principle, but the specific provisions are either ambiguously drafted or cut against the grain of the principal proposal, causing us to oppose what should be noncontroversial proposals." [117]

Mr. Asofsky provided a somewhat more detailed discussion of his concerns in a letter to the subcommittee.[118] Section 704 of H.R. 333 provides for a significantly higher uniform interest rate to be applied to tax claims in a bankruptcy case. The Tax Advisory Committee, which included governmental representatives, concluded that the rate for all types of tax claims should be the regular tax deficiency rate for Federal income tax purposes. The bill, however, provides that the rate shall be determined by applicable bankruptcy law. Of greater concern, local governments can set their own interest rates, many of which are substantially higher than either of the IRS rates.[119]

Section 707 severely limits the "superdischarge" available to debtors in chapter 13. It would prevent a debtor from discharging tax debts, which is now permitted in chapter 13, but not in chapter 7. Eliminating the benefit of the superdischarge also eliminates the single greatest incentive for an individual debtor to choose chapter 13. As Mr. Asofsky observed,

> [T]he problem faced by many taxpayers who are delinquent in their obligations is that the IRS standard allowances for installment payment agreements [120] clearly do not leave many taxpayers with the minimum amounts necessary to provide for basic necessities, and so called "offers in compromise" are very difficult to obtain. Thus, for the most desperate of taxpayers, the chapter 13 superdischarge affords a safety net which is the only thing that provides them with the possibility of living somewhat of a normal life in dignity . . . elimination of the chapter 13 superdischarge would be devastating to large numbers of unfortunate individual debtors.[121]

Section 717 requires disclosure of the tax consequences of a chapter 11 plan of reorganization. Although originally an uncontroversial idea, the bill adds extra requirements which will likely cause confusion and may be impossible for debtors to comply with fully. The section now requires "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 interest in the case." The use of a vague term such as "discussion"—although an improvement over the requirement in the earlier version of a "*full* discussion"—will likely lead to extensive litigation as these statements are scrutinized. In some instances, the precise tax consequences of a plan at all levels of government, and for a "typical" holder of claim, may be difficult to produce with great precision.[122]

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[117] *March 18, 1999 Hearing* (written statement of Paul Asofsky).
[118] Letter from Paul Asofsky to the Honorable Jerrold Nadler, Ranking Member, House Subcomm. on Commercial and Admin. Law (Feb. 5, 1999) [hereinafter Asofsky Letter].
[119] *Id.* at 3–4.
[120] These are the same standards used in the means test in section 102 of H.R. 333.
[121] Asofsky Letter at 4.
[122] *Id.* at 5–6.

Finally, section 718 requires that a debtor actually have commenced an action against the taxing authority to determine the amount of a disputed tax before a setoff can be prevented. Absent such an action by the debtor, a governmental entity generally is free to "setoff" any prepetition refund with a liability. The Advisory Committee had recommended that such setoff should only be permitted in cases where the liability was undisputed. The bill goes much further and to the disadvantage of the debtor and other, nongovernmental creditors.

CONCLUSION

For more than 100 years, Congress has carefully considered the bankruptcy laws and legislated on a deliberate and bipartisan basis. In the past, Congress has elected also to preserve carefully an insolvency system that provides a fresh start for honest, hardworking debtors, protects on-going businesses and jobs, and balances the rights of and between debtors and creditors. Because H.R. 333 departs from these principles, we respectfully dissent.

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ADDITIONAL DISSENTING VIEWS

In addition to the concerns raised in the general dissenting views, we are disappointed by the committee's refusal to put an end to one of the most notorious abuses of the bankruptcy system—the "financial planning" strategy by which debtors purchase expensive homes in states which allow an unlimited homestead exemption under 11 U.S.C. § 522 (b) (2) (A), declare bankruptcy, and continue to enjoy a life of luxury while their creditors get little or nothing.

During the committee markup, Mr. Delahunt offered an amendment to eliminate this abuse—and implement a key recommendation of the National Bankruptcy Review Commission [1]—by placing a $250,000 national cap on the homestead exemption.[2] At the request of Mr. Watt, Mr. Delahunt sought and received unanimous consent to modify his amendment to set the cap at $500,000. The amendment thus would have *increased* the cap so as to accommodate every one of the 45 states that place a cap on the exemption. But in exchange for this more generous dispensation, it sought to remove from the bill two loopholes which undercut the cap, effectively ensuring that it will have no effect on the activities of the individuals who have abused the exemption in the past. These loopholes exempt from the cap (1) transactions occurring more than 2 years prior to the bankruptcy filing; and (2) transactions occurring *within* the 2-year pre-filing period which transfer equity from one principal residence to another principal residence within the same state.[3]

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[1] Recommendation 1.2.2 (Homestead Property), NAT'L BANKR. REV. COMM'N, FINAL REPORT: BANKRUPTCY: THE NEXT TWENTY YEARS 125 (1997).

[2] During the 106th Congress, Mr. Delahunt offered an amendment at the subcommittee markup of H.R. 833 which would have placed a $100,000 national cap on the homestead exemption. Mr. Watt proposed that the cap be set at $250,000, and with this modification the Delahunt amendment was agreed to by a vote of 10–2. At full committee, Ms. Jackson-Lee offered an amendment to negate the Delahunt-Watt provision to the extent that it purports to "modify or supersede any provision of State constitutional law that prohibits forced sale of a homestead for the payment of debts." Mr. Bryant offered a substitute amendment providing that the cap shall not apply in states which "opt out" by enacting a subsequent statute. After extensive debate, the Bryant amendment was agreed to by a vote of 18–15.

During the 105th Congress, Mr. Delahunt had offered a similar amendment at the full committee markup of H.R. 3150 which was agreed to by voice vote. However, during floor consideration, the House agreed, by a vote of 222–204, to an amendment by Messrs. Gekas, Smith of Texas and McCollum, which eliminated the Delahunt provision and put in its place a provision that reduced the value of an interest in exempt property "to the extent such value is attributable to any portion of any property that the debtor disposed of in the 730-day period ending on the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor." A version of this provision expanding the 730-day period to 7 years has been retained as section 308 of the present bill.

[3] It is these qualifications which caused the National Bankruptcy Conference to criticize the homestead provision that was included in the conference report on H.R. 2415 in the 106th Congress and is retained in H.R. 333. ("[T]his legislation lacks the straightforward solution to this abuse—a dollar cap on the value of the homestead that can be shielded in bankruptcy. For this reason, H.R. 2415 does not change the outcome of many of the cases that the press has singled out as the clearest case of bankruptcy abuse.") NATIONAL BANKRUPTCY CONFERENCE, REPORT ON H.R. 2415 14–15.

As the bill presently stands, it runs counter to the stated goals of bankruptcy reform, perpetuating an abuse so flagrant and notorious as to bring the entire system into disrepute. Proponents of the "means test," and other provisions included in H.R. 333, seek to eliminate what some have characterized as the use of the Bankruptcy Code as a "financial planning tool." Yet if we are truly serious about reform, we cannot confine our attention to those at the bottom of the economic ladder.

Rather, we should start with individuals like Marvin Warner, a former ambassador to Switzerland and the owner of a failed Ohio Savings & Loan, who paid off only a fraction of $300 million in bankruptcy claims while keeping his multi-million-dollar horse ranch near Ocala, Florida.[4]

Or Martin A. Siegel, a former Wall Street investment banker convicted of insider trading. While facing a $2.75 billion civil suit, he bought a $3.25 million, 7,000-square-foot beachfront home in Ponte Vedra Beach.[5]

Or former baseball commissioner Bowie Kuhn, whose Manhattan law firm went into bankruptcy. After creditors seized his weekend house in the Hamptons and were about to attach his $1.2 million home in Ridgewood, New Jersey, Kuhn acquired a million-dollar house in Florida with five bedrooms and five baths.[6]

Or Dr. Carlos Garcia-Rivera, a Miami physician with no malpractice insurance, who was named in four separate malpractice actions, filed for bankruptcy protection, and kept a $500,000 home with a 100-foot swimming pool.[7]

Or the Dallas developer, Talmadge Wayne Tinsley, who filed under chapter 7 after incurring $60 million in debts. Tinsley objected to the Texas law that permitted him to keep only one acre of his $3.5 million, 3.1-acre magnolia-lined estate. But that acre included a five-bedroom, six-and-a-half-bath mansion with two studies, a pool and a guest house.[8]

Or the movie actor, Burt Reynolds, who declared bankruptcy in 1996, claiming more than $10 million in debt. Reynolds kept a $2.5 million home—appropriately named "Valhalla"—while his creditors received 20 cents on the dollar.[9]

Or Paul Bilzerian, who used Florida's unlimited homestead exemption to avoid his creditors. He filed for bankruptcy in 1991, and filed again last month. He retains his $5 million Florida home, and can completely avoid the $200 million in debt owed his creditors, including the IRS.[10]

The situation in Florida has become so notorious that one Miami bankruptcy judge told the New York Times, "You could shelter the Taj Mahal in this state and no one could do anything about it."[11] As the Wall Street Journal noted recently concerning the Kuhn

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[4] Larry Rohter, *Rich Debtors Finding Shelter Under a Populist Florida Law,* N.Y. TIMES, July 25, 1993, at A1.
[5] *Id.*
[6] *Id.*
[7] David J. Morrow, *Key to a Cozier Bankruptcy: Location, Location, Location,* N.Y. TIMES, Jan. 7, 1998, at A1.
[8] *Id.*
[9] Eliot Kleinberg, *Reynolds Gets Out from under Bankruptcy,* THE PALM BEACH POST, Oct. 8, 1998.
[10] Written statement of Brady C. Williamson at 6, *Hearing on S. 220 before the Sen. Jud. Comm.*, Feb. 8, 2001.
[11] Judge A. Jay Cristol, *quoted in* Rohter, *supra* note 3.

case, "the bill that Congress will soon send to a welcoming President Bush would make [pre-bankruptcy planning using the unlimited homestead exemption] more diifficult, but that's symbolic. Few people anticipating bankruptcy have the cash to pull off that maneuver.[12]

This is a national problem that demands a uniform solution. Without a nationwide cap, debtors who live in the 45 states that cap the exemption at $200,000 or less are free to relocate to one of the five so-called "debtors' paradises" that have no cap at all.[13]

Some have suggested that a Federal cap is a "violation of states' rights."[14] Yet the Bankruptcy Code is a Federal statutory scheme, and the system it envisions is one which is administered by the Federal courts. To defer to the states on such a matter is like legislating a Federal income tax and leaving it to the state legislatures to determine what will count as a business deduction. Such an arrangement invites forum shopping and encourages gross inequities in the treatment of debtors who live in different states.

It is important to recognize that the proposed Delahunt amendment would have no effect whatsoever on the 45 jurisdictions that currently place their own cap on the exemption. But it will discourage residents of those jurisdictions from moving to one of the five states with no cap at all in order to take advantage of this enormous loophole in the law.

Nor will unscrupulous debtors be unduly hindered by provision in section 308 of the bill, which disallows the exemption if the individual converted the property within 7 years of the filing of the petition but only to the extent that the nonexempt assets were converted "with the intent to hinder, delay, or defraud a creditor." Those already resident in a state with no exemption cap are unaf-

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[12] David Wessel, *A Law's Muddled Course*, The Wall Street Journal, at 1 (Feb. 22, 2001).

[13] The following are the state exemption levels (per household, i.e., for joint debtors with two dependents), as of January 1, 2000. In 18 jurisdictions, the debtor may choose between the state exemption and a Federal exemption (currently $16,150 per debtor):

Unlimited: Florida, Iowa, Kansas, South Dakota, Texas
$200,000: Minnesota
$125,000: Nevada
$100,000: Arizona, Massachusetts, Rhode Island
$80,000: North Dakota
$75,000: California, Connecticut, Mississippi, Vermont
$60,000: New Mexico, Montana
$54,000: Alaska
$50,000: Idaho
$40,000: Wisconsin, Utah (if jointly owned), Washington
$33,000: Oregon
$30,000: Colorado, Hawaii, New Hampshire, Virgin Islands
$20,000: Utah (if individually owned)
$15,000: Indiana, Louisiana
$12,500: Maine, Nebraska
$10,000: New York, North Carolina, South Carolina, Wyoming
$8,000: Missouri
$7,500: Illinois, Tennessee
$6,500: Virginia
$5,000: Alabama, Delaware, Georgia, Kentucky, Ohio, Oklahoma, West Virginia
$3,500: Michigan
$2,500: Arkansas, Maryland
$1,500: Puerto Rico
$300: Pennsylvania
$0: District of Columbia, New Jersey

Source: JOHN H. WILLIAMSON, ATTORNEY'S HANDBOOK ON CONSUMER BANKRUPTCY AND CHAPTER 13 (2000).

[14] See, e.g., Letter from 21 members of the Texas Congressional Delegation to Chairman Henry Hyde and Ranking Member John Conyers, Jr. (Apr. 19, 1999) (on file with the House Judiciary Committee).

fected by the limitation except for "any amount of interest that was acquired by the debtor during the 2-year period preceding the filing of the petition which exceeds the aggregate $100,000 in value." [15] Interests transferred from another in-state residence are exempted from that limitation.[16] And wealthy debtors from other states who are sophisticated enough to plan ahead can simply wait the 730 days and then file their petition. Debtors who have owned their homestead for 2 years or more can continue to use it to "hinder, delay, or defraud" their creditors out of millions of dollars.

During the committee debate, some speakers argued that these abuses are not common. That is true. We do not suggest that they are daily occurrences. But the fact that a particular form of misconduct occurs infrequently is not an argument that it should be condoned. By condoning these spectacular abuses by a handful of wealthy debtors, we bring the fairness and rationality of the entire system into disrepute.

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[15] Sec. 322(a).
[16] *Id.*