House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, March 1, 2005, at 2 p.m.

Senate

MONDAY, FEBRUARY 28, 2005

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. Frist. Mr. President, I welcome everyone back from the President's Day recess. I suspect the weather outside today makes our distinguished President pro tempore homesick for his home, Alaska.

As we communicated over the last week, today, in just a few minutes, we will begin debate on the bankruptcy bill, S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The chairman and ranking member are here to begin the opening remarks. Other Members will want to speak, I am sure, this afternoon.

Our agreement provides for debate only today. Therefore, as previously announced, we will have no rollcall votes today. We do have several speakers. I don't expect a lengthy session today. I ask my colleagues to come to the Chamber to make opening statements and keep the afternoon full. I want people to make sure they have that opportunity to speak today, but do not expect a lengthy session because of the weather.

We expect to begin the amendment process on the bill tomorrow. I encourage Members to notify their respective cloakrooms if they intend to offer amendments to this bill. I had the opportunity to talk to the Democratic leader over the recess, as well, and we both agreed we would encourage our caucuses to bring those amendments forward to the ranking member and the chairman so they can be addressed in an efficient and effective way. I expect we will make progress on amendments during tomorrow's session, although it is unlikely we will vote before the policy luncheons. I ask the chairman to consider having a vote shortly after the 2:15 reconvening tomorrow if at all possible.

I understand we are just beginning today, but I encourage the amendment process to begin in the morning. Hopefully, we can debate amendments in the morning.

I thank everyone for their assistance on this snowy Monday and look forward to a very constructive legislative period over the next several weeks. I will say more on the bankruptcy bill tomorrow morning.

Let me say how pleased I am we are moving forward in considering this bill that many people have looked at for longer than 7 years. Over the last 7 years we have passed this bill, or a bill very similar to it, repeatedly, again and again, both in the House and in the Senate.

The reason we have been able to pass the bill is that both sides of the aisle recognize the current system is calling for reform. Personal bankruptcies are skyrocketing and wealthy debtors are walking away from debts they can repay. This abuse is hurting everyone, not just the creditor they owe, but it hurts all who ultimately pay higher fees in prices to cover the loss.

With that, I yield the floor as we begin debate on S. 256, the Bankruptcy
SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:
Sec. 1. Short title; references; table of contents.

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

TITLE II—ENHANCED CONSUMER PROTECTION
Subtitle A—Penalties for Abusive Creditor Practices
Sec. 201. Promotion of alternative dispute resolution.
Sec. 204. Preservation of claims and defenses upon sale of predatory loans.
Sec. 205. GAO study and report on reaffirmation agreement process.

Subtitle B—Priority Child Support
Sec. 211. Definition of domestic support obligation.
Sec. 212. Priorities for claims for domestic support obligations.
Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfers.
Sec. 218. Disposable income defined.
Sec. 219. Collection of child support.
Sec. 220. Nondischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections
Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.
Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definition of person.
Sec. 227. Restrictions on debt relief agencies.
Sec. 228. Disclosures.
Sec. 229. Requirements for debt relief agencies.
Sec. 230. GAO study.
Sec. 231. Protection of personally identifiable information.
Sec. 232. Consumer privacy ombudsman.
Sec. 233. Prohibition on disclosure of name of minor children.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE
Sec. 301. Reinforcement of the fresh start.
Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security interest.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Reduction of homestead exemption for fraud.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitations on homestead exemptions.
Sec. 323. Excluding employee benefit plan retirement contributions and other property from the estate.
Sec. 324. Exclusion in matters involving bankruptcy professional dealings.
Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
Sec. 328. Defaults based on nonmonetary obligations.
Sec. 329. Clarification of postpetition wages and benefits.
Sec. 330. Delay of discharge during pendency of certain proceedings.
Sec. 331. Limitation of exceptions to exemptions, severance pay, and certain other payments.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS
Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refiled debt security interest.
Sec. 404. Executory contracts and unexpired leases.
Sec. 405. Creditors and equity security holders committee.
Sec. 406. Amendment to title 11, United States Code.
Sec. 407. Amendments to section 330(a) of title 11, United States Code.
Sec. 408. Postpetition disclosure and solicitation.
Sec. 409. Preferences.
Sec. 410. Venue of certain proceedings.
Sec. 411. Period for filing plan under chapter 11.
Sec. 412. Fees arising from certain ownership interests.
Sec. 413. Creditor representation at first meeting of creditors.
Sec. 414. Definition of disinterested person.
Sec. 415. Factors for disqualification of professional persons.
Sec. 416. Appointment of elected trustee.
Sec. 417. Utility service.
Sec. 418. Bankruptcy fees.
Sec. 419. More complete information regarding assets of the estate.

Sec. 431. Flexible rules for disclosure statement and plan.
Sec. 432. Definitions.
Sec. 433. Standard form disclosure statement and plan.
Sec. 434. Uniform national reporting requirements.
Sec. 435. Uniform reporting rules and forms for small business cases.
Sec. 436. Duties in small business cases.
Sec. 437. Plan filing and confirmation deadlines.
Sec. 438. Plan confirmation deadlines.
Sec. 439. Duties of the United States trustee.
Sec. 440. Scheduling conferences.
Sec. 441. Scheduling and confirmations.
Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
Sec. 444. Payment of interest.
Sec. 445. Priority for administrative expenses.
Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.
Sec. 447. Appointment of committee of retired employees.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS
Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—BANKRUPTCY DATA
Sec. 601. Improved bankruptcy statistics.
Sec. 602. Uniform rules for the collection of bankruptcy data.
Sec. 603. Audit procedures.
Sec. 604. Sense of Congress regarding availability of bankruptcy data.

TITLE VII—BANKRUPTCY TAX PROVISIONS
Sec. 701. Treatment of certain liens.
Sec. 702. Treatment of fuel tax claims.
Sec. 703. Notice of request for a determination of taxes.
Sec. 704. Rate of interest on tax claims.
Sec. 705. Priority of tax claims.
Sec. 706. Priority property taxes incurred.
Sec. 707. No discharge of fraudulent taxes in chapter 13.
Sec. 708. No discharge of fraudulent taxes in chapter 11.
Sec. 709. Stay of tax proceedings limited to prepetition taxes.
Sec. 710. Periodic payment of taxes in chapter 11 cases.
Sec. 711. Avoidance of statutory tax liens prohibited.
Sec. 712. Payment of taxes in the conduct of business.
Sec. 713. Tardily filed priority tax claims.
Sec. 714. Income tax refunds prepared by tax authorities.
Sec. 715. Discharge of the estate’s liability for unpaid taxes.
Sec. 716. Requirements to file tax returns to confirm chapter 13 plans.
Sec. 717. Standards for tax disclosure.
Sec. 718. Setoff of tax refunds.
Sec. 719. Spousal and family support related to the treatment of State and local taxes.
Sec. 720. Dismissal for failure to timely file tax returns.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES
Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
Sec. 802. Other amendments to titles 11 and 28, United States Code.

TITLE IX—FINANCIAL CONTRACT PROVISIONS
Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
Sec. 902. Authority of the FDIC and NCUA with respect to failed and failing institutions.
Sec. 903. Amendments relating to transfer of qualified financial contracts.
Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 905. Clarifying amendment relating to master agreements.
Sec. 907. Bankruptcy law amendments.
Sec. 908. Recordkeeping requirements.
Sec. 909. Exemptions from contemporaneous execution requirement.
Sec. 910. Damage measure.

TITLES X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN
Sec. 1001. Permanent reenactment of chapter 12.
Sec. 1002. Debt limit increase.
Sec. 1003. Certain claims owed to governmental units.
Sec. 1004. Definition of family farmer.
Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy.
Sec. 1006. Prohibition of retroactive assessment of disposable income.
Sec. 1007. Family fishermen.

TITLES XI—HEALTH CARE AND EMPLOYEE BENEFITS
Sec. 1101. Definitions.
Sec. 1102. Disposal of patient records.
Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
Sec. 1104. Appointment of ombudsman to act as patient advocate.
Sec. 1105. Debtor in possession; duty of trustee to transfer patients.
Sec. 1106. Exclusion from program participation not subject to automatic stay.

TITLES XII—TECHNICAL AMENDMENTS
Sec. 1201. Definitions.
Sec. 1202. Adjustment of dollar amounts.
Sec. 1203. Extension of time.
Sec. 1204. Technical amendments.
Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1206. Limitation on compensation of professional persons.
Sec. 1207. Effect of consolidation.
Sec. 1208. Allowance of administrative expenses.
Sec. 1209. Exemptions to discharge.
Sec. 1210. Effect of discharge.
Sec. 1211. Protection against discriminatory treatment.
Sec. 1212. Property of the estate.
Sec. 1213. Preferences.
Sec. 1214. Postpetition transactions.
Sec. 1215. Disposition of property of the estate.
Sec. 1216. General provisions.
Sec. 1217. Abandonment of railroad line.
Sec. 1218. Contents of plan.
Sec. 1219. Bankruptcy cases and proceedings.
Sec. 1220. Knowing disregard of bankruptcy law or rule.
Sec. 1221. Transfers made by nonprofit charitable organizations.
Sec. 1222. Protection of valid purchase money security interests.
Sec. 1223. Bankruptcy Judgeships.
Sec. 1224. Compensation of trustees.
Sec. 1225. Amendment to section 362 of title 11, United States Code.
Sec. 1226. Judicial education.
Sec. 1227. Reorganization plans.
Sec. 1228. Providing requested tax documents to the court.
Sec. 1229. Encouraging creditworthiness.
Sec. 1230. Property for longer subject to reorganization.
Sec. 1231. Trustees.
Sec. 1232. Bankruptcy forms.
Sec. 1233. Direction of bankruptcy matters to courts of appeals.
Sec. 1234. Involuntary cases.
Sec. 1235. Federal election law fines and penalties as nondischargeable debt.

TITLES XIII—CONSUMER CREDIT DISCLOSURE
Sec. 1301. Enhanced disclosures under an open end credit plan.
Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 1303. Disclosures related to “introductory rates”.
Sec. 1304. Prohibited credit card solicitations.
Sec. 1305. Disclosures related to late payment deadlines and penalties.
Sec. 1306. Prohibitions on certain actions for failure to incur finance charges.
Sec. 1307. Dual use debit card.
Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
Sec. 1309. Clarification of clear and conspicuous.

TITLES XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE
Sec. 1401. Employee wage and benefit priorities.
Sec. 1402. Fraudulent transfers and obligations.
Sec. 1403. Payment of insurance benefits to retired employees.
Sec. 1404. Debts nondischargeable if incurred in violation of securities fraud laws.
Sec. 1405. Appointment of trustee in cases of suspected fraud.
Sec. 1406. Effective date; application of amendments.

TITLES XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS
Sec. 1501. Effective date; application of amendments.
Sec. 1502. Technical corrections.
grandchildren 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 or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(VI) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(VII) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(VIII) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(1) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

(2) $10,000.

(A) As of the date of the order of relief, the debtor shall include a statement of the debtor's current monthly income, and the court shall determine whether a presumption arises under subparagraph (A)(i), that show how such amount is calculated.

(B) In considering an issue under paragraph (A) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the amount in subpart (I) of this paragraph does not arise or is rebutted, the court shall consider—

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

(ii) the total of all amounts scheduled as payments on account of secured debts shall be calculated as the total amount of debts entitled to priority, divided by 60.

(3) In determining the monthly amount of any cash received (other than the lesser of—

(iii) $1,000, or (ii) the court finds that—

(i) the court finds that the debtor received the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the attorney who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of evading subparagraph (A)(ii); or

(iii) the debtor is unable to pay for such reasonable and necessary expenses or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(4) In determining the monthly amount of any cash received (other than the lesser of—

(iii) $1,000, or (ii) the court finds that the debtor received the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the attorney who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of evading subparagraph (A)(ii); or

(iii) the debtor is unable to pay for such reasonable and necessary expenses or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(5) In determining the monthly amount of any cash received (other than the lesser of—

(iii) $1,000, or (ii) the court finds that the debtor received the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the attorney who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of evading subparagraph (A)(ii); or

(iii) the debtor is unable to pay for such reasonable and necessary expenses or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(6) In determining the monthly amount of any cash received (other than the lesser of—

(iii) $1,000, or (ii) the court finds that the debtor received the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the attorney who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of evading subparagraph (A)(ii); or

(iii) the debtor is unable to pay for such reasonable and necessary expenses or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(7) In determining the monthly amount of any cash received (other than the lesser of—

(iii) $1,000, or (ii) the court finds that the debtor received the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the attorney who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of evading subparagraph (A)(ii); or

(iii) the debtor is unable to pay for such reasonable and necessary expenses or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(8) (i) the court finds that the debtor received the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(ii) the attorney who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of evading subparagraph (A)(ii); or

(iii) the debtor is unable to pay for such reasonable and necessary expenses or adjustments to income necessary and reasonable and necessary and, and why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(9) In determining whether the debtor is unable to pay for such reasonable and necessary expenses or adjustments of current monthly income, the court, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the debtor to file in a case under section 1307(b), including reasonable attorneys' fees.

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(I) grants such motion; and

(ii) The signature of an attorney on the petition, pleading, or written motion 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

(iii) 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).

(2) The signature of an attorney on the petition shall constitute a certification that the attorney has knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(3) A statement in the schedules or evidence filed by a party in interest (other than a trustee or United States trustee) may only be rebutted by demonstrating specific facts demonstrating 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).

(C) For purposes of this paragraph—

(i) any other subsidiary corporation of the parent corporation;

(ii) a joint case; and

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

(A) a parent corporation; and

(B) any other subsidiary corporation of the parent corporation.

(D) The signature of an attorney on a pleading or other motion filed by a party in interest (other than a trustee or United States trustee) may only be rebutted by demonstrating specific facts demonstrating a right guaranteed to the debtor under this title.

(E) The signature of an attorney on a pleading or other motion filed by a party in interest (other than a trustee or United States trustee) may only be rebutted by demonstrating specific facts demonstrating a right guaranteed to the debtor under this title.

(F) The signature of an attorney on a pleading or other motion filed by a party in interest (other than a trustee or United States trustee) may only be rebutted by demonstrating specific facts demonstrating a right guaranteed to the debtor under this title.

(G) The signature of an attorney on a pleading or other motion filed by a party in interest (other than a trustee or United States trustee) may only be rebutted by demonstrating specific facts demonstrating a right guaranteed to the debtor under this title.

(H) The signature of an attorney on a pleading or other motion filed by a party in interest (other than a trustee or United States trustee) may only be rebutted by demonstrating specific facts demonstrating a right guaranteed to the debtor under this title.

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash
or money payments received from the debtor or the debtor's spouse attributed to the debtor's current monthly income.".

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

"(10A) 'current monthly income'—

(A) means the average monthly income from all sources, computed on a 6-month period ending on—

(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(i); or

(ii) the date on which current income is determined by the court for purposes of this title if the case is pending on the date of the filing of the petition that the presumption of abuse has arisen;".

(c) LIMITATION.—Nothing in this section shall limit the ability of a creditor to provide information to a judge (except for income information) for the purpose of determining whether there is a reasonable basis for a finding of abuse under title 18, unless otherwise permitted by applicable law, United States trustee (or bankruptcy administrator, if any), or trustee.

(d) DISMISSAL OR CONVERSION.—Section 707 of title 11, United States Code, is amended by adding at the end the following:

"(c)(1) In the case of a debtor who is an individual and who

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

(B) the term 'drug trafficking crime' has the meaning given such 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 order that the person--

(i) be disqualified from purchasing, possessing, or using a firearm, ammunition, or destructive device; and

(ii) be subject to a firearm ban order; and

(iii) be subject to an order requiring the person to provide the victim with the location of the person's residence with the court's approval; and

(3) by adding at the end the following:

"(4) reduces amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

"(A) such expenses are reasonable and necessary;

"(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

"(C) the amount is not otherwise allowed for purposes of determining the disposable income under section 1325(b) of this title; and

and upon request of any party in interest, files proof that a health insurance policy was purchased.

(j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended by striking "and 523(a)(2)(C)(i)" each place it appears and inserting "523(a)(2)(C), 707(b), and 1325(b)(3)".

(k) DEFINITION OF 'MEDIAN FAMILY INCOME'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (11) the following:

"(11A) 'median family income' means for any year—

(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year; and

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

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

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established for reporting purposes as needed to accommodate their use under section 707(b) of title 11, United States Code.
(a) The financial management training curriculum and materials developed under subsection (a) are:

(A) the financial management training curriculum and materials developed under subsection (a) of section 111 of title 11, United States Code; and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 7 of title 11, United States Code, and by consumer counseling agencies.

(2) The report under paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (1) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(b) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (1) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(c) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(d) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(e) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(f) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(h) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(i) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(j) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.

(k) 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.

(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.
“(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, including funding sources, counselor qualifications and training that will be provided, the budget and credit counseling agency or instructional course being provided in a manner consistent with stated objectives directly related to the goals of such instructional course.

(2) To be approved by the United States trustee (or bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall—

(A) have met the standards set forth under this subsection during such period; and

(B) can satisfy such standards in the future.

(3) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

(c)(1) The United States trustee (or the bankruptcy administrator, if any) may only approve an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

(A) has met the standards set forth under this section for the duration of such period; and

(B) can satisfy such standards in the future.

(4) At the conclusion of the applicable 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 developing a personal bankruptcy management and that are consistent with stated objectives directly related to the goals of such instructional course;

(C) a qualified entity situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course 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 instructional course, including any evaluation of satisfactory instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course 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 designed to increase substantially the debtor’s understanding of personal financial management.

(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to demonstrate the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency, or stop approving such agency if it finds that such agency does not meet the qualifications of subsection (b).

(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and 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).

(2) No nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

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

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

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

‘‘(111) Nonprofit budget and credit counseling agencies; financial management instructional courses.’’.

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

‘‘(i) On request of a party in interest, the clerk shall issue an order under subsection (c)(5) confirming that the automatic stay has been terminated.’’.}

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 507(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

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

(1)(B)(i).’’.

(b) offer of the debtor under subparagraph (A)—

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

(ii) provided for payment of at least 60 percent of the amount of the claim 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 negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111; and

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

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

(ii) provided for payment of at least 60 percent of the amount of the claim 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 negotiate 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)(ii).

Limitation on Avoidability.—Section 547 of title 11, United States Code, is amended by adding at the end the following:
"(b) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an amortizing and listing credit and debt counseling agency.

SEC. 202. EFFECT OF DISCHARGE.

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

"(1) The willful failure of a creditor to credit payments received under a plan confirmed under this title unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payment of the amounts required by 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.

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

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

"(ii) 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 or lien.

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION AGREEMENT PRACTICES.

(a) In General. Section 524 of title 11, United States Code, as amended section 202, is amended—

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

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

"(2) by adding at the end the following:

"(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order, if any, respectively, that is the holder of a secured claim, if—

"(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

"(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related listing of the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listed.

"(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—

"(i) by making the statement: ‘Your first payment in the amount of $ is due on and your annual payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable,’ and stating the amount of the first payment in the amount of $ is due on and your annual payment amount may be different.

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

"(1) 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 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 reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don’t have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.’

"(d)(4) 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 your debts carefully. Then, if you enter into 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 your reaffirmation agreement, the attorney must have signed the reaffirmation agreement in Part B.

‘4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part B.

‘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 your reaffirmation agreement, the attorney must have signed the negotiation in Part D and all listing the items.

‘7. If you were not represented by an attorney during the negotiation of your 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 the reaffirmation agreement. Once your bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation 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.

"You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order. If the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (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 case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will consist of 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 reaffirmation agreement may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

"Are you allowed 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 the payments. The reaffirmation agreement that is exempt under your State’s law or that the trustee has abandoned, you may be able to redeem the item rather than keep 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.

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

"(ii) In the case of a reaffirmation agreement which may have changed the terms of the original agreement, your reaffirmation agreement becomes effective upon filing the court.

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

"Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts 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 these debts:

"Accepted by creditor:

"Date of creditor acceptance:

"(g) The declaration shall consist of the following:

"(A) The following certification by Debtor’s Attorney (If Any):

"I hereby certify that (1) this agreement represents a voluntary agreement by the debtor; (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) If the reaffirmation agreement has been established with respect to such agreement, such 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.

"(6A) The statement in support of such 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.

"I believe this reaffirmation 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 reaffirmed 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 rebutted if I explain to the satisfaction of the court how I can afford to make the payments here:

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

"Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, 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 reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons for the court).

"(c) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and served by the movant and shall consist of the following:

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

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

"(d) The reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons for the court).

"The court grants the debtor’s motion and approves the reaffirmation agreement described above.

"(e) Notwithstanding any other provision of this title, the following shall apply:

"(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

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

"(f) The requirement in paragraphs (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

"(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, or after notice and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the following the ending income less the debtor’s monthly income expenses as shown on the debtor’s completed and signed statement in support of such agreement required under subsection (k)(7)(A)(i) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court.

"(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 1601a(a)(2) of the Federal Reserve Act.

"(n) LAW ENFORCEMENT.—

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

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

"(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 law 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 ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

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

"(2) an agent of the Federal Bureau of Investigation 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 court shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy
schedule to the individuals designated under this section.

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

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

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREATORY LOANS.

Section 306 of title 11, United States Code, is amended—

(1) by redesignating subsection (o) as subsection (p); and

(2) by inserting after subsection (n) the following:

"(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 333.1 of title 16 of the Code of Federal Regulations 1, 2004), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.

SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION AGREEMENT PROCESS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation agreement process that occurs under title 11 of the United States Code, to determine the overall treatment of consumers within the context of such process, and shall include in such study consideration of—

(1) the policies and activities of creditors with respect to reaffirmation agreements; and

(2) whether consumers are fully, fairly, and consistently informed of their rights pursuant to such title.

(b) REPORT TO THE CONGRESS.—Not later than 18 months after the date of the 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 on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive tactics found in connection with the reaffirmation agreement process that occurs under title 11 of the United States Code.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

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

(1) by striking paragraph (12); and

(2) by inserting after paragraph (11) the following:

"(12) A domestic support obligation means a debt that accrues before, on, or after the date of the order for relief in a case 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, on, or after the date of the order for relief in this title, by reason of applicable provisions of—

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

"(ii) an order of divorce, a dissolution of marriage, or separation; or

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

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

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

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

(1) by striking paragraph (7);

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

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

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

(5) in paragraph (4), as so redesignated, by striking "Third" and inserting "Fourth"; and

(6) by striking the semicolon at the end and inserting a period.

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

Title 11, United States Code, is amended—

(1) in section 1128(a), by adding at the end the following:

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

(2) in section 128(a)(c)—

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

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

(C) by adding at the end the following:

"(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition;"

(3) in section 122(a)(2), by inserting "and" at the end;

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

(C) by adding at the end the following:

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

(4) in section 122(b)—

(A) in paragraph (10), by striking "and" at the end;

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

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

"(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are non-dischargeable under section 122(a), except that such interest may be paid only to the extent that such interest is available to pay such interest after making provision for full payment of all allowed claims;"

(5) in section 122(b)(5)—

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

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

(C) by adding at the end the following:

"(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation;"

(6) in section 122(a)(5), in the matter preceding paragraph (1), by inserting", and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due and payable before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan have been paid" after" in

(7) in section 1307(c)—
(A) in paragraph (9), by striking “or” at the end; (B) in paragraph (10), by striking the period at the end and inserting “; or”; (C) in paragraph (11), by striking the following: “(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition;” (D) in section 1322(a)— (A) in paragraph (2), by striking “and” at the end; (B) in paragraph (3), by striking the period at the end and inserting “; and”; (C) by adding at the end the following: “(4) in 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) of title 11, United States Code, if all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.”; (9) in section 1322(b)— (A) in paragraph (9), by striking “; and” and inserting a semicolon; (B) by redesignating paragraph (10) as paragraph (11); and (C) inserting after paragraph (9) the following: “(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under subsection 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and”; (10) in section 1322(a), as amended by section 1(b), by inserting after paragraph (7) the following: “(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and”; (11) in section 1322(a), in the matter preceding paragraph (1), by inserting “, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due and payable on or before the date of the petition (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid” after “completion by the debtor of all payments under the plan”.

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS. Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following: “(2) under subsection (a)— “(A) of the commencement or continuation of a civil action or proceeding; “(B) for the establishment of paternity; “(C) for the establishment or modification of an order for domestic support obligations; “(D) 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) of the collection of a domestic support obligation from property that is not property of the estate; or “(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 or a statute; “(D) of the withholding, suspension, or retraction of a professional fee or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act; “(E) of the withholding of a payment owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act; “(F) of the seizure of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; and “(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act.” SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT. Section 523(a)(1) of title 11, United States Code, is amended— (1) in subsection (a)— (A) by striking paragraph (5) and inserting the following: “(5) for a domestic support obligation;”; (B) by striking paragraph (18); (2) in subsection (b), by striking “, (6), or (15)” each place it appears and inserting “and (6)”; and (3) in paragraph (15), as added by Public Law 105–394 (112 Stat. 4110), by— (A) by inserting “to a spouse, former spouse, or child of the debtor and” before “not of the kind”; (B) by inserting “or” after “court of record,” and (C) by striking “unless—” and all that follows through the end of the paragraph and inserting a period.

SEC. 216. CONTINUED LIABILITY OF PROPERTY. Section 522 of title 11, United States Code, is amended— (1) in subsection (c), by striking paragraph (1) and inserting the following: “(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a)(1) in which, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5)”; “(2) in subsection (d), by striking the dash and all that follows through the end of the subparagraph and inserting “of a kind specified in section 523(a)(5); or” and “(3) in subsection (g)(2), by striking “sub- section (f)(2)” and inserting “subsection (f)(1)(B)”.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS. Section 547(e)(7) of title 11, United States Code, is amended to read as follows: “(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation.”

SEC. 218. DISCHARGEABLE INCOME DEFINED. Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting “or for a domestic support obligation that first becomes payable after the date of the filing of the petition” after “dependent of the debtor”.

SEC. 219. COLLECTION OF CHILD SUPPORT. (a) DUTIES OF TRUSTEE UNDER CHAPTER 7. Section 704 of title 11, United States Code, as amended by section 102, is amended— (1) in subsection (a)— (A) in paragraph (6), by striking “and” at the end; (B) in paragraph (9), by striking the period and inserting a semicolon; and (C) by adding at the end the following: “(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and”;

(b) by adding at the end the following: “(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall— “(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under section 664 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; “(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and “(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter; “(B)(i) provide written notice to such State child support enforcement agency of such claim; and “(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; “(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of the identity of the debtor; “(ii) the last recent known address of the debtor; “(iii) the last recent known name and address of the debtor’s employer; and “(iv) the name of each creditor that holds a claim that— “(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or “(II) was reaffirmed by the debtor under section 523(c); “(4)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1) or (iv) the last known address of the debtor. “(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a debtor in a bankruptcy case in response to a request made under subparagraph (A) shall not be liable by reason of making such disclosure.”

(a) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended— (1) in subsection (a)— (A) in paragraph (6), by striking “and” at the end; (B) in paragraph (7), by striking the period and inserting “; and”; (C) by adding at the end the following: “(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and”;

(b) by adding at the end the following: “(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall— “(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 664 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and “(ii) include in the notice required under clause (i) the address and telephone number of such State child support enforcement agency;
“(B)(i) provide written notice to such State child support enforcement agency of such claim; and

“(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

“(C) at any time after the debtor has been provided a written notice under section 1228, a creditor that makes a disclosure with respect to such a claim and of the right of such holder to use the services of the State child support enforcement agency, shall not be liable by reason of making such disclosure.”.

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

(1) in subsection (b)—

(A) in paragraph (4), by striking “and” at the end of the clause (ii) of such paragraph; and

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

(C) by adding at the end the following:

“(2)(A) The holder of a claim described in subsection (a)(8) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of a debtor in connection with a request made under subparagraph (A) 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 by reason of making that disclosure.”.

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

(1) in subsection (b)—

(A) in paragraph (4), by striking “and” at the end of the clause (ii) of such paragraph; and

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

(C) by adding at the end the following:

“(2) in a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency, shall not be liable by reason of making such disclosure.”.

1986, incurred by a debtor who is 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 bankruptcy petition preparer.”; and

“(ii) an obligation to repay funds received for assistance in collecting child support during and after the case under this title; and

“(ii) by adding at the end the following:

“(2)(A) Before preparing any document for filing, accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

“(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; and

(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—

(1) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

“(II) be filed with any document for filing.”.

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking “(2) For purposes” and inserting “(2)(A) Subject to subparagraph (B), pursuant to”; and

(ii) by adding at the end the following:

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

(B) by striking paragraph (3); and

(4) in subsection (d)—

(A) by striking “(d)(1)” and inserting “(d)(1)”; and

(B) by striking paragraph (2); and

(5) in subsection (e)—

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

“(2) at the time the 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 bankruptcy petition preparer.”; and

(B) by striking paragraph (3); and

(6) in section 523(a) of title 11, United States Code, is amended—

(A) by striking paragraphs (4) and (14) of section 523(a); and

(B) by striking subparagraphs (B) and (C) of section 523(a).
violates this section or commits any act that
the court finds to be fraudulent, unfair, or
defective, on the motion of the debtor, trustee,
United States trustee (or the bankruptcy
administrator, if any), and after notice and a
hearing on the motion, the court shall order the
bankruptcy petition preparer to pay to the debt-
or—;
(10) in subsection (j)—
(A) in paragraph (1), by striking "a
violation of which subjects a person to crimi-
nal penalty";
(B) in subparagraph (A)—
(1) by striking "or has not paid a penalty" and
inserting "has not paid a penalty"; and
(II) by inserting "or failed to disgorge all 
fees ordered by the court under "a penalty 
imposed under this section.",
(C) by redesignating paragraph (3) as para-
graph (4); and
(D) by inserting after paragraph (2) the fol-
lowing:
"(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 on the motion of the court, the trust-
ees, or the United States trustee, if any.
"(4) by adding at the end the following:
"(i) A bankruptcy petition preparer who
fails to comply with any provision of sub-
section (b), (c), (d), (e), (f), (g), or (h) may be
fined not more than $500 for each such fail-
ure.
"(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 use a false So-
cial Security account number;
(B) failed to comply with any provision of sub-
section (b), (c), (d), (e), (f), (g), or (h); or
(C) failed to inform the debtor that the
bankruptcy petition preparer was filing for relief
under this title;
(D) prepared a document for filing in a
manner that failed to disclose the identity of
the bankruptcy petition preparer.
"(3) A debt, trustee, creditor, or United
States trustee (or the bankruptcy adminis-
trator, if any) may file a motion for an
order imposing a fine on the bankruptcy petition
preparer for an act described in this section.
"(A) Fines imposed under this sub-
section 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 re-
ferred 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 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 re-
ferred to in section 586(e)(2) of title 28.
"(9) in subsection (i)—
(II) Fines imposed under this sub-
section 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 re-
ferred 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.
"(A) 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 re-
ferred 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.
sec. 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 such amount; and"

(2) in subsection (d)—

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

(B) by adding at the end the following:

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

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

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

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

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

"(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection, or of a benefit of 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, 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 under 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) a loan from a thrift savings plan permitted under subchapter III of chapter 4 of title 5 that satisfies the requirements of section 8433(c) of such title; but nothing in this paragraph 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) Discharge.—Section 523(a) of title 11, United States Code, as amended by section 215, is amended by inserting after paragraph (17) the following:

"(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, 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 under 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) a loan from a thrift savings plan permitted under subchapter III of chapter 4 of title 5 that satisfies the requirements of section 8433(c) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; ."

(d) Plan Contents.—Section 1322 of title 11, United States Code, is amended by inserting at the end the following:

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

(e) Asset Limitation.—

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

"(f) 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 402(k), or a defined benefit retirement account under section 403(p) of such code, the aggregate value of such assets exempted under paragraph (1) with regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 408(b)(8) of the Internal Revenue Code of 1986, that shall not exceed $1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(2) Adjustment of Dollar Amounts.—

Paragraphs (1) and (2) of section 101(b) of title 11, United States Code, are amended by inserting "522(n), after "522(d)."

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

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

(1) in subsection (b) —

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

(B) by redesignating paragraph (5) as paragraph (4); and

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

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

"(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild 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 497(c) of the Internal Revenue Code of 1986); and

"(6) funds placed 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 fund as does not exceed $5,000; ."

(b) Exception.—Section 530 of the Internal Revenue Code of 1986, as added by section 202, is amended by inserting "522(n)," after "522(d)."

SEC. 226. DEFINITIONS.

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

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

"(3) 'assisted person' means any person with respect to whom the court finds that such person and the value of whose nonexempt property is less than $150,000; ."

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

"(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person 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 who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer; or

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

(b) Conforming Amendment.—Section 101(b) of title 11, United States Code, is amended by inserting "522(n), after "522(d)."

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) Establishment.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:...
"§526. Restrictions on debt relief agencies

(a) A debt relief agency shall not—

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

(2) make any statement, or counsel or advise any assisted person or prospective assisted person to the effect that an instrument 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, by material omission, with respect to—

(A) the services that such agency will provide to such person, or

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

(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 as part of negotiating for or representing a debtor in a case under this title.

(b) No waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor or 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 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 as determined by the court.

(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;

(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 such State;

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

(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 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 as determined by the court.

(3) 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 the motion of the United States trustee or the debtor or, finds that a person intentionally violated this section, or engaged in a clear and conspicuous written notice advising prospective assisted persons not to do so. A creditor is not permitted to coerce you into reaffirming your debts.

(2) You may 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 to attend the required first meeting of creditors where you may be questioned by a court official called ‘a trustee’ and by creditors.

"§527. Disclosures

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

(1) the written notice required under section 522(b)(1), and

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

(1) 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;

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

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

(4) 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 dismisal of the case under this title or other sanction, including the imposition of a civil penalty.

(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) the following statement, to the extent applicable, or one substantially similar:

The following are examples of common financial assistance services which are not bankruptcy assistance:

(a) Counseling and education services provided to assist you in understanding your financial affairs, as well as in some cases a State-appointed nonbankruptcy assistance provider to give you a written contract specifying what the attorney or bankruptcy petition preparer will do for you and how much it will cost.

(b) Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the options that are available. 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. A creditor is not permitted to coerce you into reaffirming your debts.

(2) You may 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 to attend the required first meeting of creditors where you may be questioned by a court official called ‘a trustee’ and by creditors.

(3) 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.

(4) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person, or other information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance services 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:
such advertisement that the assistance may be received in connection with a chapter 13 plan whether or not structured help or other similar statements are made.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 527 the following:

“527. Requirements for debt relief agencies.”

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

(a) ENVIRONMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 227 and 228, is amended by adding at the end the following:

“529. Requirements for debt relief agencies’.

(a) A debt relief agency shall—

(1) not later than 15 days after the date on which any action is commenced by the United States trustee or a trustee in a case, and

(2) not later than 5 business days after the date on which such agency provides any bankruptcy assistance services to an assisted person, prepare and deliver to such assisted person a written contract with such assisted person that explains clearly and conspicuously—

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

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

(b) A debt relief agency shall provide with such policy; or

(c) 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

(d) A debt relief agency shall maintain a record of the assistance services or of the benefits of bankruptcy assistance services to an assisted person.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227 and 228, is amended by inserting after the item relating to section 527 the following:

“528. Requirements for debt relief agencies.”

SEC. 230. GAO STUDY.

(a) SET DATES.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

(b) STUDY.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President, the Speaker of the House of Representatives, and the Chairmen and Ranking Members of the Senate and the House of Representatives.

(c) REPORT.—Not later than 360 days after the date of enactment of this Act, the Comptroller General shall submit to Congress the results of the study required by subsection (a).

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.

(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, as amended by section 332, is amended by striking the period at the end and inserting the following:

“within 7 days after the date on which the notice is given to the assisted person.”

(b) CONFORMING AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, as amended by section 332, is amended by inserting after the item relating to section 334(a)(1) the following:

“333. Consumer privacy ombudsman.”

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11, United States Code, is amended by inserting after section 333 the following:

“333. Consumer privacy ombudsman.

(a) A hearing is required under section 333(b)(1)(B), the court shall order the United States trustee to appear before the Consumer Privacy Ombudsman not later than 5 days before the commencement of the hearing on which the notice is given the assisted person.

(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease; or of the identifiable information under section 363(b)(1)(B). Such information may include presentation of—

(1) the debtor’s privacy policy;

(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court; and

(3) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.

(b) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 333(a) of title 11, United States Code, is amended in the matter preceding subparagraph (A) by inserting “a consumer privacy ombudsman appointed under section 333(b),” before “may be required to disclose.”

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

“332. Consumer privacy ombudsman.”

SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF MINOR CHILDREN.

(a) PROHIBITION.—Title 11, United States Code, as amended by section 106, is amended by inserting after section 111 the following:

“112. Prohibition on disclosure of name of minor children.

‘‘The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public record in the case the name of such minor child. The debtor may be required to disclose the name of such minor child if a court determines that such information that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) under section 506(f) of title 26, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such public record.’’.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:
“112. Prohibition on disclosure of name of
minor children.’’.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by striking ‘‘and’’ and inserting ‘‘and subject to section 112’’ after ‘‘section’’.

TITLE III —DISCOURAGING BANKRUPTCY
ABUSE

SEC. 301. TECHNICAL AMENDMENTS.
Section 529(a)(17) of title 11, United States Code, is amended—
(1) by striking ‘‘by a court’’ and inserting ‘‘on a motion in a case under chapter 11’’;
(2) by striking ‘‘section 1915(b) or (f)’’ and inserting ‘‘subsection (b) or (f)(2) of section 1915’’; and
(3) by inserting ‘‘(or a similar non-Federal law)’’ after ‘‘title 26’’ each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT
FILINGS.
Section 302 of title 11, United States Code, is amended—
(1) in paragraph (1), by striking ‘‘and’’ at the end;
(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and
(3) by adding at the end following:
‘‘(bb) if a case under chapter 11 or 13, with
respect to the personal property of the estate
in the case as to any or all creditors (subject
to the personal property of the estate
in which the debtor is an individual, not re-
tained possession of personal property as to
which the debtor is an individual, other than
real property, if the court finds that the
debtor from being a debtor in another case
under title 11, United States Code, is amended—
(1) in section 521(a), as so designated by
section 106—
(A) in paragraph (4), by striking ‘‘and’’ at
the end and inserting a semicolon,

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

(C) by adding at the end the following:
‘‘(6) in a case under chapter 7 of this title in
which the debtor is an individual, not re-
taining possession of personal property as to
which the debtor is an individual, the purchase
price secured in whole or in part by an
interest in such personal property unless
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) with res-
spect to the claim secured by such property;
or

(B) redeems such property from the secur-
ity interest pursuant to section 726.

If the debtor fails to file an answer or to enter
a claim within the 45-day period referred to in
paragraph (6), the stay under section 362(a) is terminated
with respect to the personal property of the estate
of the debtor which, if foreclosed, such prop-
erty shall no longer be property of the
estate, and the creditor may take whatever ac-
tion as to such property as is permitted by
applicable nonbankruptcy law. The

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property security.”
in section 362(a), as amended by section 106—

(a) in subsection (c), by striking “(e), (O)” and inserting “(e), (O), and (H)”;

(b) by redesignating subsection (h) as subsection (k) and transferring such subsection so as to insert it after subsection (j) as added by section 106; and

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

“(h) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor secur- ing in whole or in part a claim, or subject to an unexpired lease, and such personal prop- erty shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

“(A) to file timely any statement of inten- tion required under section 522(a)(2) with re- spect to such personal property or to indi- cate in writing to the Trustee that the debtor will either surrender such personal property or retain it and, if retaining such personal prop- erty, either redeem such personal property pursuant to section 362, enter into an agree- ment of the kind specified in section 522(c) applicable to the debt secured by such per- sonal property, or assume such unexpired lease pursuant to section 365 if the trustee does not so do, as applicable; and

“(B) to take timely the action specified in such statement, as it may be amended before expiration of the applicable period for taking action, unless such statement specifies the debtor’s intention to reaffirm such debt on the origi- nal contract terms and the creditor refuses to agree to the reaffirmation on such terms.

“(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applica- ble time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protec- tion of creditors’ interest, and orders the debtor to deliver any collateral in the debtor’s possession to the trustee. If the court does not order such collateral to be delivered, subsection (a) shall terminate upon the conclusion of the hearing on the motion.”; and

(2) in section 521, as amended by sections 106 and 522—

(A) in subsection (a)(2) by striking “con- sumer”;

(B) in subsection (a)(2)(B)—

(i) by striking “forty-five days after the filling of a notice of intent under this sec- tion” and inserting “30 days after the first date set for the meeting of creditors under section 362(h)”; and

(ii) by striking “forty-five day” and insert- ing “30-day”;

(C) in subsection (a)(2)(C) by inserting “, except as provided in section 362(h) before the semifinal” and

(D) by adding at the end the following:

“(d) If the debtor fails timely to take the action required by subsection (a)(6) of this section, or in paragraphs (1) and (2) of subsection 362(h), with respect to property which a lessor or bailor owns and has leased, rented, or hired, or the United States creditor or as to which a credi- tor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this section shall prevent or limit a provision of the lease or agreement that the lessee or bailor, as appropriate, agrees to the assignment or termination of the lease or agreement as a result of the debtor’s default under such lease or agreement by reason of the oc- currence, pendency, or existence of a pro- ceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to affect the effect of a provision which the debtor may elect to exempt property that is speci- fied under section 522.”.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHERE SUBSEQUENT OR COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLABORATIVE.

Title 11, United States Code, is amended—

(1) in section 362, as amended by section 106—

(A) in subsection (c), by striking “(e), (O)” and inserting “(e), (O), and (H)”;

(B) by redesignating subsection (h) as sub- section (k) and transferring such subsection so as to insert it after subsection (j) as added by section 106; and

(C) by inserting after subsection (g) the follow- ing:

“(h) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor secur- ing in whole or in part a claim, or subject to an unexpired lease, and such personal prop- erty shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

“(A) to file timely any statement of inten- tion required under section 522(a)(2) with re- spect to such personal property or to indi- cate in writing to the Trustee that the debtor will either surrender such personal property or retain it and, if retaining such personal prop- erty, either redeem such personal property pursuant to section 362, enter into an agree- ment of the kind specified in section 522(c) applicable to the debt secured by such per- sonal property, or assume such unexpired lease pursuant to section 365 if the trustee does not so do, as applicable; and

“(B) to take timely the action specified in such statement, as it may be amended before expiration of the applicable period for taking action, unless such statement specifies the debtor’s intention to reaffirm such debt on the origi- nal contract terms and the creditor refuses to agree to the reaffirmation on such terms.

“(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applica- ble time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protec- tion of creditors’ interest, and orders the debtor to deliver any collateral in the debtor’s possession to the trustee. If the court does not order such collateral to be delivered, subsection (a) shall terminate upon the conclusion of the hearing on the motion.”; and

(2) in section 521, as amended by sections 106 and 522—

(A) in subsection (a)(2) by striking “con- sumer”;

(B) in subsection (a)(2)(B)—

(i) by striking “forty-five days after the filling of a notice of intent under this sec- tion” and inserting “30 days after the first date set for the meeting of creditors under section 362(h)”; and

(ii) by striking “forty-five day” and insert- ing “30-day”;

(C) in subsection (a)(2)(C) by inserting “, except as provided in section 362(h) before the semifinal” and

(D) by adding at the end the following:

“(d) If the debtor fails timely to take the action required by subsection (a)(6) of this section, or in paragraphs (1) and (2) of subsection 362(h), with respect to property which a lessor or bailor owns and has leased, rented, or hired, or the United States creditor or as to which a credi- tor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this section shall prevent or limit a provision of the lease or agreement that the lessee or bailor, as appropriate, agrees to the assignment or termination of the lease or agreement as a result of the debtor’s default under such lease or agreement by reason of the oc- currence, pendency, or existence of a pro- ceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to affect the effect of a provision which the debtor may elect to exempt property that is speci- fied under section 522.”.

SEC. 305B. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

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

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

(2) in subparagraph (B)—

(A) by striking “in the converted case, with allowed secured claims” and inserting “only in a case converted to a case under chapter 13 or chapter 11, but not otherwise converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12”; and

(B) by striking the period and inserting “; and”;

(3) by adding at the end the following:

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

“(i) the claim of any creditor holding security interest as of the date of the petition shall continue to be secured by that security interest as of the date the petition is filed for conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.”.

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

“(1) If a lease of personal property is re- jected 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 termin- ated.

“(2) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor de- sires to assume the lease. Upon being so no- tified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition
(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor or creditor filing the objection does not notify the trustee in writing that, if the lease is assumed, the liability under the lease will be assumed by the debtor and not by the trustee;

(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 not confirmed under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.

(c) Adequate Protection of Lessors and Purchase Money Secured Creditors.—

(1) Confirmation of Plan.—Section 1325(a)(6)(B) of title 11, United States Code, as added by section 369, of amendment—

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

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

(C) by adding at the end the following:

(iii) If—

(I) the lessor or secured creditor is not a creditor of the debtor, during the 30-day period after the filing of the bankruptcy petition, a judgment for possession of the property against the debtor was obtained against the debtor or the debtor’s property, or the debtor was in possession or control of the property; and

(ii) the certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the lessor and the debtor a further certification under penalty of perjury that there was a judgment for possession of the property obtained against the debtor or that the debtor was in possession or control of the property.

(2) Payments.—Section 333(b) of title 11, United States Code, is amended to read as follows:

(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 or order 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 (2)(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. 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 this subsection, and deducting any unpaid claim allowed under section 503(b).

(3) Subject to section 362, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.
(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(2) The court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and the objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(2)(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall not remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

"(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

"(B) any failure of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure."

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking "six" and inserting "eight"; and

(2) in section 1328, by inserting after paragraph (14) the following:

"(19) court and serve on the debtor a notice of address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

"(20) A notice filed under paragraph (1) may be withdrawn by such entity.

"(g)(1) Notice provided to a creditor by the court or the debtor other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor.

"(g)(2) A monetary penalty may not be imposed on a creditor for a violation of a stay effectuated under section 362(k) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 592 or 593 unless the conduct that is the basis for such a violation occurs after such creditor receives notice effective under this section of the order for relief."
(b) DEBTOR’S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

(1) in subsection (a), as so designated by section 106, by amending paragraph (1) to read as follows:

‘‘(1) file—

‘‘(A) a list of creditors, and a copy of the order of the court orders otherwise—

‘‘(i) a schedule of assets and liabilities; and

‘‘(ii) a schedule of current income and current expenditures;

‘‘(ii) a statement of the debtor’s financial affairs and, if section 342(b) applies, a certificate—

‘‘(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that he or she is the attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

‘‘(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, the notice of the debtor that such notice was received and read by the debtor;

‘‘(iv) copies of all payments advice or other evidentiary materials delivered within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

‘‘(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 the filing of the petition; and

(2) by adding at the end the following:

‘‘(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

‘‘(2) At the time any request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor is received, the court shall make such petition, such schedules, and such statement available to such creditor.

‘‘(f) in paragraph (1), by adding at the end the following:

‘‘(B) not later than 5 days after such request is granted, the court shall enter an order dismissing the case unless the debtor demonstrates to the court that the failure to comply is due to circumstances beyond the control of the debtor.

‘‘(C)(i) if the debtor, by a document letter, requests such credit card information; and

‘‘(ii) if the debtor, by a document letter, requests such credit card information; and

‘‘(D)(i) if the debtor, by a document letter, requests such credit card information; and

‘‘(iiii) if the debtor, by a document letter, requests such credit card information; and

‘‘(E)(ii) if the debtor, by a document letter, requests such credit card information; and

‘‘(F)(ii) if the debtor, by a document letter, requests such credit card information; and

‘‘(G)(ii) if the debtor, by a document letter, requests such credit card information; and

(ii) if the debtor, by a document letter, requests such credit card information; and

(iii) if the debtor, by a document letter, requests such credit card information; and

(iv) if the debtor, by a document letter, requests such credit card information; and

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(xxxviii) if the debtor, by a document letter, requests such credit card information; and

(xxxix) if the debtor, by a document letter, requests such credit card information; and

(xl) if the debtor, by a document letter, requests such credit card information; and

(xli) if the debtor, by a document letter, requests such credit card information; and

(xlii) if the debtor, by a document letter, requests such credit card information; and

(xliii) if the debtor, by a document letter, requests such credit card information; and

(xliv) if the debtor, by a document letter, requests such credit card information; and

(xlv) if the debtor, by a document letter, requests such credit card information; and

(xlvi) if the debtor, by a document letter, requests such credit card information; and

(xlvii) if the debtor, by a document letter, requests such credit card information; and

(xlviii) if the debtor, by a document letter, requests such credit card information; and

(xlix) if the debtor, by a document letter, requests such credit card information; and

(1) the court agrees that there is an extraordinary reason for entering an order dismissing the case; and

(2) by adding at the end the following:

‘‘(B) if appropriate, includes proposed legislation to—

(i) better 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.

SEC. 316. DISMISSAL FOR FAILURE TO FILE TIMELY SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, and 315, is amended by adding at the end the following:

‘‘(1) Subject to paragraphs (2) and (4) and notwithstanding section 709(a), 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 date of the filing of the petition, the court shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

‘‘(2) Subject to paragraph (4) and 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) Subject to paragraph (4) and upon request of the debtor, may file after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days after the date of the filing of the petition to file under subsection (a)(1) if the court finds justification for extending the period for filing.

‘‘(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), and after a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

SEC. 317. APPLICABLE LAW FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1329 of title 11, United States Code, is amended—

(1) by striking ‘‘After’’ and inserting the following:

‘‘(a) Except as provided in subsection (b) and after’’; and

(2) by adding at the end the following:

‘‘(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) in section 1322(d), by adding at the end the following:

‘‘(d) If the current monthly income of the debtor and the debtor’s spouse combined, when multiplied by 12, is equal to or less than the median family income for a family of the same number or fewer individuals in the applicable State for the support of any dependent of the debtor; and

(2) in section 1325(b), by adding at the end the following:

‘‘(B) if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.

‘‘(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, plus $325 per month for each individual in excess of 4, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years;.”;
(2) in section 1325(b)(1)(B), by striking “three-year period” and inserting “applicable commitment period”; and
(3) in section 1325(b), as amended by section 102, by adding at the end the following: “(4) In this subsection, the applicable commitment period—
(A) subject to subparagraph (B), shall be—
(1) 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) 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, plus $325 per month for each individual in excess of 4; and
(B) may be less than 3 or 5 years, which is applicable under subparagraph (A), but only if the plan provides for payment in full of all or any unsecured claims over a shorter period.”; and
(4) in section 1325(c), by striking “three years” and inserting “the applicable commitment period for section 1325(b),”.

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves or debtors who are represented by attorneys be submitted only if the court or trustee has made reasonable inquiry to verify that the information contained in such documents is—
(1) well grounded in fact; and
(2) warranted by existing law or a good faith belief for cause, such as extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASE.

Section 362(e) of title 11, United States Code, is amended—
(1) by inserting “(1)” after “(e)” and “(2)” and adding the following:
(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, 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) such 60-day period is extended—
(i) by agreement of all parties in interest; or
(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.”.

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—
(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

**§ 1115. Property of the estate**

“(a) In a case in which the debtor is an individual, 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.

(c) CREDITOR’S AMENDMENT.—The table of sections for subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

**1115. Property of the estate**

“(a) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—
(1) in paragraph (6), by striking “and” at the end;
(2) in paragraph (7), by striking the period and inserting “; and”;
(3) by adding at the end the following:
“(8) in a case in which the debtor is an individual, provision to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case other than the debtor’s income as is necessary for the execution of the plan.

(d) CONFIRMATION OF PLAN.—
(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended by adding at the end the following:
“(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan, the court may grant a discharge to the debtor or dependent of the debtor claims as provided in section 707(b)(1), or provide for the payment of such claims as is necessary for the execution of the plan.

(2) REQUIRED RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(i) of title 11, United States Code, as amended by inserting “; and” at the end, is amended by inserting “; except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 541, subject to the requirements of subsection (a)(14) of this section”;.

(3) EFFECT OF CONFIRMATION.—Section 1141(d) of title 11, United States Code, is amended—
(1) in paragraph (2), by striking “The confirmation of a plan does not discharge an individual debtor” and inserting “A discharge under this chapter does not discharge a debtor or who is an individual”; and
(2) by adding at the end the following:
“(6) In a case in which the debtor is an individual—
“(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on 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 the debtor who has not completed payments under the plan if—
“(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured 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 on such date; and
“(ii) modification of the plan under section 1127 is not practicable; and

(4) MODIFICATION OF PLAN.—Section 1123 of title 11, United States Code, is amended by adding at the end the following:
“(c) Extension of time for confirmation of plan—In the case of a plan, 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 provide for the payment of claims of a particular class provided for by the plan; or
“(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 on such claim made other than under the plan.

(1) Sections 1121 through 1128 and the requirements of section 1129 do not apply to any modification under subsection (a).

(2) The plan, as modified, shall become the plan only after there has been disclosure of the plan, notice and a hearing, and such modification is approved.”.

SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 244 and 308, is amended by adding at the end the following:
“(p)(1) Except as provided in paragraph (2) of this section and section 544, a debtor may exempt property under section 522(A)(3) to exempt property under State or local law, a debtor may not exempt any amount of indebtedness that was acquired during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000 in value—
“(A) of a person or property that the debtor or a dependent of the debtor uses as a residence;
“(B) of 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; or
“(D) of a person or property that the debtor or a dependent of the debtor claims as a homestead.”
“(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 such farmer.

(B)(2)(1) in subparagraph (B)(1), any amount of such interest does not include any interest transferred from a debtor’s previous principal residence (as defined in section 1325(b)(2); or

(ii) a health insurance plan regulated by State law whether or not subject to such plan.

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSORS.

(a) In General.—Section 1334 of title 28, United States Code, is amended—

(1) by inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.”

SEC. 327. FAIR VALUATION OF COLLABORATION.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting “(1)” after “(a)”; and

(2) by adding at the end the following:

“(D) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.”.

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) inserting “(1)” after “(a)”; and

(B) by striking “the semicolon at the end and inserting the following: “other than that a default is a breach of a provision relating to the satisfaction of any proviso (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease or real property lease for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arose from a failure to perform 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 this paragraph.””; and

(2) in paragraph (2), by striking “penalty rate or provision” and inserting “penalty rate or penalty provision”;

(b) in subsection (c)—

(A) in paragraph (2), by inserting “or” at the end;

(B) in paragraph (3), by striking “; or” at the end and inserting a period; and

(C) by striking paragraph (4); and

(c) in subsection (d)—

(A) by redesigning subparagraph (A) as paragraph (5); and

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

(4) in subsection (f)(1) by striking “; except that” and all that follows through the end of the paragraph and inserting the following:

“and in all that follows through section 365(b)(2) expressly does not require to be cured” before the semicolon at the end;

(2) in subparagraph (C), by striking “and” at the end;

(3) by redesigning subparagraph (D) as subparagraph (E); and

(C) by striking paragraph (2) after subparagraph (C) the following:

“(D) If such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A),

SEC. 329. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

“(A) The compensation that is payable to the trustee shall be the compensation that is payable to the debtor as of the commencement of such 1215-day period into the debtor’s current principal residence. If the debtor’s previous and current residences are located in the same State—

(q)(1) 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 property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if—

(1) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(2) the debtor owes a debt arising from—

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of securities registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 164 of the Internal Revenue Code of 1986; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual during the 5 years prior to the date of the filing; and

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

(b) Adjustment of Dollar Amounts.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting “522(p),” after “522(q),”.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding a new paragraph (6) at the end, by adding section 225(a)(1)(C), the following:

“(7)(A) Any money withheld from the wages of employees for payment as contributions—

(i) to—

(A)(A) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(B) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986;

(C) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986; except that such amount under this subpara-

graph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such plan.

(A) in paragraph (2), by striking “the semicolon at the end and inserting—

“and

(B) by striking paragraph (4); and

(C) by redesigning paragraph (10) as paragraph (5); and

(2) in subsection (f)(1) by striking “; except that” and all that follows through the end of the paragraph and inserting the following:

and in all that follows through section 365(b)(2) expressly does not require to be cured” before the semicolon at the end;

(2) in subparagraph (C), by striking “and” at the end;

(3) by redesigning subparagraph (D) as subparagraph (E); and

(C) by striking paragraph (2) after subparagraph (C) the following:

“(D) If such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential 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 

SEC. 229. CLARIFICATION OF POSTPENSION WAGES AND BENEFITS. Section 522(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—

(1) wages, salaries, and commissions for services rendered after the commencement of the case; and

(2) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after the commencement of the case, under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title be necessary.

SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS. (a) CHAPTER 7.—Section 722(a) of title 11, United States Code, as amended by section 106, is amended—

(1) in paragraph (10), by striking “or” at the end; and

(2) in paragraph (11) by striking the period at the end and inserting “; or”;

and

(b) in subsection (a) by striking “As” and inserting “Subject to subsection (d), as”;

and

(c) by inserting after paragraph (11) the following:

“(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

“(A) section 522(q)(1) may be applicable to the debtor; and

“(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).”.

SEC. 331. LIMITATION ON RETENTION BONUSES, SEVERANCE PAY, AND CERTAIN OTHER PAYMENTS. Section 503 of title 11, United States Code, is amended by adding at the end the following:

“(c) Notwithstanding subsection (b), there shall neither be allowed, nor paid—

“(1) a transfer made to, or an obligation incurred for the benefit of, the debtor for the purpose of inducing such person to remain with the debtor’s business, absent a finding by the court based on evidence in the record that—

“(A) the transfer or obligation is essential to the survival of the business; and

“(B) the services provided by the person are essential to the survival of the business; and

“(C) the transfer or obligation is not greater than an amount equal to 10 times the amount of the mean transfer or obligation of a similar kind given to nonmanagement employees for any purpose during the calendar year in which the transfer or obligation is incurred; or

“(ii) if no such similar transfers were made to, or obligations were incurred for the benefit of, such nonmanagement employees during such calendar year, the amount of the transfer or obligation is not greater than an amount equal to 25 percent of the amount of any similar transfer or obligation made to or incurred for the benefit of such insider for any purpose during the calendar year before which such transfer or obligation was made or obligation is incurred; or

“(2) a severance payment to an insider of the debtor, unless—

“(A) the payment is part of a program that is generally applicable to all full-time employees; and

“(B) the amount of the payment is not greater than 10 times the amount of the mean severance pay given to nonmanagement employees during the calendar year in which the payment is made; or

“(iii if other transfers or obligations are outside the ordinary course of business and not justified by the facts and circumstances of the case, including transfers made to, or obligations incurred for the benefit of, officers, managers, or consultants hired at the date of the filing of the petition.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:


SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

“(c) 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 a United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.

SEC. 403. PROTECTION OF REFINANCE OF SECURITIES.

Subparagraphs (A), (B), and (C) of section 541(e)(2) of title 11, United States Code, are each amended by striking “10” each place it appears and inserting “90”.

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

“(4)(A) Subject to subparagraph (B), 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 before 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 period for filing for 90 days on the motion of the trustee or lessor for cause.

“(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.

“(B) Exception.—Section 365(d)(1) of title 11, United States Code, is amended by striking “subsection” the first place it appears and inserting “subsections (b) and”.

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

“(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the composition of the creditors 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 properly qualified small business concern (as described in section 3(a)(1) of the Small Business Act), 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) In subsection section 112(b) of title 11, United States Code, is amended by adding at the end the following:

“(3) A committee appointed under subsection (a) shall—

(A) provide access to information for creditors who—

(i) hold claims of the kind represented by that committee; and

(ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and

(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (h); and

(2) in subsection (h), as so redesignated, by inserting “and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods” after “consent of a creditor”; and

(3) by adding at the end the following:

“(i)(1) Notwithstanding paragraphs (2) and (3) of section 546, 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 State statute applicable to such lien 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 2005, or any successor to such section 7–209.”

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking “In” and inserting “In”;

(B) by inserting “to an examiner, trustee under chapter 11, or professional person” after “awarded”;

(2) by adding at the end the following:

“(7) In determining the amount of reasonable compensation to be awarded to a trustee, that such compensation is determined as a commission, based on section 333.”

SEC. 408. POSTPETITION DISCLOSURE AND LICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

“(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from the holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the confirmation of the case in a manner complying with applicable nonbankruptcy law.”

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

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

“(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was not in the ordinary course of business or financial affairs of the debtor and the transferee; or

(B) made according to ordinary business terms;”;

(2) in paragraph (B), by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.”

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting “, or a debt (excluding a consumer debt) against a noninsider of less than $10,000,” after “$5,000”.

Section 1409(b) of title 28, United States Code, is further amended by striking “$5,000” and inserting “$15,000”.

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking “On” and inserting “(1)”; and

(2) by adding at the end the following:

“(2)(A) 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.

(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.”

SEC. 412. FEES ARISING FROM CERTAIN OWNER-SHIP OF UTILITIES.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking “dwelling” the first place it appears;

(2) by striking “ownership or” and inserting “ownership,”;

(3) by striking “housing” the first place it appears;

(4) by striking “but only” and all that follows through “period,” and inserting “a person in a homeowners association, for as long as the debtor or the trustee has legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,”; and

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following:

“(1) On request of a party in interest—

(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 elected and appointed for purposes of this subsection; and

(ii) the service of any trustee appointed under subsection (d) shall terminate.

(C) If the court shall resolve any dispute arising out of an election described in subparagraph (A), the court shall make any order necessary thereunder.

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking “subsection (b)” and inserting “sections (b) and (c)”; and

(2) by adding at the end the following:

“(c)(1)(A) For purposes of this subsection, the term ‘assurance of payment’ means—

(i) a cash deposit;

(ii) a letter of credit;

(iii) a certificate of deposit;

(iv) a surety bond;

(v) a prepayment of utility consumption; or

(vi) another form of security that is mutually agreed upon 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.

(C) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if, at the time of the 30-day period beginning on the date of the 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, the court may consider the amount of payment that is adequate, the court may not consider—

(i) the absence of security before the date of the filing of the petition;

(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the 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 the filing of the petition without notice or order of the court.

SEC. 418. BANKRUPTCY FEES. Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking “Notwithstanding section 1915 of this title, the” and inserting “The”; and

(2) by adding at the end the following:

“(d) The court may increase the amount of the fee prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may increase the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income officially determined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981, applying the Official Income Guidelines, and is unable to pay that fee in installments. For purposes of this paragraph, the term ‘filing fee’ means the filing fee required by subsection (a).”

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE. (a) IN GENERAL. Section 1102 of title 11, United States Code, is amended—

(1) in subsection (a), by striking “(1) the reasonable needs of the bankruptcy court;” and inserting—

“(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

(b) EFFECTIVE DATE. Section 1102 of title 11, United States Code, as amended by section 226, is amended by inserting “debtor” after “small business debtor” each place the term “debtor” appears.

SEC. 420. TRANSITION. Section 1125 of title 11, United States Code, is amended—

(1) by striking “(a) the court may approve the disclosure statement submitted on standard forms approved by the court or adopted under section 307 of title 11,”

(2) by inserting “(B) the court may conditionally approve the disclosure statement subject to final approval after notice and a hearing;” after “(A) the court may approve the disclosure statement submitted on standard forms approved by the court or adopted under section 307 of title 11,;” and

(3) by striking “(c) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.” and inserting—

“(c) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.”

SEC. 421. DEFINITIONS. (a) Definitions. Section 1125 of title 11, United States Code, is amended—

(1) in subsection (b), by striking “debtor” each place it appears.

(b) EFFECTIVE DATE. The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 307 of title 11, United States Code, to establish forms to be used with postpetition requirements imposed by section 307 of title 11, United States Code.

SEC. 422. UNIFORM NATIONAL REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES. (a) PROPOSAL OF RULES AND FORMS. The Judicial Conference of the United States shall propose in accordance with section 2075 of title 28, United States Code, amended by section 226, Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official bankruptcy forms, directing the United States Trustee to incorporate the financial and other reports containing information, including information relating to—

(1) the debtor’s profitability;

(2) the debtor’s cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) PURPOSE. Section 2075 of title 28, United States Code, as amended by section 226, describes the need for forms and procedures that are reasonably simplified for small businesses and that will provide adequate information to the public interest in fair and efficient procedures under chapter 11 of title 11.

SEC. 423. STANDARD FORM DISCLOSURE STATEMENT AND PLAN. Within a reasonable period of time after the date of enactment of this Act, the Judicial Conference of the United States shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official standard form disclosure statements and plans of reorganization for small business debtors as (as defined in section 101(51C) of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 424. UNIFORM NATIONAL REPORTING REQUIREMENTS. (a) REPORTING REQUIRED. Section 1125 of title 11, United States Code, is amended by inserting after section 307 the following:

“(b) DEBTOR REPORTING REQUIREMENTS. (1) 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.

(2) A small business debtor shall file periodic financial and other reports containing information including—

“(A) whether the debtor is—

“(1) in compliance in all material respects with postpetition requirements imposed by the Federal Rules of Bankruptcy Procedure and other court orders; and

“(2) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due; and

“(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 paying taxes and other administrative expenses when due, 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, in the public interest in fair and efficient procedures under chapter 11 of title 11.

(2) CLERICAL AMENDMENT. The table of sections for chapter 3 of title 11, United States Code, as amended by inserting after the item relating to section 307 the following:

“330. Debtor reporting requirements.”

(b) EFFECTIVE DATE. The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 307 of title 11, United States Code, to establish forms to be used with postpetition requirements imposed by section 307 of title 11, United States Code.

SEC. 425. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES. (a) PROPOSAL OF RULES AND FORMS. The Judicial Conference of the United States shall propose in accordance with section 2075 of title 28, United States Code, amended by section 226, Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official bankruptcy forms, directing the United States Trustee to incorporate the financial and other reports containing information, including information relating to—

(1) the debtor’s profitability;

(2) the debtor’s cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) PURPOSE. The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance between—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor’s interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the bankruptcy court understand such debtor’s financial condition and plan such debtor’s future.
SEC. 436. DUTIES IN SMALL BUSINESS CASES.
(a) Duties in Chapter 11 Cases—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, is amended in subsection (e) in the end of the following:
"§ 1116. Duties of trustee or debtor in possession in small business cases
"In a small business case, a trustee or the debtor in possession, in addition to the duties performed in this title and as otherwise required by law, shall—
"(1) submit to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief the following:
"(A) its most recent balance sheet, statement of operations, cash-flow statement, and Federal income tax return; or
"(B) assume 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, after notice and a hearing, waives that attendence due to a finding of extraordinary and compelling circumstances;
"(3) timely file all schedules and statements of financial affairs, unless notice is waived by 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; except 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 taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and
"(7) follow 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 during normal business hours, unless notice is waived by the debtor."

(b) Clerical Amendment.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting after the item relating to section 1115 the following:
"§ 1116. Duties of trustee or debtor in possession in small business cases
"(a) Plan Filing and Confirmation Deadlines.
"Section 1121 of title 11, United States Code, is amended in subsection (e) and inserting the following:
"(e) In a small business case—
"(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—
"(A) extended as provided by this subsection, after notice and a hearing; or
"(B) reduced, (a) by striking, (a) otherwise; and
"(2) the plan and a disclosure statement (if any) shall be filed not later than 30 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 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.
"(f) Plan Confirmation Deadline.
"Section 1123 of title 11, United States Code, is amended by adding at the end the following:
"(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time is extended in accordance with section 1121(e)."

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.
Section 366(a) of title 28, United States Code, is amended—
(1) in paragraph (3)—
(A) by striking "and" and inserting "or" at the end; and
(B) by redesignating subparagraph (B) as subparagraph (I); and
(C) by inserting after subparagraph (G) the following:
"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases;
"(2) in paragraph (5), by striking "and" at the end; and
"(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and
"(4) by adding at the end the following:
"(7) in each of such small business cases—
"(A) conduct an initial debtor interview as soon as practicable after the date of the 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 schedules order;
"(v) inform the debtor of other obligations;
"(B) if determined to be appropriate and advisable, to monitor and advise the debtor of appropriate business premises of the debtor, to maintain 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 by 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 1121 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.
"(g) Conversion and Appointment of Trustee.
"Section 1129 of title 11, United States Code, is amended by adding at the end the following:
"(e) In a small business case, the court shall decide the motion not later than 15 days after the date of the order for relief entered with respect to the petition; or
"(f) Conversion to chapter 7.
"Section 1125(b) of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—
(1) in paragraph (3)—
(A) by striking "and" and inserting "or" at the end; and
(B) by redesignating subparagraph (B) as subparagraph (I); and
(C) by inserting after subparagraph (G) the following:
"(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases.
"(2) In a small business case, a trustee or the debtor in possession in small business cases shall—
"(A) the debtor, after providing notice to all parties in interest (including the United States trustee, creditors convened under section 341 unless the court, after notice and a hearing, waives that attendence due to a finding of extraordinary and compelling circumstances;
"(b) Clerical Amendment.—The table of sections for chapter 11 of title 11, United States Code, is amended by striking subpart EE.
"(c) Effective Date.—This section applies with respect to cases under chapter 11 of title 11, United States Code, as amended by this section, and the first interim meeting scheduled after a plan has been confirmed and the estate, if the movant establishes, in any case under chapter 11 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:
""(b) 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 absent under circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whenever is in the best interests of creditors and the estate, if the movant establishes cause.
"(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—
"(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and
"(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(a)—
"(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 the motion not later than 30 days after filing of the motion, and shall decide the motion not later than 15
days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from continuing within the time limits established by this paragraph.

"(d) For purposes of this subsection, the term ‘cause’ includes—

(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(B) the effect of the commencement 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 substantially harmful to 1 or more creditors;

(E) failure to comply with an order of the court;

(F) unexcused failure to satisfy timely 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 rules 2004 of the Federal Rules of Bankruptcy Procedure without good cause;

(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator if there is none).

(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of 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;

(M) failure 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 of the filing of the petition.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ‘‘or’’ at the end;

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

(3) by adding at the end the following:

‘‘(S) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.’’;

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 6 months after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Secretary of the Treasury, GAO, and the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietors and small partnerships in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title;

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

Section 503(b)(1) of title 11, United States Code, is amended—

(1) by inserting ‘‘or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later’’ after ‘‘90–day period’’;

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

‘‘(B) the debtor has commenced monthly payments that—

‘‘(i) may, in the debtor’s sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before the commencement of, or after the date of 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 unseasoned statutory lien); and

‘‘(ii) are in an amount equal to interest at the time and nondefault contract rate of interest on the value of the creditor’s interest in the real estate; or’’;

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b)(1) of title 11, United States Code, is amended—

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

(2) in paragraph (6), by striking the period at the end and inserting ‘‘; and’’;

(3) by adding after paragraph (6) the following:

‘‘(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) that the administrator has assumed to the plan.’’;

SEC. 446. DUTIES OF TRUSTEE TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, is amended to read as follows:

‘‘(a) DUTIES OF TRUSTEE.—Section 704(a) of title 11, United States Code, is amended to read as follows:

‘‘(b) DUTIES OF TRUSTEE.—Section 704(a) of title 11, United States Code, as amended by sections 106 and 304, is amended—

(1) in paragraphs (5) and (6), by striking ‘‘and’’ at the end;

(2) in paragraph (6), by striking the period at the end and inserting ‘‘; or’’;

(3) by adding after paragraph (6) the following:

‘‘(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) that the administrator has assumed to the plan.’’;

(b) DUTIES OF TRUSTEE.—Section 704(a) of title 11, United States Code, as amended by sections 106 and 219, is amended—

(1) in paragraph (10), by striking ‘‘and’’ at the end;

(2) by adding at the end the following:

‘‘(11) if, at the time of the commencement of the case, the administrator (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of the plan, continue to perform the obligations required of the administrator; and’’;

(c) CONFIRMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

‘‘(1) perform the duties of the trustee, as specified in paragraphs (3), (7), (8), (9), (10), and (11) of section 704.’’;

SEC. 447. APPOINTMENT OF COMMITTEE OF DEBTORS IN POSSESSION.

Section 1102(a)(1) of title 11, United States Code, is amended—

(1) by inserting ‘‘appoint’’ and inserting ‘‘the order of appointment’’, and by adding at the end the following:

‘‘The United States trustee shall appoint any such committee.’’;"
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; and

"(D) The average period of time between the date of the filing of the petition and the closing of the case for cases closed during the reporting period;

"(E) for cases closed during the reporting period—

(i) the number of cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

(ii) the total number of reaffirmation agreements filed;

"(F) with respect to cases filed under chapter 13 of title 11, the number of cases in which the reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

"(G) of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement was approved by the court;

"(H) 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 face amount of the claim; and

(I) the number of final orders entered determining the value of property securing a claim;

"(ii) the number of cases dismissed, 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 or the United States trustee were required to provide under section 156(b) of this title; and

"(H) the number of cases in which sanctions under rule 2004 of the Federal Rules of Bankruptcy Procedure were imposed against debtor’s attorney or damages awarded under such Rule.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

"159. Bankruptcy statistics.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"§399b. 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 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 of (or 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 and that can be reasonably and adequately documented and described in a manner that is responsive to the needs of the public for the prevention of fraud and evasion and for effective and efficient administration and enforcement of the bankruptcy laws.

"(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use 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 chapters 13 of title 11;

"(6) claims asserted;

"(7) claims allowed; and

"(8) distributions to claimants and claims discharged without payment.

"(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use 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 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 statistics for the most recent period and cumulatively since the date of the order for relief;

"(5) compliance with title 11, whether or not the debtor filed tax returns 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 debtors in chapters 7 and 13 of title 11, if those who could have been incurred above, and other creditors and those not); and

"(7) plans of reorganization filed and confirmed, and confirmed and disclosed, by claimants, 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 to which they belong.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

"§399b. Bankruptcy data.”

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of periodic reports of schedules of income and expenses that the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title in which the debtor is an individual. Such audits shall be conducted in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform such audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits of schedules of income and expenses that reflect greater than average variances from the statistical norm of the district in which the schedules were filed if such variances occur for incomes higher than the median income or expenses higher than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenses is reported.

(b) AMENDMENTS.—Section 506 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

"(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;”;

and

(2) by adding at the end the following:

"(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 2005;”;

(2)(A) The report of each audit referred to in paragraph (1) shall be submitted to the Clerk of the United States District Court and the Attorney General and, if the case is certified under section 156(b) of this title, shall give notice of the misstatement to the creditor in the case.

(2)(B) If a material misstatement of income or expenses or of assets is reported, the United States trustee shall—

(A) identify the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and
“(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor’s discharge pursuant to section 727(d) of title 11.”

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a)(11) of title 11, United States Code, as amended by section 106, is amended in each of paragraphs (3) and (4) by inserting “or an auditor serving under section 506(f) of title 28” after “serving in the case”.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

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

(3) by adding at the end the following: “(4) the debtor has failed to explain satisfactorily—

(A) a material misstatement in an audit referred to in section 506(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 506(f) of title 28.”

(e) CLERICAL AMENDMENT.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data are only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and formats are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 729 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting “other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate” after “under this title”; and

(2) in subsection (b)(2), by inserting “except as to such expenses, other than claims for wages, salaries, or commissions that arise after the date of the filing of the 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” after “509(a)(1);” and

(b) by striking the following: “(e) Before subscribing 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 such property.

(“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 to satisfy a claim for an ad valorem tax lien, or the proceeds of such property:

(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(5).”

(c) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended by adding at the end the following:

“(d) A M E N D M E N T S T O S E C T I O N 7 2 7 D E F I N I T I O N S OF A D VALOREM TAX.—The definition of ‘ad valorem tax’ is amended to include any tax levied or imposed—

(1) by a governmental unit, or owed to a governmental unit, or assessed by a governmental unit, or imposed by a governmental unit, or imposed on a governmental unit, or imposed under chapter 4 of title 42, United States Code, in the manner required by section 4074 of such title on personal or real property, and

(2) by a governmental unit, or owed to a governmental unit, or assessed by a governmental unit, or imposed by a governmental unit, or imposed on a governmental unit, or imposed under chapter 4 of title 42, United States Code, in the manner required by section 4074 of such title on personal or real property.

(‘‘An otherwise applicable time period specified in section 505(b) of title 11, United States Code, is amended by adding at the end the following:

“(4) 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 to satisfy a claim for an ad valorem tax lien, or the proceeds of such property:

(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(5).”

(d) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “or” at the end;

(2) in subparagraph (B), by striking the period at the end and inserting “; or”;

(3) by adding at the end the following: “(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redeeming that amount under any law (other than a bankruptcy law) has expired.”

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 505(b) of title 11, United States Code, is amended by adding at the end the following:

“(a) TREATMENT OF CERTAIN LIENS.—Section 704 of title 11, United States Code, is amended by adding at the end the following:

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended by adding at the end the following:

“(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended by adding at the end the following:

“(B) A claim arising from the liability of a debtor for fuel tax assessed consistent with the requirements that are entitled to priority under section 507(a)(5) of title 11 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a priority claim.

(c) Amendments to Section 505(b) of Title 11, United States Code, is amended by adding at the end the following:

“(b) Amended.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

(b) NOTIFICATION OF REQUEST FOR A DETERMINATION OF TAXES.—Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting “at the address and manner designated in paragraph (1) after “determination of such tax”; and

(2) by striking “(A)” and inserting “(B)”;

(3) by striking “(i)” and inserting “(ii)”; and

(4) by striking “(B)” and inserting “(A)”;

(5) by striking “(A)” and inserting “(B)”;

(6) by striking “(B)” and inserting “(A)”;

(7) by striking “(C)” and inserting “(II)”;

and

(8) by inserting before paragraph (2), as so designated, the following:

“(b)(1A) The clerk shall maintain a list 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 obtained.

(B) In clause (i), by striking “any time during which an offer in compromise is in effect in a prior case under this title” and inserting “any time during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of the request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; and plus any time during which the stay of proceedings was in effect during that 240-day period, plus 90 days.’’;

and

(2) by adding at the end the following:

“(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.’’;

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter 1 of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

“(d) 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 to satisfy a claim for an ad valorem tax lien, or the proceeds of such property:

(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(5).”

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

“(A) in the matter preceding clause (i), by inserting “for a taxable year ending on or before the date of the filing of the petition” after “gross receipts’’;

(B) in clause (i), by striking “for a taxable year ending on or before the date of the filing of the petition’’; and

(C) by striking clause (ii) and inserting the following:

“(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

(1) 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

(2) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.’’;

and

SEC. 705. PRIORITY OF TAX CLAIMS.

(b) C L E R I C A L A M E N D M E N T.—The table of sections for subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

“(511. Rate of interest on tax claims.”

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

(a) IN GENERAL.—Section 507(a)(8)(B) of title 11, United States Code, is amended by striking “assessed” and inserting “incurred”.

(b) CONGRESSIONAL RECORD — SENATE
and inserting—

(a) a corporate debtor’s tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title’’.

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking “and” at the end; 

(2) in subparagraph (C), by striking “deferred cash payments,” and all that follows through the end of the subparagraph, and inserting “regular installment payments in cash—”;

“(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim; 

“(ii) over a period ending not later than 5 years after the date of the order for relief under subsection (a), (2), or (3); and 

“(iii) in a manner not less favorable than the most favorable nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1129(b)); and”;

and

(3) by adding at the end the following:

“(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C)”.

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 506(b)(1) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: “—but for the allowed amount of such claim”;

“(a) PAYMENT OF TAXES REQUIRED.—Section 506(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking “and” at the end; 

(2) in subparagraph (C), by adding “and” at the end; and 

(3) by adding at the end the following:

“(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C)”.

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 506(b)(1) of title 11, United States Code, is amended by inserting before the semicolon at the end the following:

“(a) 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 under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under 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 or elected 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)(6) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax’’.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 506(b)(1)(B)(i) of title 11, United States Code, is amended by inserting “whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,” before “except”.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section

506(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking “and” at the end; 

(2) in subparagraph (C), by adding “and” at the end; and 

(3) by adding at the end the following:

“(D) notwithstanding the requirements of subsection (a), the 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.”

(c) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subparagraph (C), by adding “or State statute” after “agreement”; and 

(2) in subsection (c), by inserting “, including the payment of all ad valorem property taxes with respect to the property” before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking “before the date on which the trustee commences distribution under this section:” and inserting the following: “on or before the earlier of—

“(A) the date that is 10 days after the mailing to creditors of the summary of the trustee’s final report; or 

“(B) the date on which the trustee commences final distribution under this section:”.

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a)(1) of title 11, United States Code, as amended by sections 215 and 224, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting “or equivalent report or notice,” after “a return;”;

(B) in clause (i), by inserting “or given” after “filed”; and 

(C) in clause (i)—

(i) by inserting “or given” after “filed”;

(ii) by inserting “, report, or notice” after “return;” and 

(2) by adding at the end the following:

“: For purposes of this subsection, the term ‘return’ means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.”.

SEC. 715. DISCHARGE OF THE ESTATE’S LIABILITY FOR UNPAID TAXES.

Section 506(b)(2) of title 11, United States Code, as amended by section 703, is amended by inserting “the estate,” after “misrepresentation”.

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(b)(2) of title 11, United States Code, as amended by sections 102, 213, and 306, is amended by inserting after paragraph (8) the following:

“(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.”.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—In general.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

“§ 1308. Filing of prepetition tax returns

“(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition, if the debtor was required to file any tax return for 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—

“(1) the date that is 120 days after the date of that meeting; or

“(2) 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) After notice and a 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 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 section (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 final order entered by a nonbankruptcy tribunal.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 13 of title 11, United States Code, is amended by striking at the end of the entry for section 1308, the words ‘prepetition tax returns’.

(d) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

“(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.”.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following:

“to respect with a tax return filed under section 1308 shall be timely if the claim is filed before or on the 60th day after the date on which such return was filed as required’’.

February 28, 2005

CONGRESSIONAL RECORD — SENATE

S1755
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 treated as a partnership for purposes of any State and local law imposing a tax on or measured by income from the discharge of indebtedness in a case under title 11, United States Code, that the income, gain, loss, deductions, and credits shall be taxed to or claimed by the trustee, the trustee shall be treated as the debtor under this title, and the 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 treated 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. Such returns to the extent they are not required to be made under State or local law shall be made under such State or local law.

(2) In addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, that no objection to a claim for a tax with respect to which a return is required to be filed under section 3108 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 117. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting "including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of holders of claims or interests in the case." after "records:"; and

(2) by striking "a hypothetical reasonable investor typical of holders of claims or interests in the case and inserting "such a hypothetical investor".

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 405, is amended by inserting after paragraph (2) the following:

"(2) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be treated as a partnership for purposes of any State and local law imposing a tax on or measured by income from the discharge of indebtedness in a case under title 11, United States Code, that the income, gain, loss, deductions, and credits shall be taxed to or claimed by the trustee, the trustee shall be treated as the debtor under this title, and the 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 treated 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. Such returns to the extent they are not required to be made under State or local law shall be made under such State or local law."

"(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 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 transfer for purposes of section 346 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.

(b) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, that could be or required to be withheld or collected under applicable State or local 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.

(1) To the extent that any State or local law imposes a tax on or measured by income for the carryover of any tax attributes attributable 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 section 346.

(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 date of 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.

(4) For purposes of any State or local law imposing a tax on or measured by income, a tax imposed on or measured by income that 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.

(5) 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 attributable to and the tax imposed on or measured by income that are not realized by the estate, the debtor, or a successor to the debtor under State or local law, a similar reduction shall be made under applicable Federal nonbankruptcy law.

"(2) For Federal tax purposes, the provisions of this section are amended by—

(A) applicable State or local tax law providing 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."
CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 1501. Purpose and scope of application

1502. Definitions

1503. International obligations of the United States

1504. Commencement of ancillary case

1505. Authorization to act in a foreign country

1506. Public policy exception

1507. Additional assistance

1508. Interpretation

SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

1509. Right of direct access

1510. Limited jurisdiction

1511. Commencement of case under section 301 or 303

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

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

1514. Notice to foreign creditors concerning a case under this title

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

1515. Application for recognition

1516. Presumption concerning recognition

1517. Order granting recognition

1518. Subsequent information

1519. Relief that may be granted upon filing petition for recognition

1520. Effects of recognition of a foreign main proceeding

1521. Relief that may be granted upon recognition

1522. Protection of creditors and other interested persons

1523. Actions to avoid acts detrimental to creditors

1524. Intervention by a foreign representative

SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

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

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

1527. Forms of cooperation

SUBCHAPTER V—CONCURRENT PROCEEDINGS

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

1529. Coordination of a case under this title and a foreign proceeding

1530. Coordination of more than 1 foreign proceeding

1531. Coordination of a case under this title and foreign proceedings in other countries

1532. Rule of payment in concurrent proceedings

*§ 1501. Purpose and scope of application

(1) cooperation between

(A) courts of the United States, 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 persons, 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 through protecting investment and preserving employment.

(2) This chapter applies where:

(1) assistance is sought in the United States by 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 pending concurrently;

(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.

(3) 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); or

(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.

(4) 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.

(5) 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.

(6) To the extent that this chapter conflicts with any other provision of law, the policy of this chapter—

(a) just treatment of all holders of claims against or interests in the debtor’s property;

(b) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(c) prevention of preferential or fraudulent dispositions of property of the debtor;

(d) distribution of proceeds of the debtor’s property substantially in accordance with the order prescribed by this title; and

(e) 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 this title directly with the court a petition for recognition of a foreign proceeding under section 1515.

(b) If the court grants recognition under section 1517, 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;
§ 1510. Limited jurisdiction

The sole fact that a foreign representative in a case 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.

(c) A petition for recognition shall also be accompanied by:

(1) a certified copy of the decision concerning certain foreign proceedings with respect to the debtor that becomes known to the foreign representative;

(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative;

(3) a statement identifying all proofs of claim and specify the place for filing such proofs of claim;

(4) contain any other information required by the court.

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

(a) Upon recognition, the foreign representative in a case under this title is entitled to participate as a party in interest in a case regarding the debtor under this title.

(b) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

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

(a) Foreign creditors have the same rights under this title as foreign creditors in the foreign main proceeding.

(b) A petition for recognition shall be accompanied by:

(1) a certified copy of the decision concerning certain foreign proceedings with respect to the debtor that becomes known to the foreign representative;

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

§ 1514. Notification to foreign creditors concerning recognition

(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 specified in the notice.

(b) Such foreign proceeding shall be recognized—

(1) as a foreign main proceeding if it is pending in the foreign country where the debtor has the center of its main interests; or

(2) as a foreign nonmain proceeding if the foreign proceeding shall be considered by the court to be a proceeding that is not a foreign main proceeding.

§ 1515. Application for recognition

(a) A foreign representative applies to the court for recognition of a 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 concerning certain foreign proceedings with respect to the debtor that becomes known to the foreign representative;

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

§ 1516. Presumptions concerning recognition

(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign main proceeding and that the person or body is a foreign representative, 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 is granted by a bankruptcy judge or bankruptcy administrator in a court or administrative agency in any proceeding under this chapter.

(b) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) 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 property of the debtor that is within the territorial jurisdiction of the United States;

(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the extent 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 cram-down proceeding, under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), and (3), and (6) of subsection (a).

(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to proceedings in the foreign representative or the debtor's assets located in the United States, the taking of evidence or the delivery of a bond.

§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 that are within the territorial jurisdiction of the United States 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 or other persons, including an examiner, authorized by the court, and the admission of information concerning the debtor's assets, affairs, rights, obligations, liabilities; or

(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.

(b) When a 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

(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

(b) When a foreign proceeding is a foreign main 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.

§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 a foreign court or a foreign representative, including a foreign representative or the interests of 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), 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 reliefs granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

§1529. Coordination of a case under this title and a foreign proceeding

(a) If a foreign proceeding is a foreign main proceeding, the court shall seek cooperation and coordination under sections 1526, 1527, and 1529 of the United States, the effects of such case are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent such other assets and rights subject to the coordination of a foreign proceeding that has been recognized under this chapter.

(b) If a foreign proceeding is a foreign nonmain proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the case in the United States; and

(c) In granting, extending, or modifying relief granted to a representative of a foreign representative or the interests of creditors and other interested entities, including the debtor, are sufficiently protected.

(d) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party 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 a foreign court or a foreign representative.

(b) The trustee or other person, including an examiner, authorized by a foreign representative, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

§1527. Forfeiture of exceptions

‘‘Upon recognition of a foreign proceeding, whether main or nonmain, the court shall determine, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

(c) In granting, extending, or modifying relief granted to a representative of a foreign representative or the interests of creditors and other interested entities, including the debtor, are sufficiently protected.

(d) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice, and participation.

§1528. Commencement of a case under this title after recognition of a foreign main proceeding

(a) After recognition of a foreign main proceeding under this chapter and a foreign proceeding in the United States, the court shall seek cooperation and coordination under sections 1526, 1527, and 1529 if inconsistencies are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent such other assets and rights subject to the coordination of a foreign proceeding that has been recognized under this chapter.

(b) If a foreign proceeding is a foreign nonmain proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the case in the United States; and

(c) In granting, extending, or modifying relief granted to a representative of a foreign representative or the interests of creditors and other interested entities, including the debtor, are sufficiently protected.

(d) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice, and participation.

§1529. Coordination of a case under this title and a foreign proceeding

(a) If a foreign proceeding is a foreign main proceeding, the court shall seek cooperation and coordination under sections 1526, 1527, and 1529 if inconsistent with the case in the United States; and

(b) If a foreign proceeding is a foreign nonmain proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the case in the United States; and

(c) In granting, extending, or modifying relief granted to a representative of a foreign representative or the interests of creditors and other interested entities, including the debtor, are sufficiently protected.

(d) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice, and participation.
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 1528, and 1527, and the following shall apply:

(1) Any relief granted under section 1519 or 1521 to a representative of a foreign main 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, the 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 does not per se create 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 main proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.

(b) Amendments.—(1) in subsection (a), by striking ‘‘and’’ at the end;
(2) by adding at the end:

(3) In a case other than those specified in paragraph (1) or (2), in which there is pending against the debtor an action or proceeding in a Federal or State court;

(4) In a State proceeding to administer the reorganization of the debtor’s assets and affairs or to act as a representative of the assets and affairs of the debtor in a foreign proceeding, the court shall seek cooperation and coordination under sections 1528, and 1527.

(c) Amendments to Title 28, United States Code.—

(1) Procedures.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ‘‘and’’ at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ‘‘; and’’;

(C) by adding at the end the following:

‘‘(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.’’.

(2) Bankruptcy proceedings.—Section 1334(c) of title 28, United States Code, is amended by striking ‘‘Nothing in’’ and inserting ‘‘Except with respect to a case under chapter 15 of title 11, nothing in’’.

(3) Duties of Trustees.—Section 586(a)(3) of title 28, United States Code, is amended by striking ‘‘or 13’’ and inserting ‘‘, or 15’’.

(D) Venue of cases ancillary to foreign proceedings.—Section 1410 of title 28, United States Code, is amended to read as follows:

§ 1410. Venue of cases ancillary to foreign proceeding

A case under chapter 15 of title 11 may be commenced in the district court of the United States 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;

(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.

(E) Other sections of Title 11.—Title 11 of the United States Code is amended—

(1) in section 108(b), by striking paragraph (3) and inserting the following:

‘‘(3)(A) a foreign insurance company, engaged in such business in the United States; or’’;

(2) in section 303 by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking ‘‘, 304,’’ each place it appears;

(6) in section 305 by striking paragraph (2) and inserting the following:

‘‘(2) A petition under section 1515 for recognition of a foreign proceeding has been granted; and

(3) The purposes of chapter 15 of this title would be best served by such dismissal or suspension.’’;

and

(7) in section 506—

(A) by striking subsection (a); and

(B) in subsection (b), by striking ‘‘by’’.

Title IX—Financial Contract Provisions

Sec. 901. Treatment of Certain Agreements by Foreign Insured Depository Institutions of Secured or Insured Depository Institutions

(a) Definition of Qualified Financial Contract.—

(1) FDIC-Insured Depository Institutions.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) by striking ‘‘subsection—’’ and inserting ‘‘subsection, the following definitions shall apply—’’;

and

(B) in clause (1), by inserting ‘‘, resolution, or order’’ after ‘‘any similar agreement that the Corporation determines by regulation.’’.

(2) FDIC-Insured Depository Institutions.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) by striking ‘‘subsection—’’ and inserting ‘‘subsection, the following definitions shall apply—’’;

and

(B) in clause (1), by inserting ‘‘, resolution, or order’’ after ‘‘any similar agreement that the Board determines by regulation.’’.

(b) Definition of Securities Contract.—

FDIC-Insured Depository Institutions.—Section 1(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

‘‘(ii) Securities Contract.—The term ‘securities contract’—

(1) means a contract in 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 (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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

(2) does not include any purchase, sale, or repurchase obligation under a participations agreement or commercial loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

(3) means any option entered into on a national securities exchange relating to foreign currencies;

(4) means the guarantee by or to any securities clearing agency of any settlement of cash transactions, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, 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, mortgage loan, interest, group or index, or option;

(5) means any margin loan;

(6) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

(7) means any combination of the agreements or transactions referred to in the previous clauses;

(8) means any agreement or transaction referred to in this clause;

(9) means a master agreement that provides for an agreement or transaction referred to in a subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, unless, with regard to whether 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 referred to in a 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, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause;.”

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1767(c)(8)(D)(iv)) is amended to read as follows:

“(iv) FORWARD CONTRACT.—The term ‘forward contract’ means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (II); or

(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 commodity contract, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction referred to in subclause (I) or (II), or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or

(V) with respect to a commodity options dealer, a commodity option; or

(VI) any option to enter into any agreement or transaction that is similar to any agreement or transaction referred to in this clause;”.

(3) DEFINITION OF FORWARD CONTRACT.—

(a) IN GENERAL.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1767(c)(8)(D)(iv)) is amended to read as follows:

“(iv) FORWARD CONTRACT.—The term ‘forward contract’ means—

(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

(II) any combination of agreements or transactions referred to in subclauses (I) and (II); or

(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 commodity contract, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction referred to in subclause (I) or (II), or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization; or

(V) with respect to a commodity options dealer, a commodity option; or

(VI) any option to enter into any agreement or transaction that is similar to any agreement or transaction referred to in this clause;”.

(b) EFFECTIVE DATE.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1767(c)(8)(D)(iv)) is amended by adding a note at the end of subsection (b) to read as follows:

“Note.—The amendments made by this section apply to agreements or transactions entered into on or after the date of enactment of this section.”
"(I) any combination of agreements or transactions referred to in subclauses (I) and (III); "
"(II) 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), (III), or (IV), 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 forward contract 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), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.".

(e) DEFINITION OF REPURCHASE AGREEMENT—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1812(e)(8)(D)(vi)) is amended to read as follows:

"(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement) includes any agreement (including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause)."

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(vi) of the Federal Credit Union Act (12 U.S.C. 1787c(c)(8)(D)(vi)) is amended to read as follows:

"(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), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.".

(f) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1812(e)(8)(D)(iv)) is amended to read as follows:

"(IV) SWAP AGREEMENT.—The term 'swap agreement' means—"

"(I) any agreement, including any terms and conditions incorporated by reference in any such agreement, 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);"

"(II) any agreement, including any terms and conditions incorporated by reference in any such agreement, 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);"

"(III) any agreement that is not a swap agreement under clause (I) or (II), but is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, a significant element of swap dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or other agreement on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantity contracts, or other similar agreement;"

"(IV) any agreement that is not a swap agreement under clause (I) or (II), and that is of a type that has been, is presently, or in the future becomes, a significant element of swap dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or other agreement on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantity contracts, or other similar agreement;"

"(V) any agreement that is not a swap agreement under clause (I) or (II), and that is of a type that has been, is presently, or in the future becomes, a significant element of swap dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or other agreement on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantity contracts, or other similar agreement;"

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any agreement or transaction referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

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)."
(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following new clause:

"(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 depositor institution's equity of redemption.".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) as amended by subsection (f) of this section is amended by adding at the end the following new clause:

"(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 depositor institution's equity of redemption.".

(b) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) in subparagraph (A)—

(i) in paragraph (10) inserting "subparagraphs (9) and (10);";

(ii) by striking "section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers," before "the Board".

(b) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended to read as follows:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depositor institution's equity of redemption.".

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) as amended by subsection (f) of this section is amended by adding at the end the following new clause:

"(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depositor institution's equity of redemption.".
amount due to or from 1 of the parties in ac-
cordance 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 par-
ty’s status as a nondefaulting party.”

2. conforming amendment.—Section 207(c)(12)(A) of the Federal
Credit Union Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting “or
the exercise of rights or powers by” after “the appointment
of”.

SEC. 903. AMENDMENTS RELATING TO TRANS-
FERS OF QUALIFIED FINANCIAL CON-
TRACTS.

(a) FDIC-Insured Depositary Insti-
tutions. —

(1) Transfers of qualified financial con-
tracts to financial institutions.—Sub-
section 11(e)(9) of the Federal Deposit
Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as fol-

dows:—

“(9) Transfer of qualified financial con-
tracts.—

“(A) IN GENERAL.—In making any transfer
of assets or liabilities of a depositary institu-
tion in default which includes any qualified
financial contract, the conservator or re-
cipient of such depositary institution shall either—

“(i) transfer to one financial institution,
other than a financial institution for which
a conservator or liquidating agent has been
appointed, or other legal custodian has been
appointed which or otherwise is the subject of
a bankruptcy or insolvency proceeding;

“(ii) transfer any qualified financial con-
tracts between any person or any affiliate of
such person and the depository institution in default;

“(D) Transfer to foreign bank, foreign
financial institution, or branch or agency of
a foreign bank or financial institu-
tion.—In transferring any qualified financial
contract, and related claims and property
under subparagraph (A)(ii), the conservator
or receiver for the depository institution shall not make such transfer to a foreign
bank, financial institution, branch or agency
of a foreign bank or financial institu-
tion unless, under the law applicable to such
bank, financial institution, branch or agen-
cy, to the qualified financial contracts, and
to any netting contract, any security agree-
ment or arrangement or other credit en-
hancement related to one or more qualified
financial contracts, the contractual rights
of the parties to such qualified financial
contracts, netting contracts, security agree-
ments or arrangements, or other credit en-
hancements are enforceable substantially
to the same extent as permitted under this
section.

(3) 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 en-
hancements pursuant to subparagraph (A)(i)
and such contract is cleared by or subject to
the rules of a clearing organization, the
clearing organization shall not be required
to accept the transferee as a member by vir-
tue of the transfer.

(b) insured credit unions.—Section 207(c)(9) of the Federal Credit Union Act (12 U.S.C. 1821(e)(9)) is amended to read as fol-
dows:

“(B) Transfer to foreign bank, foreign
financial institution, or branch or agency of
a foreign bank or financial institu-
tion.—In transferring any qualified financial
contract, the conservator or liquidating
agent for the credit union shall either—

“(i) transfer to one financial institution,
other than a financial institution for which
a conservator or liquidating agent has been
appointed; or

“(ii) transfer any qualified financial con-
tracts between any person or any affiliate of
such person and the credit union in default;

“(B) Transfer of contracts subject to the rules of a clearing organization.—In
the event that a conservator or receiver for
the credit union transfers any qualified finan-
cial contract and related claims, property, and
credit enhancements pursuant to subparagraph
in the case of a conservatorship.''

(b) by inserting after paragraph (10) the following new paragraph:

"(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insolvency proceeding with respect to the conservator or receiver is pending in the case of a liquidation or receivership, the conservator or receiver shall either:

(A) disaffirm or repudiate all qualified financial contracts referred to in paragraph (10) (with respect to such person or any affiliate of such person); and

(B) the depository institution in default; or

(C) by adding at the end the following new paragraph:

"(12) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(7) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended by inserting after clause (vi) (as added by section 901(i)) the following new clause:

"(viii) 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 supplement to 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.''

(b) INSURED CREDIT UNIONS.—Section 207(c)(10)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)(A)) is amended by inserting after paragraph (9) the following new paragraph:

"(10) TREATMENT OF BRIDGE BANKS.—Any insured credit union that is a member of the Federal Reserve System or that is insured by the National Credit Union Administration or is a member of the National Credit Union Share Insurance Fund and that is a member of the Federal Home Loan Bank System shall either—

(A) disaffirm or repudiate none of the qualified financial contracts referred to in a preceding clause of this paragraph (or any supplement to such master agreement or agreements), or

(B) by inserting after subparagraph (A) the following new subparagraph:

"(B) deferring to the liquidating agent of the insured credit union any right that such person, or any affiliate of such person, or any member or any affiliate of such member, 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 liquidating agent for the credit union for which the liquidating agent is appointed.

"(1) by redesigning paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

"(ii) conveyns a prohibition that the contract has been transferred pursuant to a preceding clause of this subparagraph or a preceding clause of subparagraph (A) of this paragraph; or

"by inserting after paragraph (16) the following new paragraph:

"(12) TREATMENT OF MULTILATERAL EXCHANGE MARKETS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract in which an insolvency proceeding with respect to the conservator or receiver is pending in the case of a liquidation or receivership, the conservator or receiver shall either:

(A) disaffirm or repudiate all qualified financial contracts referred to in paragraph (11) (with respect to such person or any affiliate of such person); and

(B) by redesigning subparagraphs (B) through (E) as subparagraphs (C) through (E), respectively:

"(C) by inserting after subparagraph (A) the following new subparagraph:

"(1) by redesigning subparagraphs (B) through (D) as subparagraphs (C) through (D), respectively:

"(ii) a credit union organized by the Board for which a conservator is appointed—

"by striking "the conservator'' and all that follows through the end of "an affiliate of such person).''; and

"by adding after paragraph (13) the following new paragraph:

"(15) by adding after paragraph (14) the following new paragraph:

"(16) by redesigning paragraphs (15) and (16) as paragraphs (17) and (18), respectively;

"(ii) conveyns a prohibition that the contract has been transferred pursuant to a preceding clause of this paragraph (or any supplement to such master agreement or agreements), or

"by inserting after paragraph (17) the following new paragraph:

"(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(7) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 1462) is amended—

(1) in paragraph (2)—

"(vi) by redesigning subparagraphs (A) through (XV) as subparagraphs (A) through (XV), respectively;

"(ii) a credit union organized by the Board for which a cons
the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 11(b) of the International Banking Act of 1978;

(3) by inserting after the period ‘‘and any other clearing organization with which such clearing organization has a netting contract’’;

(4) by adding paragraph (14)(A)(i) to read as follows: ‘‘(1) 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 close out values relating to such entitlements) among the parties to the agreement; and’’; and

(5) by adding at the end the following new paragraph:

‘‘(1) APM. 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 unsecured obligation.’’

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 407 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

‘‘(a) GENERAL RULE. Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 1(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union 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 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code);’’; and

(2) by adding at the end the following new subsection:

‘‘(b) 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 1(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union 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 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code);’’; and

(3) by inserting after section 406 the following new section:

‘‘SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—

(a) IN GENERAL. Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 1(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates as a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations solely to implement this section.

(b) ENFORCEABILITY. In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 1(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System may determine 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 the case of an uninsured national bank or uninsured Federal branch or Federal agency, or any order authorized under section 25A of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates as a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations solely to implement this section.

(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 1(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System may determine 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, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System may determine 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 meaning as in sections 11(e) and 11(f) of the International Banking Act of 1978.’’

SEC. 907. BANKRUPTCY LAW AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, PURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ‘means a contract’ and inserting ‘means—’;

(A) a contract’’;

(ii) by striking ‘or any combination thereof or option therefore’ and inserting ‘or any other similar agreement’; and

(iii) by adding at the end the following:

(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);’’;

(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);’’;

(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement that is referred to in subparagraph (A), (B), or (C);’’;

(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), or (C), including any guarantee or reimbursement obligation (other than in section 11(e)(8)(D) of such Act), the Corporation, whether acting as such or as conservator or receiver,’’;

(f) LIABILITY.—The liability of a receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or Federal agency to any agreement or transaction referred to in subparagraph (A) or (B) shall not be limited by section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations solely to implement this section.

(g) LIABILITY.—The liability of a receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or Federal agency to any agreement or transaction referred to in subparagraph (A) or (B) shall not be limited by section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations solely to implement this section.

(h) LIABILITY.—The liability of a receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or Federal agency to any agreement or transaction referred to in subparagraph (A) or (B) shall not be limited by section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations solely to implement this section.

(i) LIABILITY.—The liability of a receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or Federal agency to any agreement or transaction referred to in subparagraph (A) or (B) shall not be limited by section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations solely to implement this section.
(B) in paragraph (46), by striking "on any day during the period beginning 90 days before the date of" and inserting "at any time before";

(C) by amending paragraph (47) to read as follows:

"(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement) means—

(A) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related obligations, or mortgage, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, securities, mortgage loans, or interests therein (including an interest therein 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, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage 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 (including any interest therein or on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage 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 agreement or transactions referred to in this subparagraph.

(2) in section 741(7), by striking paragraph (H), together with all supplements to such master agreement or transactions referred to in clause (i), (ii), (iii), (iv), (v), or (vi), and, with respect to each agreement or transaction not a swap agreement under this paragraph, except that such 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 referred to in clause (i), (ii), (iii), or (iv).

(3) in section 761(4)—

(A) by striking "or" at the end of subparagraph (D); and

(B) by adding at the end the following:

"(I) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), or (vi), and, with respect to each agreement or transaction not a swap agreement under this subparagraph, except that such master agreement shall be considered to be a swap agreement under this subparagraph only with respect to each agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), or (vi), together with all supplements to such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a swap agreement under this subparagraph only with respect to each agreement or transaction under master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), or (vi); or

(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in the master agreement referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in such clause, and

(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan; and

(E) by amending paragraph (53B) to read as follows:

"(53B) 'swap agreement'—

(A) means—

(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

(I) an interest rate swap, option, future, or forward agreement, including a rate float, rate cap, rate collar, cross-currency rate swap, and basis swap;
agreement, or arrangement or other credit enhancement related to any such agreement or transaction, measured in accordance with section 562(e).''; and

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

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"§559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement":

(2) in the first sentence, by striking "liq-
uidation" and inserting "liquidation, termin-
ation, or acceleration"; and

(3) in the third sentence, by striking "As used and" and all that follows through "right," and inserting "As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clear-
ing organization (as defined in the Com-
modity Exchange Act) or a multilateral clear-
ing organization (as defined in the Federal
Deposit Insurance Corporation Improvement
Act of 1991), a national securities exchange,
a national securities association, a securities
clearing agency, a contract market des-
ignated under the Commodity Exchange
Act, a derivatives transaction execution fac-
ility registered under the Commodity Ex-
change Act or a derivatives transaction exe-
cution facility registered under the Com-
modity Exchange Act or a clearing organi-
zation (as defined in section 5c(c) of the Com-
modity Exchange Act) or in a resolution
of the governing board thereof and a right.,"

(3) by striking "in connection with any swap agreement" and inserting "in connec-
tion with the termination, liquidation, or ac-
celeration of one or more swap agreements";

(4) in the second sentence, by striking "As used and" and all that follows through "right," and inserting "As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clear-
ing organization (as defined in the Com-
modity Exchange Act) or a multilateral clear-
ing organization (as defined in the Federal
Deposit Insurance Corporation Improvement
Act of 1991), a national securities exchange,
a national securities association, a securities
clearing agency, a contract market des-
ignated under the Commodity Exchange
Act, a derivatives transaction execution fac-

ty registered under the Commodity Exchange
Act, or a board of trade (as defined in the
Commodity Exchange Act) or in a resolution
of the governing board thereof and a right.,"

(2) C ONFORMING AMENDMENT.—The table of
sections for chapter 5 of title 11, United States
Code, is amended by inserting after the item relating to section 560 the fol-

lowing:

"561. Contractual right to terminate, liq-
uidate, accelerate, or offset under a master netting agreement and across contracts; pro-
ceedings under chapter 15."

(i) COMMODITY BROKER LIQUIDATIONS.—
Title 11, United States Code, is amended by inserting after section 766 the following:

"§767. Commodity broker liquidation and for-
ward contract merchants, commodity bro-
kers, stockbrokers, financial institutions, fi-
nancial participants, securities clearing agen-
cies, swap participants, repo participants,
and master netting agreement par-
ticipants

"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 net-
ting agreement participant under this title
shall not affect the priority of any unsecured
claim it may have after the exercise of such
rights."

(m) STOCKBROKER LIQUIDATIONS.—Title 11,
United States Code, is amended by inserting after section 752 the following:

"§753. Stockbroker liquidation and forward
contract merchants, commodity brokers,
stockbrokers, financial institutions, finan-
cial participants, securities clearing agen-
cies, 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 net-
ting agreement participant under this title
shall not affect the priority of any unsecured
claim it may have after the exercise of such
rights."

(n) SECTOF. —Section 553 of title 11, United States
Code, is amended—

(b)(1) by striking "title or by any order of a court or adminis-
trative agency in any proceeding under this title.
(b)(1) A party may exercise a contractual right
described in subsection (a) to termi-
nate, liquidate, or accelerate only to the ex-
tent that such party could exercise such a right under section 555, 556, 559, or 560 for each
individual contract covered by the mas-
ster netting agreement in issue.

(2) If a debtor is a commodity broker sub-
ject to subchapter IV—
(4) in the second sentence, by striking "As
used and" and all that follows through "right," and inserting "As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clear-
ing organization (as defined in the Com-
modity Exchange Act) or a multilateral clear-
ing organization (as defined in the Federal
Deposit Insurance Corporation Improvement
Act of 1991), a national securities exchange,
a national securities association, a securities
clearing agency, a contract market des-
ignated under the Commodity Exchange
Act, or a derivatives transaction execution fac-

itly participant, securities clearing agency, a contract market des-
ignated under the Commodity Exchange
Act, or a derivatives transaction execution fac-
ility registered under the Commodity Ex-
change Act or a derivatives transaction exe-
cution facility registered under the Com-
modity Exchange Act or a clearing organi-
"(A) a party may not net or offset an obli-
gation to the debtor arising under, or in con-
nection with, a commodity contract traded
on or subject to the rules of a contract mar-
ket designated under the Commodity Ex-
change Act or a derivatives transaction exe-
cution facility registered under the Com-
modity Exchange Act or any claim aris-
ing under, or in connection with, other in-
struments, contracts, or agreements listed in
subsection (a) except to the extent that the
party has positive net equity in the com-
modity accounts at the debtor, as calculated
under such subchapter; and

(B) another commodity broker may not
net or offset an obligation to the debtor aris-
ing under, or in connection with, a com-
modity contract entered into or held be-
half of a customer of the debtor and traded
on or subject to the rules of a contract mar-
ket designated under the Commodity Ex-
change Act or a derivatives transaction exe-
cution facility registered under the Com-
modity Exchange Act or any claim aris-
ing under, or in connection with, other in-
struments, contracts, or agreements listed in
subsection (a) except to the extent that the
party has positive net equity in the com-
modity accounts at the debtor, as calculated
under such subchapter; and

(3) by striking "in connection with any con-
tractual right" and inserting "in connec-
tion with the termination, liquidation, or ac-
celeration of one or more swap agreements";

(4) in the second sentence, by striking "As used and" and all that follows through "right," and inserting "As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clear-
ing organization (as defined in the Com-
modity Exchange Act) or a multilateral clear-
ing organization (as defined in the Federal
Deposit Insurance Corporation Improvement
Act of 1991), a national securities exchange,
a national securities association, a securities
clearing agency, a contract market des-
ignated under the Commodity Exchange
Act, or a derivatives transaction execution fac-
ility registered under the Commodity Exchange
Act, or a board of trade (as defined in the
Commodity Exchange Act) or in a resolution
of the governing board thereof and a right.,"

"(A) a party may not net or offset an obli-
gation to the debtor arising under, or in con-
nection with, a commodity contract traded
on or subject to the rules of a contract mar-
ket designated under the Commodity Ex-
change Act or a derivatives transaction exe-
cution facility registered under the Com-
modity Exchange Act or any claim aris-
ning under, or in connection with, other in-
struments, contracts, or agreements listed in
subsection (a) except to the extent that the
party has positive net equity in the com-
modity accounts at the debtor, as calculated
under such subchapter; and

(B) another commodity broker may not
net or offset an obligation to the debtor aris-
ing under, or in connection with, a com-
modity contract entered into or held be-
half of a customer of the debtor and traded
on or subject to the rules of a contract mar-
ket designated under the Commodity Ex-
change Act or a derivatives transaction exe-
cution facility registered under the Com-
modity Exchange Act or any claim aris-
ning under, or in connection with, other in-
struments, contracts, or agreements listed in
subsection (a) except to the extent that the
party has positive net equity in the com-
modity accounts at the debtor, as calculated
under such subchapter; and

(3) by striking "in connection with any swap agreement" and inserting "in connec-
tion with the termination, liquidation, or ac-
celeration of one or more swap agreements";

(4) in the second sentence, by striking "As used and" and all that follows through "right," and inserting "As used in this section, the term "contractual right" includes a right set forth in a rule or bylaw of a derivatives clear-
ing organization (as defined in the Com-
modity Exchange Act) or a multilateral clear-
ing organization (as defined in the Federal
Deposit Insurance Corporation Improvement
Act of 1991), a national securities exchange,
a national securities association, a securities
clearing agency, a contract market des-
ignated under the Commodity Exchange
Act, or a derivatives transaction execution fac-
ility registered under the Commodity Exchange
Act, or a board of trade (as defined in the
Commodity Exchange Act) or in a resolution
of the governing board thereof and a right.,"

(2) C ONFORMING AMENDMENT.—The table of
sections for chapter 5 of title 11, United States
Code, is amended by inserting after the item relating to section 560 the fol-

lowing:

"561. Contractual right to terminate, liq-
uidate, accelerate, or offset under a master netting agreement and across contracts; pro-
ceedings under chapter 15."

(1) in section 362(b)(6), by striking "finan-
cial participant," after "financial institution,"; and

(3) in subsection (b)(1), by striking "repo partici-
pants," after "securities clearing agency, swap
participant," and inserting "repo participants, securities clearing agency, swap participant, repo partici-
pants, and master netting agreement par-
ticipants

"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 net-
ning agreement participant under this title
shall not affect the priority of any unsecured
claim it may have after the exercise of such
rights."

(5) in section 548(d)(2)(C), by inserting "or
financial participant," after "financial institu-
tion,"; and

(o) SECURITIES CONTRACTS, COMMODITY CON-
TRACTS, AND FORWARD CONTRACTS.—Title 11,
United States Code, is amended—

(3) in section 362(b)(6), by striking "financial
institutions," each place such term ap-
ppears and inserting "financial institution, fi-
nancial participant,"

(4) in section 546(e), by inserting "financial par-
ticipant," after "repo participant,"

(5) in section 548(d)(2)(C), by inserting "fi-
nancial participant," after "repo partici-
 participant;"
(6) in section 548(d)(2)(D), by inserting “or financial participant” after “swap participant”;

(7) in section 555—

(A) by inserting “financial participant,” after “financial institution,”; and

(B) by striking the second sentence and inserting the following: “As used in this section, the term ‘contractual right’ includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, and a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, or a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.”;

(B) in section 556, by inserting “financial participant,” after “commodity broker”;

(C) in section 559, by inserting “financial participant” after “repo participant” each place such term appears; and

(D) in section 560, by inserting “or financial participant” after “swap participant”;

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by striking the items relating to sections 555 and 556 to read as follows: “

555. Contractual right to liquidate, terminate, or accelerate a securities contract, or forward contract, or in a resolution of the governing board thereof, or in 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, terminate, or accelerate a commodities contract or forward contract.”;

and

(B) by amending the items relating to sections 559 and 560 to read as follows: “

559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.”;

560. Contractual right to liquidate, terminate, or accelerate a swap agreement.”;

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following: “

767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”;

and

(B) by inserting after the item relating to section 752 the following: “

753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.”;

SEC. 908. RECORDKEEPING REQUIREMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11e(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

“(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed record keeping for ALL netting institutions with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as defined by the Corporation pursuant to section 32).”;

(b) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended by adding at the end the following new subparagraph:

“(H) RECORDKEEPING REQUIREMENTS.—The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 212).”;

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1829(e)(2)) is amended to read as follows—

“(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the termination of—

(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11a(2), agreement to provide collateral in lieu of a surety bond;

(B) bankruptcy estate funds pursuant to section 363(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 11e(e)(8)(D), shall not be deemed invalid pursuant to paragraph (1) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.”;

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

“562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract, repurchase agreement, master netting agreement pursuant to section 365(a), if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, accelerates such contract or agreement, damages shall be measured as of the earlier of—

(1) the date of such rejection; or

(2) the date or dates of such liquidation, termination, or acceleration;

(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages,

(1) in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.”; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

“562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements.”

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting “(1)” after “(g)”; and

(2) by adding at the end the following:

“(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

“(C) EXCEPTION FROM STAY.—

(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, accelerate a forward contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in section 716 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 derivatives exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization, a right set forth in a resolution of the governing board thereof, and a right, whether or not in writing, arising under
common law, under law merchant, or by reason of normal business practice.

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105-277), and as in effect on June 30, 2005, is hereby reenacted.

(2) EFFECT OF REENACTMENT.—Paragraph (1) shall take effect on July 1, 2005.

(b) AMENDMENTS.—Chapter 12 of title 11, United States Code, as reenacted by subsection (a), is amended by this Act.

(c) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (c).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting “$3,237,000,” after “$3,237,” each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, as amended by section 306, is amended—

(1) in subparagraph (A)—

(A) by striking “$1,500,000” and inserting “$3,237,000”; and

(B) by striking “80” and inserting “50”;

and

(2) in subparagraph (B)(1)—

(A) by striking “$1,500,000” and inserting “$3,237,000”; and

(B) by striking “80” and inserting “50”.

(b) PROVISIONS OF LAW.—The amendments made by this section—

(1) in subsection (a)—

(A) by redesignating paragraph (27A) as paragraph (27B); and

(B) by inserting after paragraph (27) the following:

“(27A) ‘commercial fishing vessel’ means a vessel used by a family fisherman to carry out a commercial fishing operation; and

“(27B) ‘family fisherman’ means—

“(A) an individual or individual and spouse engaged in a commercial fishing operation;

“(B) a corporation or partnership—

(i) in which more than 50 percent of the outstanding stock or equity is held by—

(I) the individual and spouse; or

(II) an individual and spouse who—

(aa) are licensed commercial fishermen;

(bb) are members of the same family;

(cc) are licensed and operate under applicable law as a joint commercial fishing enterprise; and

(dd) the individual or individuals and spouses of such family or such relatives conduct the commercial fishing operation; and

(ii) in which more than 50 percent of the outstanding stock or equity is held by—

(I) 1 family that conducts the commercial fishing operation; or

(II) 1 family and the relatives of the members of such family or such relatives conduct the commercial fishing operation; and

(iii) in which more than 50 percent of the outstanding stock or equity is publicly traded;

(iv) a non-profit organization engaged in the commercial fishing industry; and

(v) a commercial fishing vessel that is a principal residence;

(vi) the principal residence of an individual or a partnership, or entity that is a joint family commercial fishing enterprise; and

(vii) any other organization or entity that conducts a commercial fishing operation that is engaged in the commercial fishing industry and is not publicly traded.”

(c) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to cases commenced under title 11 of the United States Code before such date.

SEC. 1004. 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 “$3,237,000”; and

(B) by striking “80” and inserting “50”;

and

(2) in subparagraph (B)(1)—

(A) by striking “$1,500,000” and inserting “$3,237,000”; and

(B) by striking “80” and inserting “50”.
``(V) domiciliary care facility; and
``(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;"

(b) An ombudsmen appointment or other appointment to perform duties described in paragraph (a) may be made by—

(1) the United States trustee (under subparagraph (A));

(2) a State Long-Term Care Ombudsman appointed under subsection (a)(1), the United States trustee shall appoint 1 designate 1 as an ombudsman under paragraph (1), the United States trustee shall appoint 1 who is not a family farm-

``(c) An ombudsman appointment or other appointment to perform duties described in paragraph (a) may be made by—

(1) the United States trustee (under subparagraph (A));

(2) a State Long-Term Care Ombudsman appointed under subsection (a)(1), the United States trustee shall appoint 1 designate 1 as an ombudsman under paragraph (1), the United States trustee shall appoint 1 who is not a family farm-
(B) by striking "thereto having aggregate" and all that follows through the end of the paragraph and inserting a semicolon;

(e) by striking paragraph (54) and inserting the following:

"(54) The term 'transfer' means—

(A) the creation of a lien;

(B) the retention of title as a security interest;

(C) the foreclosure of a debtor's equity of redemption;

(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

(i) its property; or

(ii) an interest in property;";

(1) in paragraph (55), by striking the semicolon at the end and inserting "an insured";

(2) by striking the last sentence of paragraph (55), and by inserting "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) its property; or

(ii) an interest in property;";

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting "section 523(c)," after "section 522(d)," each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking "section 522(d)" and all that follows through "or", and inserting "section 922, 1201, or".

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking "subsection (c) or (d)" of; and

(2) in section 522(b)(1), by striking "product" each place it appears and inserting "products".

SEC. 1205. PENALTY FOR PERSONS WHO NEGLECT OR PROFESSIONAL PERSONS.

Section 110(j)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking "attorney's" and inserting "attorneys'".

SEC. 1206. LIMITATION ON COMPENSATION OF PERSONS PROFESSIONAL PERSONS.

Section 326(a) of title 11, United States Code, is amended by inserting "subject to paragraph (A), (B), (C), (D), or (E) of" before "paragraph (3)".

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by sections 215 and 314, is amended by inserting "section 365 before "section 522(d),"

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(a)(4)(B)(i) of title 11, United States Code, as amended by inserting "365 before "section 542.

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—

(1) in subsection (b), by striking "subsection (c)" and inserting "sections (c) and (d)"; and

(2) by adding at the end the following:

"(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is not an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 554(c) of title 11, United States Code, is amended—

(1) by inserting "an interest in" after "transfer of" each place it appears;

(2) by striking "such property or inserting "such real property"; and

(3) by striking "the interest" and inserting "such interest".

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking "1005".

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting "1123(d), after "1123(b),".

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, as amended by striking "section 11397" and inserting "section 11397(a)".

SEC. 1218. CONTENTS OF PLAN.

Section 1122(c)(4) of title 11, United States Code, as amended by section 1127, is amended by inserting "section 11397" and inserting "section 11397(a)".

SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.

Section 334(d) of title 28, United States Code, is amended—

(1) by striking "made under this subsection" and inserting "made under subsection (c)"; and

(2) by striking "This subsection" and inserting "Subsection (c) and this subsection".

SEC. 1220. TRANSFER OF PROPERTY TO BANKRUPTCY LAW OR RULE.

Section 547(c)(1) of title 11, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting "(1) the term" before "bankruptcy"; and

(B) by striking the period at the end and inserting "document"; and

(2) in the second undesignated paragraph—

(A) by inserting "(2) the term" before "document"; and

(B) by striking "this title" and inserting "title 11".

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF MONEY SECURITY INTERESTS.

Section 526(a)(3) of title 11, United States Code, as amended by striking "section 523(c) and inserting the following:

"(1) in paragraph (1), by inserting "student" before "grant" the second place it appears; and

(2) in paragraph (2), by striking "the program operated under part B, D, or E of" and inserting "any program operated under".

(b) CONFIRMATION OF PLAN OF REORGANIZATION.—Section 1129(a)(1) of title 11, United States Code, as amended by sections 215 and 321, is amended by adding at the end the following:

"(b) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.".

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:

"(c) Notwithstanding any other provision of this title, property that is held by a debtor or 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 or trust only under the same conditions as would apply if the debtor had not filed a case under this title.

SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking "30" and inserting "30".

SEC. 1223. BANKRUPTCY JUDGES.

(a) SHORT TITLE.—This section may be cited as the "Bankruptcy Judgeship Act of 2005".

(b) TEMPORARY JUDGES.—

(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, in such district for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judge for the eastern district of California.

(B) Three additional bankruptcy judges for the central district of California.

(C) Four additional bankruptcy judges for the district of Delaware.

(D) Two additional bankruptcy judges for the southern district of Florida.

(E) One additional bankruptcy judge for the eastern district of Maryland.

(F) Three additional bankruptcy judges for the southern district of Florida.

(G) One additional bankruptcy judge for the eastern district of Maryland.

(H) One additional bankruptcy judge for the southern district of Mississippi.

CONGRESSIONAL RECORD — SENATE S1773 February 28, 2005
(I) One additional bankruptcy judge for the district of New Jersey.

(J) One additional bankruptcy judge for the eastern district of New York.

(K) One additional bankruptcy judge for the southern district of New York.

(L) One additional bankruptcy judge for the eastern district of North Carolina.

(M) One additional bankruptcy judge for the eastern district of Pennsylvania.

(N) One additional bankruptcy judge for the western district of Pennsylvania.

(O) One additional bankruptcy judge for the central district of California.

(P) One additional bankruptcy judge for the district of Puerto Rico.

(Q) One additional bankruptcy judge for the district of Hawaii.

(R) One additional bankruptcy judge for the eastern district of Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(2) VACANCIES.—(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), any vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(1) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1); and

(2) resulting from the death, retirement, resignation, or removal of a bankruptcy judge shall not be filled.

(B) DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

(1) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(2) resulting from the death, retirement, resignation, or removal of a bankruptcy judge shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(1) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(2) resulting from the death, retirement, resignation, or removal of a bankruptcy judge shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

(1) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(2) resulting from the death, retirement, resignation, or removal of a bankruptcy judge shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

(1) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(2) resulting from the death, retirement, resignation, or removal of a bankruptcy judge shall not be filled.

(c) EXTENSIONS.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) shall remain available until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge occurring 5 years after the date of the enactment of this Act.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: "Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located."; and

(2) in paragraph (2)—

(A) in the middle district of Georgia, by striking "2" and inserting "3"; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking "Middle and Southern . . . . . . 1".

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking "and"; and

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

(2) by adding at the end the following:

"(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor’s prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

(A) by prorating such amount over the remaining duration of the plan; and

(B) by monthly payments not to exceed the greater of—

(i) $25; or

(ii) the amount payable to unsecured non-priority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan; and

(2) by adding at the end the following:

"(d) Notwithstanding any other provision of this title—

(i) 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 case under this title; and

(ii) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(1)(B)."

SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

"(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not within a school district or a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;".

SEC. 1226. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the mailing of notice under section 707(b), and reaffirmation agreements under section 524, of title 11 of the United States Code, as amended by this Act.

SEC. 1227. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

"(c) As provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest 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, within 45 days before the date of the commencement of a case under title 11, and the debtor has not reclamation 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 notice, 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 shall still may assert the rights contained in section 506(b).

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end the following:

"(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under title 11 in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.".

SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual who is a debtor in a case under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been provided to the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1229. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) existing consumer debt may increasingly be a major contributing factor to consumer insolvency.
(b) EXPENSES OF STANDING TRUSTEES.—Section 550(e) of title 28, United States Code, is amended by adding at the end the following:—

(8) After first exhausting all available administrative remedies, an individual adversary action under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subchapter. Such an action shall be brought in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the court if the determination was made in accordance with law, and without cause based upon the administrative record before the agency.

SEC. 1232. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

"(8) The Attorney General shall prescribe procedures for the certification described in subsection (c)."

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEAL.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking "Subject to subsection (b)," and inserting "Subject to subsection (b) and (d)(2);"; and

(2) in subsection (d)—

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

(B) by adding at the end the following:

"(2) The court of appeals for the circuit in which the bankruptcy court is located, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(b) EXPENSES OF STANDING TRUSTEES.—Section 550(e) of title 28, United States Code, is amended by adding at the end the following:

"(9) After first exhausting all available administrative remedies, an individual adversary action under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subchapter. Such an action shall be brought in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the court if the determination was made in accordance with law, and without cause based upon the administrative record before the agency.

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under title 11 of the United States Code before, on, and after such date.

SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 223(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following:

"(14B) incurred to pay fines or penalties imposed under Federal election law;"

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINDING THE DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(D) Notwithstanding subparagraph (A), or (B), in complying with any such subparagraph shall not be subject to subparagraph (A), (B), or (C), as applicable;"

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the ‘‘Board’’) shall promulgate regulations implementing the requirements of this section (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of (A) 18 months after the date of enactment of this Act; or (B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information that are most helpful to potential borrowers for consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board shall, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider the ramifications of defaulting on new credit, and how taking on excessive credit can result in financial difficulty;
SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637(a)(13)) is amended—

(A) by striking “CONSULTATION OF TAX ADVISER.—A statement that the and inserting the following: “TAX DEDUCTIBILITY.—A statement that—

“(A) the; and

(B) by striking the period at the end and inserting “and”; 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; and

(B) CREDIT EXTENSIONS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1658(b)) is amended—

(A) by striking “IF ANY” and inserting the following:

“(1) IN GENERAL.—If any; and

(B) by adding at the end the following:

“(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, 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 shall be taxable income 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) REGULATORY IMPLEMENTATION.—The Board shall promulgate regulations implementing the amendments made by this section.

SEC. 1303. DISCLOSURES RELATED TO “INTRODUCTORY RATES”.

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c)(6) of the Truth in Lending Act (15 U.S.C. 1637(c)(6)) is amended by adding at the end the following:

“(6) ADDITIONAL NOTICE CONCERNING ‘INTRODUCTORY RATES’.—

(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

“(1) 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 in the tabular format prescribed by section 122(c), the time period in which the introductory period will end and the annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

“(B) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—Except as provided in subparagraph (A), the Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

“(7) INTERNET-BASED 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) easily accessible to consumers at the solicitation to open a credit card account;
SEC. 1301. Employment contract violations.

(a) Report.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protection violations under existing law to limit the liability of creditors and debtors attributable to the use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on the findings. 

(b) Considerations.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693a), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers; 

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and 

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that section, further address adequate protection for consumers concerned unauthorized use liability.

SEC. 1302. Study of bankruptcy credit impact of credit extended to dependent students.

(a) Study.—

(1) In general.—The Board shall conduct a study regarding the extent that the extension of credit described in paragraph (2) has on the rates of default by individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements on a full-time basis, in postsecondary educational institutions.

(2) Extension of credit.—The extension of credit described in the paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements on a full-time basis, in postsecondary educational institutions.

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Board shall report to the Committee on Banking and金融服务 system operated or services offered by libraries or educational institutions.

(b) Regulatory Implementation.—

(1) In general.—The Board shall promulgate regulations implementing the requirements of section 127(b)(7) of the Truth in Lending Act, as added by this section.

(2) Effective date.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. Disclosures related to late payment deadlines and penalties.

(a) Disclosures related to late payment deadlines and penalties.—

(1) In general.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act (15 U.S.C. 1637(b)) as amended by adding at the end the following:

(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

(A) The date on which that payment is due or, if different, the earliest date on which such fee may be charged.

(B) The amount of the late payment fee to be imposed if payment is made after such date.

(b) Regulatory implementation.—

(1) In general.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act (15 U.S.C. 1637(b)) as amended by adding at the end the following:

(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

(A) The date on which that payment is due or, if different, the earliest date on which such fee may be charged.

(B) The amount of the late payment fee to be imposed if payment is made after such date.

(2) Effective date.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. Effective date; application of amendments.

(a) Effective date.—All amendments made by this title, except amendments made by section 1301, shall be effective on the date of enactment of this Act. 

(b) Application of amendments.—The amendments made by this title shall apply to all United States credit card issuers and shall apply to all covered accounts entered into on or after the date of enactment of this Act, and shall take effect on the date of enactment of this Act.
chief financial officer, participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor’s public financial reporting.

SEC. 1406. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), the amendments made by this title shall apply with respect to cases commenced under title 11 of the United States Code after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this title, the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

(2) AVOIDANCE PERIOD.—The amendments made by section 1605(b) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

(b) RELATED CONFORMING AMENDMENT.—Section 6(e) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff(e)) is amended by striking “507(a)(1)” and inserting “507(a)(2)”.

The PRESIDENT pro tempore. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, in my capacity as chairman of the Senate Judiciary Committee, I am pleased to join my distinguished colleague from Vermont, the ranking member, in beginning the debate on this very important legislation.

At the outset, I congratulate Senator GRASSLEY for the work he has done over the past decade, and also former chairman, Senator HATCH, for the outstanding job he has done. I thank Senator HATCH especially for filling in for me a week ago Thursday on the executive session when the committee took up the bill and reported it to the Senate.

I thank both Republicans and Democrats on the committee for withholding amendments until the floor.

We had one very extensive hearing. I know there was an interest in having more hearings, but the reality is this has been a long and thorough debate. I think there is a very comprehensive idea on both sides as to the underlying merits of the bill.

It is important to note that going back to the 105th Congress the Senate passed a bill in 1997, and subsequently voted to proceed to conference by a vote of 94 to 2. The Senate again took up a similar bill in the 106th Congress and passed legislation again by a wide margin, 83 to 14. The House also passed legislation during the 106th Congress, but President Clinton resorted to a veto pocket, so the bill was not enacted. The Senate took up the bill again in the 107th Congress but never reached agreement with the House on certain language. So here we are today with reform legislation that seeks to protect the interests of the debtors, honest Americans, who need relief from bankruptcy, and still address those who take advantage of the bankruptcy laws.

Bankruptcy is obviously a necessary tool for many people who find they simply are not able to repay their debts. Indeed, the vast majority of bankruptcy filers have nothing with which to pay their creditors. They file for bankruptcy as a last resort. And for them bankruptcy will continue to provide a fresh start.

Unfortunately, at the same time, there are some who use bankruptcy as a means of avoiding debts they have passed a similar bill by a vote of 97 to 1, and subsequently voted to proceed to conference by a vote of 94 to 2. The Senate again took up a similar bill in the 106th Congress and passed legislation again by a wide margin, 83 to 14. The House also passed legislation during the 106th Congress, but President Clinton resorted to a veto pocket, so the bill was not enacted. The Senate took up the bill again in the 107th Congress but never reached agreement with the House on certain language. So here we are today with reform legislation that seeks to protect the interests of the debtors, honest Americans, who need relief from bankruptcy, and still address those who take advantage of the bankruptcy laws.
from languishing and creditors from waiting indefinitely.

In addition, the bill makes it easier for family farmers to obtain bankruptcy protection under Chapter 12, a form of bankruptcy that takes account of the unique concerns of farmers. And, for the first time, family fishermen will also be able to file for Chapter 12 bankruptcy.

Further, the bill contains protections aimed at helping consumers avoid excessive debt and bankruptcy. It requires credit card companies to warn their cardholders that making the minimum payment on a credit card balance can significantly increase the time it takes to pay off the balance. Many credit card practices are extremely deceptive. Credit card companies must also provide certain disclosures in credit card solicitations, including clear indications when an advertised interest rate is merely introductory, a practice which is very deceptive. The bill is aimed at preventing the little guy from being misled, which leads him into bankruptcy.

The legislation further provides that creditors make certain disclosures before they can file for bankruptcy so that debtors fully understand the implications of signing a reaffirmation agreement—a technical matter. The legislation requires that debtors receive credit counseling before filing for bankruptcy so that they can understand the consequences of filing and are aware of the alternatives to bankruptcy. A little knowledge there can go a long way.

At the outset, I want to acknowledge that there are many low-income people who will not be able to repay any of their debts. The means test will not affect those people. If they are below the median income for their State, the means test will not apply. However, for those who are above the median income, it will be a balance so that those who can afford to do so must repay part of their debts, to help prevent the $44 billion in discharged debts from burdening other honest Americans, and part of the commercial system will not be saddled with those obligations.

In analyzing this legislation, it is my concern to ensure that it is fair to the “little guy,” the working men and women who need bankruptcy as a last resort and who do not abuse the system.

We had a lively debate in the hearing in the Judiciary Committee. We had a lively hearing. I know there are many amendments which will be offered, and I will have an open mind in considering these amendments as we work through the process. It is too early to determine what the final form of the bill will be. But it has been analyzed and reanalyzed. Again, it attempts to strike a balance so that the person who needs the discharge in bankruptcy will be able to obtain it, but those who game the system will not be able to do so.

Let me reiterate the comments of the majority leader in urging Senators who have opening statements to come to the floor to offer those opening statements. It will be the objective of Senator LEAHY, the ranking member, and myself to try to move through to amendments. It is anticipated there will be amendments.

We have a very active calendar ahead of us. One of the items on the Judiciary Committee agenda that we are moving forward on is asbestos legislation, an issue of tremendous importance, where many Americans are dying from mesothelioma. Other deadly ailments from exposure to asbestos, who collect nothing because the companies are bankrupt. Some 74 companies have gone bankrupt, and more are in the process. I filed a draft discussion bill. There have been very extensive negotiations with Republicans and Democrats, and we are anxious to move ahead. We will be taking that issue up on the executive calendar of the Judiciary Committee on Thursday. But I also want to emphasize the importance of moving ahead on this legislation because there will be, doubtless, many amendments, and the sooner they are offered, the sooner we can come to grips with the substance of the bill.

At this time, I yield to my distinguished ranking member, Senator LEAHY.

The PRESIDENT pro tempore. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I thank the distinguished chairman of the committee, the senior Senator from Pennsylvania, for his opening statement. I know he has worked hard on this matter.

The Senator from Pennsylvania, the Senator from Vermont, and the distinguished President pro tempore have noted that it is spitting snow outside. Unfortunately, some think this is a time for panic. They should go to Alaska. They should go to Vermont. They should go over to the mountains of Pennsylvania.

I say to the President pro tempore, you heard me mention not so long ago that I was back home in Vermont. I was listening to the news, and almost as an afterthought they said: By the way, we should have a dusting of snow tonight; No more than 3 to 5 inches. Down here, of course, everything comes to a screeching halt.

Why I bring this up I have no idea, except that when watching TV crews going out beggin’ to get one shot of a snow storm, it made me say: Go to Alaska, Go to Vermont. We will show them what real weather is.

Today, we are beginning debate on the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005—a big bipartisan bill and help us enact bankruptcy reform into law.

Both the chairman and I have worked very hard with Senators on our sides of the aisle. We have tried to move this legislation forward. But we know that bankruptcy is a complex area of law. It has many competing public policy interests between debtors and creditors and even among competing creditors.

The very complex and competing interests involved in achieving fair reforms of our bankruptcy system demand that we work in a bipartisan manner throughout the legislative process.

I mentioned that 4 years ago we debated this issue. I mentioned that because today our Nation has an entirely different face than it did then. We have endured the terrorist attacks of September 11, 2001. We have sent ourselves in wars in Afghanistan and Iraq. We have witnessed a parade of financial misdeeds—more than misdeeds, financial thefts and skulduggery by major U.S. corporations. We have even had corporate fraud legislation, and the promises of the pension programs, were shortchanged by nearly $100 billion. All these factors have only deepened the financial woes of an already struggling economy. So when we debate this issue today, we are discussing real life today, not what it was in 2001.

I think for this legislation to be appropriate and fair, the key provisions have to be carefully examined. If necessary, they have to be modernized, they have to be amended.

Earlier this month, our committee held a bipartisan hearing on bankruptcy reform legislation. As I said, that was our first hearing in 4 years. It was an informative and well-attended day. And later, the Judiciary Committee held its first markup on bankruptcy legislation in 4 years. During that meeting, we considered 11 amendments, 5 of which were accepted.

They improved the bill. In fact, they were accepted unanimously. I am particularly pleased the committee accepted the Leahy-Grassley amendment that clarifies that any judgment, order, or appointment or conviction of securities fraud law after the filing of a bankruptcy case is nondischargeable. In other words, if you want to defraud somebody in securities, if you want to pull some of these big fraud actions, we have seen in the past few years, you are not going to escape the consequences by bankruptcy.

During consideration of the Sarbanes-Oxley Act of 2002, Senator GRASSLEY and I worked together to amend the Bankruptcy Code to make judgments and settlements based on security law violations nondischargeable. We wanted to protect the victims’ ability to recoup their losses and hold wrongdoers accountable for their securities fraud. I introduced a Judiciary Committee amendment that Senator GRASSLEY and I introduced to my corporate fraud legislation, S. 10, the Corporate and Criminal Fraud Accountability Act that was unanimously reported by the Judiciary Committee. It was later adopted as a floor amendment by a vote of 99 to nothing in 2002.
Recently a bankruptcy court wrongly interpreted the new law by finding that a securities fraud judgment, order, or settlement must be in existence at the time the bankruptcy petition is filed to be nondischargeable. That was never intended to be the result in future courts discharging securities fraud judgments, orders, or settlements that are entered into after a debtor files for bankruptcy.

To give you an idea of what a get-out-of-jail-free card this is, an Enron executive could avoid paying his securities fraud judgment by filing for bankruptcy where the securities fraud litigation is pending. That would be wrong. Neither Republicans nor Democrats who supported that amendment want that to happen. So the Leahy-Grassley amendment, which was accepted by all Members, Republicans and Democrats, in the committee during committee consideration, would remedy that injustice and makes it clear that intended for securities fraud judgments, orders, or settlements to be nondischargeable.

Another area we have to consider is the economic hardships faced by service members’ families. When you get a call to duty, you are leaving your family, your career, and your community in Afghanistan or elsewhere—and now it is a disproportionate number of guardsmen and reservists who are called up; I watch this as the cochair of the National Guard caucus of the Senate. It can cause loss once; it is difficult to replace that income, the close of a family business, a whole lot of other unexpected expenses. Unfortunately, it is not uncommon for service members and their families to be forced into filing for bankruptcy relief. We have to protect those who are fighting for us. I know Senators DURBIN and NELSON have taken an interest in this issue. I look forward to hearing their thoughts on how we can help the situations faced by service members serving our Nation and their families.

I spoke of the financial misdeeds of U.S. corporations. When you talk about Enron and WorldCom, others, it leaves a very bitter taste in the mouths of average Americans. If an average American were to steal $500 or $1,000, they might go to jail. Apparently, if you steal $100 million, $200 million, or $500 million, you are a hero. When it is done, there are no heroes, not to any of us. They have damaged our capital markets. Senators SAR- BANES, KENNEDY, DURBIN, HARKIN, and CANTWELL have prepared amendments to address the ongoing problems caused by corporate abuse.

We must strengthen the financial safety net for hard-working American families who confront illness or injury. Medical problems contribute to about half of all bankruptcies, even though most of those who file had health insurance when they became sick. Many lose their insurance because they got sick. Others face thousands of dollars in copayments and deductibles for services not covered by their insurance. Senators KENNEDY, DURBIN, CLINTON, and CORZINE will be leading the debate on this issue.

Since we last considered bankruptcy reform legislation, financially troubled companies have shortchanged their pension plans by nearly $100 billion, putting workers approaching retirement age or responsible companies and actually taxpayers at risk. We will hear from Senators HARKIN, ROCKE- FELLER, and DAYTON during debate over this issue.

I know that Senators GRASSLEY, DURBIN, DODD, FEINSTEIN, and others share a commitment to include credit industry reform in a balanced bankruptcy bill. The millions of credit card solicitations made to American consumers in the past year have contributed to the rise in consumer debt and bankruptcy. It is relatively easy to obtain credit. We have heard the stories of a neighbor’s dog getting a $3,000 preapproved credit card. Kids go to college and are treated as if they were preapproved for preapproved credit cards. So it is relatively easy to obtain them. Not nearly enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include all of the information necessary to allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use.

Senator FEINGOLD intends to offer the credit card minimum payment warning act. I am proud to be an original co- sponsor with him. It will provide a wake-up call for consumers by making it very clear what costs they are going to incur if they make only the minimum payments on their credit cards. The personalized information they will receive for each of their accounts will help consumers make informed choices about their debts. In an era of computers, this is not a real burden on the companies.

Senator FEINGOLD, a longtime protector of working middle and lower income families who rely on the ability to resolve overwhelming financial burdens through bankruptcy, is going to offer several amendments to improve the bankruptcy code. Senator FEINGOLD and I have worked together on bankruptcy reform issues for a long time. I know his experience and the measures he means to propose enhance the legislation.

We have to be careful that our efforts to ensure accountability in the bankruptcy process do not inadvertently create problems for privacy and security. We are in an age where personal information—far too much personal information—can be easily digitized and shared. If it falls into the wrong hands, it is abused. Identity theft is one danger, as is tracking and harassing a battered spouse. We can look for account- ability, but we have to find ways to minimize the possibilities of abuse and misuse.

Four years ago, the committee adopted the Leahy-Hatch amendment to protect the personal privacy of consumers whose information is held by firms in bankruptcy as part of bankruptcy reform legislation. I am pleased this bill retains this proprivacy provision.

Our bipartisan provision permits bankruptcy courts to impose privacy policies of business debtors. It creates a consumer privacy ombudsman to protect personal privacy in bankruptcy proceedings. I appreciate Senator HATCH’s efforts to add important consumer privacy protections to the code.

Unfortunately, the Leahy-Hatch amendment is needed because the customer lists and databases of failed firms now can be put up for sale in bankruptcy without any privacy consider- ations, even in violation of the failed firm’s own public privacy policy against sale of personal customer information to third parties.

Let me just tell you what happened in this case, and it is real. We had an online toy store called Toysmart.com. Toysmart.com wanted to encourage parents to allow their children to go online and, in doing so, they promised on their Web site that personal information voluntarily submitted by visitors to the site, such as name, address, billing information, childhood preferences—would never be shared with a third party. If you are a parent, you would look at that and say: I feel a little bit better about this. I don’t want my son or daughter’s names out there.

Guess what happened. They filed for bankruptcy in 2000. Even though they had made this promise to parents and children, the personal customer information was put on the auction block. In a way, the bankruptcy court had a catch-22. I suspect the judge realized that this was violating everything every parent thought of, but under the law at that time, there was only one way out. It was this mailing list. It wasn’t the old desks or loading docks or the warehouse. Those were empty. It wasn’t the computers. Those would be out of date every few months. The one item of any value was the mailing list. The mailing list that parents had been promised would never go out, the children’s names would never be sold, that had to go into bankruptcy. That is why we have the Leahy-Hatch amendment.

The Leahy-Hatch provision included in the legislation adds privacy protec- tions and a consumer privacy ombudsman to the bankruptcy code. We wanted to prevent future cases like Toysmart.com. Once somebody tells you we are going to keep your kids, information confidential, it will be.

We have seen in the news recently the ChoicePoint Inc. breach. It is just the latest example of why we need to take special care with databases containing America’s personal information. It is astounding that a company in the business of providing data for background checks and law enforce- ment purposes failed to assess the leg- itimacy of its own customers. It sold
personal data on 145,000 individuals to scam artists. Many of the victims had no idea that ChoicePoint existed, let alone that the company compiled data. How irresponsible, how wrong. How can the people who run ChoicePoint sleep at night? This is of the most outrageous things I have ever seen. All of their records were lost. Good Lord, they send something off or ship it off by plane—no, not often but they mail it to a location with backup files of all of their customers. I don’t know. I suspect maybe their top executives fly by private jets. Maybe they don’t understand that the three Senators on the floor right now fly commercially, and we have no idea how often they lose a bag or a suitcase lost. They just lost thousands upon thousands of files on their customers. How would you like to be a Bank of America customer and wake up and find out they were so stupid and negligent that they lost all your information? They ought to be ashamed of themselves.

But I digress. I mentioned privacy. I have kept an article. It is the only thing I have ever framed that was written about me in one of our newspapers. To put this into context, you have to understand that we live on a dirt road in an old farmhouse. We have an adjoining farm family who kind of watch us over the place when we are not there. The reporter in this article drew up on a Saturday with out-of-State license plates and asks the farmer sitting on the porch, “Does Senator LEAHY live up this road?”

The farmer said, “Are you a relative of his?”

He said, “No.”

“Are you a friend of his?”

He answered, “Not really.”

“Is he expecting you?”

“No.”

“Never heard of him.”

That is the kind of privacy we lack. These people in a cavalier way—like Bank of America and all—are giving information away. We are finding more and more of our own Government is being involved with this information they have. Of course, the information can often be wrong. The third most senior Member of the Senate has been stopped half a dozen times getting on an airplane when going home—something he has been doing for decades—because he is on a terrorist list. He is one of the most recognizable people in America, and he cannot get off this list. You have to kind of ask, how much are we willing to give up and what does it do? We talked about this today, but it didn’t do much of anything. These are some of the reforms included in the bill. I hope we will all look at this carefully and work together closely.

Requiring truncation of social security numbers is similarly reasonable. It provides protection against abuse, but still allows for important information sharing to take place. These are just some of the reforms that should be included in this bill. I hope that all Senators will give fair thought and consideration to amendments proposed on either side of the aisle. When the Senate works productively and constructively, we can
improve legislation on a bipartisan basis. I have worked with Senator Grassley and others to make bipartisan improvements in the past and I hope that we can do that again on this bankruptcy reform legislation.

In particular, I urge my colleagues to give full consideration to an amendment Senator Schumer will offer to make sure debts incurred through violence and other illegal acts at health clinics may not be discharged in bankruptcy. Senator Schumer has been the leader in doing this bankruptcy abuse and I have always been proud to support his efforts. Any fair bankruptcy reform measure should end abusive bankruptcy filings used to avoid the legal consequences of violence, vandalism and obstruction to deny access to legal health services.

As we move forward with reforms that are appropriate to eliminate abuses in the system, we need to remember the people who use the system, both the debtor and the creditor. We need to balance the interests of creditors with those of the poor and middle class who need the opportunity to resolve overwhelming financial burdens. These are important subjects that have too often been allowed to take lives of many people who have already suffered from illnesses or divorce or job loss. We should utilize the expertise of our colleagues on both sides of the aisle to ensure that the Senate passes balanced legislation.

I look forward to continuing to work with Senator Grassley, Senator Specter and the rest of my colleagues to make more bipartisan improvements on the Senate floor to enact balanced bankruptcy reform legislation into law.

The PRESIDING OFFICER (Mr. Sununu). The Senator from New Hampshire is recognized.

Mr. Gregg. Mr. President, we are on the brink of a major concern. The PRESIDING OFFICER. The Senator is correct.

Mr. Gregg. Mr. President, first, it was a pleasure to hear the presentation by the chairman of the Judiciary Committee and the ranking member relative to the bankruptcy bill, which is an extraordinarily important piece of legislation, which has been to the floor before—in fact, too many times. Hopefully, this year we will pass it and send it to the President to be signed. I congratulate the Judiciary Committee for bringing it out. Certainly, it is a piece of legislation that is very important to the commerce of our country and needs to be passed.

The BUDGET

I wanted to speak about another subject—specifically, the budget of the United States and the fiscal policy, as we are presently dealing with the funding of the Federal Government. Within the next 3 weeks, hopefully, we will take up a budget in committee and here on the floor of the Senate. The budget is a blueprint of where we are going as a country relative to our spending policies and fiscal policies. What is important to remember is that the budget is just an outline. It doesn't get into too much specific detail of how we function as a Government but, rather, it sets goals that we as a Government wish to pursue in the area of policy relative to spending and relative to taxes.

What we need to focus on, I believe, this year—and I believe Congress did focus on it, and certainly the President did in his budget, which is a very laudable document, and it does focus specifically on these issues—there are two things: the deficit, as we confront as a Nation the short-term liabilities, and what we confront in the long-term.

The deficit in the short term is having an unfortunate impact on our country. It arises for a lot of reasons. I argue that it arises for two primary reasons. First is that in the mid and late 1980s, we started to run very significant surpluses in this Nation as a result of an economic boom known as the Internet bubble—a bubble that is an aberration on the economic landscape. There have been other major bubbles in our history. It is basically when people have created artificial money. The Internet bubble was probably the largest bubble in the history of the world. In many instances, it was an artificial expansion of the economy relative to real productivity and growth. That bubble collapsed, as they have. As that bubble collapsed, the economy slowed dramatically, and the revenues to the Federal Government dropped significantly.

The second major cause, obviously, of the deficits we confront today, in my opinion, was the fact that we were attacked on 9/11. We are at war, and as a nation we must fight that war with every tool we have available, and that means fully arming and manning our soldiers. Also, it means regearing ourselves as a nation. We have had to make what I would call significant investments in our national security, both in the homeland area, bringing first responders up to speed, in the area of protecting ourselves from biological, chemical, or potentially nuclear attacks, and in the area, obviously, of rearming and retooling our military and our intelligence community across the country and the globe. It has been a tremendous investment in a nation, but it is money we must spend because we have been attacked, we are at war.

There are people who wish to do us harm in the most heinous way. They want to kill Americans simply because they are Americans. They wish to destroy our culture and Nation because they don't like our freedoms. They don't like the fact that we are prosperous. Those people are still out there, and they must be found and brought to justice, and, most importantly, we have to keep our children safe in America. That is a commitment we have made as a nation, and this President has pursued that with a focus.

So we went through a period of significant surpluses in the late 1990s to a period of deficit. That deficit has been rather large. We are now as a nation trying to address that fact. The deficit in the short term is having deleterious effects on our Nation. It is obviously causing us to pass on to our children the debts for the operation of today's Government. You are basically borrowing from the future, and the people who are going to have to pay that are our children, not you. Because that note becomes due not in your lifetime—well, maybe in your lifetime—but 10, 15 years from now. Who has to pay it? The people who work 10, 15 years from now, in their taxes. They have less money to keep because they have to pay more taxes. So we are borrowing from our children's future to pay for this deficit.

Second, it is having an impact on our our international community looks at our deficit and says we are not doing a heck of a lot about it.

So we need to address the short-term deficit, and I will get to the specifics of that, how we have done that. But the President's budget has attempted to do that. That is an important public policy issue.

The second largest public policy issue we have is the question of how we deal with the long-term liabilities of our country, liabilities that already exist. What does that mean?

We have basically put in place today a large number of Federal programs that we have to pay for today because these programs survive for as far as the eye can see—infinity. We know they are going to cost money. Most of these programs—the most expensive ones, called entitlements—will last up to decades. And we are making sure that people who are retired have a decent lifestyle. This has been a great benefit to our Nation—Social Security, Medicare, Medicaid. These programs have truly improved the quality of life of American people, especially those who are retired. But as we look into the future, we see huge and very complicated and difficult problems for us as a country as we try to maintain those programs and make sure that people who are retired have a decent lifestyle.

What is driving this major concern, this huge cost which we are going to face as a nation, is a fact which has nowhere existed before. It is called demographics. After World War II, the largest expansion ever in our population occurred. More children were born during a period from about 1946 to about 1955 than at any other period in American history. It is called the baby boom generation.

That generation was so large—and I happen to be a member of it—that it totally restructured every lifestyle event it impacted. As children, that generation caused a massive expansion in schools. As college students, that generation created the huge social concern of the sixties, in the area of rights...
of African Americans and minorities and the rights of women and, of course, with regard to the issue of how Viet-
nam was fought. In the seventies and eighties, as that generation went into the workplace, it became the most pro-
ductive engine of economic growth this country has ever known. When that generation heads to full reti-
rement, beginning about the year 2015—actually, it starts in the year 2008—there is an explosion in the entitle-
ment spending and a percentage of that—defense, Medicare, Social Security—does not change much discre-
tionary spending does not change much, but retirement spending jumps to 64 percent of the Federal Gov-
ernment. In fact, if it continues on its present track, spending to support So-
cial Security will create this massive problem for us as a nation, which I have alluded to, is that we will have so many programmatic demands placed on the younger working Americans that their taxes will have to go up radi-
cally in order to pay for it.

This chart shows it pretty clearly. The historic spending levels of the Fed-
ral Government since the year 1960 have been right around 20 percent. That is historic spending. That is all that the Federal Government has ever spent during the Cold War or the II period. But entitlement spending as a percentage of gross national product has always been—or up until now—fair-
ly flat—not flat, going up, but still staying within the 5 to 10-percent range.

However, beginning in the year 2008, it starts to climb precipitously. By the year 2030, Medicare and Social Security spending will be 20 percent of the gross national product. By the year 2040, it will exceed that and be 25 percent of the gross national product. We will es-
sentially be spending more on those two programs alone within a few years, about a decade and a half to two dec-
adles, than we spend today on the entire Federal Government.

What does that mean? It means ei-
ther at that point you do not have any part of the Federal Government—you do not have national defense, you do not have any education programs, you do not have any environmental pro-
grams—or you have to jump the tax rates dramatically to pay for Social Security and Medicare expenditures.

What is the implication of this other than we are headed toward clear fiscal disaster? One of the implications is if this graph were carried out to its log-
cal conclusion, the tax rate on work-

2 people working for every 1 person re-
tired.

There is where the problem is. We go from a pyramid to essentially a rec-
tangle. It becomes pretty obvious, if you only have two people working to pay for one person retired, those two people are going to have to pay a lot more in taxes to support that one person retired than if we have 10 people working or 3½ people working, as we have been.

So this creates a huge what is called unfunded liability, contingent liabil-
ity. We do not know how we are going to pay for this in the outyears. We do know the problem is going to exist, but we do not know how we are going to pay for it.

I want to give you some context of this problem because it is so massive, and we should be so concerned about it.

Entitlements—which basically is what I am talking about, which includes Social Security, Medicare, and Medi-

icait represent this orange bar on this chart as a percentage of Federal spend-
ing. One will see today that orange bar

is approximately 56 percent of the Fed-
eral Government, with defense spend-
ing being about 18 percent of the Fed-

eral Government, nondefense spending about 18 percent of the Federal Government, and interest on the Federal debt being about 7 percent.

When that generation is headed to full retirement, beginning about the year 2015—actually, it starts in the year 2008—there is an explosion in the entitlement spending as a percentage of that—defense, Medicare, Social Security—does not change much, but retirement spending jumps to 64 percent of the Federal Government. In fact, if it continues on its present track, spending to support Social Security will create this massive problem for us as a nation, which I have alluded to, is that we will have so many programmatic demands placed on the younger working Americans that their taxes will have to go up radically in order to pay for it.

This chart shows it pretty clearly. The historic spending levels of the Federal Government since the year 1960 have been right around 20 percent. That is historic spending. That is all that the Federal Government has ever spent during the Cold War or the II period. But entitlement spending as a percentage of gross national product has always been—or up until now—fairly flat—not flat, going up, but still staying within the 5 to 10-percent range.

However, beginning in the year 2008, it starts to climb precipitously. By the year 2030, Medicare and Social Security spending will be 20 percent of the gross national product. By the year 2040, it will exceed that and be 25 percent of the gross national product. We will essentially be spending more on those two programs alone within a few years, about a decade and a half to two decades, than we spend today on the entire Federal Government.

What does that mean? It means either at that point you do not have any part of the Federal Government—you do not have national defense, you do not have any education programs, you do not have any environmental programs—or you have to jump the tax rates dramatically to pay for Social Security and Medicare expenditures.

What is the implication of this other than we are headed toward clear fiscal disaster? One of the implications is if this graph were carried out to its logical conclusion, the tax rate on working Americans—my children, your children, and our grandchildren—will have to be doubled to support the system.

Another implication is that there is, according to the Comptroller General, approximately $4 trillion of potential liability over the natural lifetime of Social Security, which is deemed to be 75 years, or Medicare. Mr. President, $4 trillion—that is, trillion, and I do not know how you say that number, but that is what it is—$4 trillion of costs which we have no idea how we are going to pay. We have no idea at all. It is called unfunded liabilities, $44 trillion.

To try to put this in perspective: If you take all the taxes paid into the Federal Government since the beginning of America, all the taxes paid into the Federal Government in history, that represents $38 trillion. We are talking about a liability that exceeds that number. We are talking about a liability that would actually be about the same as the present value of wealth. That is the present value number, by the way. It means it is discounted to today’s dollar, which actually would be almost the same as the present net worth of every American.

The present net worth of every American is about $47 trillion. The present liability of just the Medicare and Social Security funds—with not even Medicaid included in this—is $44 trillion. So essentially we would have to use every dollar of every American, every asset of every American to pay that.

We can see the problem is astronomical, so large, in fact, that many are burying their heads on the issue and saying it does not exist, which is a very unique approach to the problem. Obvi-
ously, if we wait until this year or in the next couple of weeks. But what we can do in the next couple of weeks as we address the budget is try to start addressing these two major issues. One is the short-term deficit; the other is this long-term problem which we confront as a nation. And that brings us back to the budget process and why it is important.

It is important because it is the blueprint of which we can begin this proc-
ess of addressing these huge public policy issues. If we do not address them now, it is like that old television ad, you can pay me now or you can pay me later. When you pay later, the cost is going to be basically unacceptable because if we wait until 2015 to start addressing these issues, we are essentially going to have to do something extraordinarily precipitous. We are either going to have to radically cut the benefits of seniors who are re-
tired or we are going to have to radi-
cially increase the taxes on our children and their children’s children, meaning their quality of life is going to be re-
duced significantly.

The President sent up a budget which begins the process of trying to address some of these core issues. On the first issue of the deficit, he has proposed a budget which reduces in half the deficit over the next few years. You can see he takes it from about 4.5 percent of GDP, the deficit. That is what we need to look at because the actual solutions do not relate to what their effect is on the economy.

The deficit was projected to be about 4.5 percent of gross domestic product back in 2004, down to approximately 1.3 percent of gross domestic product in 2009, 1.5 percent in 2009, 1.7 percent in 2008, or he reduces it in half. I would be the first to say that in that estimate,
especially the 2008 number, there is no accounting for the war. The war is a one-time item, hopefully, or two-time item. We do not expect the war to go on forever. In fact, by 2008, we hope the war to be over relative to Iraq and Afghanistan. It will not be built into the base, and we expect it will not be.

These numbers may be inaccurate in that they may be off in not accounting for the war. But the point is, when you go from 4.5 percent to 1.7 percent, that should still be able to be accomplished whether we are at war, with accounting for the war correctly. We can reduce this deficit, and the President has proposed this.

How has he proposed it? He proposed to do it in a series of ways, but there is a consistency within his proposal, which is this: Basically, he said we need to address the long-term entitlement issue. That is a courageous act, and that, of course, is one of the key components of any sort of major entitlement reform. We must address the issue of Social Security.

The President has stepped up to the plate, so to speak, to move forward with a plan which will put in place fiscal discipline. As the Senate moves forward, it is our responsibility to pursue this course and place a budget which is fiscally responsible and which addresses not only the discretionary side of the ledger but the entitlement side of the ledger. That is going to be our challenge. It is very doable. All it takes is a willingness to stand up and recognize that if we do not do it, we will be passing on to our children a nation which does not guarantee them as high a quality of life as we have had because of the burden of taxation which we will be placing on them.

It is our responsibility to move forward in this area, and I look forward to the next few weeks as an opportunity to debate and discuss these proposals even further.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask that the record show that I call for the roll.

Mr. HATCH. Mr. President, I ask that the record show that I call for the roll. The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. I thank the Chair. The Senate from Utah.

Mr. HATCH. Mr. President, I rise today to speak to the Boy Scouts of America Land Transfer Act of 2005. This important legislation will allow the exchange of two small parcels of land between the Utah National Parks Council of the Boy Scouts of America and Brian Head.

In a 1983 land patent, the Bureau of Land Management granted roughly 1,300 acres to the Utah National Parks Council of the Boy Scouts of America to be used as a Boy Scout camp. The camp, known as Camp Thunder Ridge, is situated in the mountains adjacent to Brian Head Ski Resort and near Cedar Breaks National Monument.

At the time the land patent was granted, a local rancher owned a parcel of land adjacent to the camp and another parcel right in the middle of the camp. Several years ago, the rancher gave those lands to Brian Head Ski Resort. The Scouts need to obtain the land, totaling 120 acres, from Brian Head. However, under the land patent, land cannot be sold or exchanged without an act of Congress.

While Camp Thunder Ridge is located in a steep, rough, mountainous area, much of the land the Boy Scouts seek is flat, making it particularly important for the camp. Obtaining the land would make it possible for the Scouts to make the camp’s shooting area and archery range safer and would allow them to improve and expand their camping facilities. It also would allow for the installation of much-needed septic tanks.

I am a strong supporter of the Boy Scouts of America. They have a long tradition of instilling strong values in young men.

Scout camps such as Camp Thunder Ridge give young men the opportunity to learn vital skills, fulfill merit badge requirements, and otherwise improve themselves. This small land exchange will allow Camp Thunder Ridge to more fully help these young men learn and grow.

For their part, Brian Head Ski Resort is seeking to expand their operations and has received preliminary approval from local officials. The local planning commission, however, has required them to build an emergency exit from their property. The only place to build such a road is through land owned by the Boy Scouts. This exchange will allow Brian Head to construct the access road and comply with county fire safety regulations.

The Boy Scouts have been working for more than 20 years to secure the land. Brian Head needs to build a road on lands currently owned by the Scouts. This exchange is desperately needed by both parties, and I urge my colleagues to support this important legislation.

Mr. HATCH. Mr. President, I rise in support of S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The purpose of this bill is to make our bankruptcy system more fair and efficient. Every citizen has a stake in this bill. It is obvious that bankruptcy filers have a lot at stake in this legislation.

In recent years, the number of bankruptcy cases has on the rise, and I understand that today more bankruptcies are filed every year than during the entire decade of the Great Depression, and this chart shows that. It begins in the year 1900. It is basically a flat line until we get to about 1934—actually, 1935—and then it heads straight up. These are bankruptcy filings per 100,000 population, and they have gone up dramatically over the years. Annual bankruptcy filings have now reached about 1.6 million Americans, and this is up significantly since the time we started working on the overhaul of the bankruptcy system now 8 years ago.

One of the key goals of legislation we have before us today is to make sure the system is not abused by the unscrupulous who leave their creditors high and dry. At the same time, the concept of allowing those citizens who have become saddled by debt to use bankruptcy to get a fresh start is firmly entrenched in the American legal system. Gone are the days of debtor prisons.

We want to treat debtors fairly and give those who become overwhelmed by debt a second chance. We do not want
to send a signal to those who for whatever reason get into a financial hole that it is okay to go deeper in that hole prior to filing for and become absorbed by bankruptcy. We want to give those in debt a fair second chance to bring their finances back on track.

We want to tell creditors fairly. At the end of the day, it is law-abiding, bill-paying citizens who pay for the bankruptcy of others, regardless of whether the debts involved were taken on by corrupt businessmen or those whose situations simply got out of hand.

As this debate goes forward, it is important for all to understand that according to some experts, a conservative estimate is that every American family pays about $600 a year in a hidden tax associated with bankruptcy, taxes they should not have to pay. I am told that others place the fair estimate of this hidden bankruptcy tax in the range of $550 per person per year. There are numerous examples of people who take advantage of loopholes today at the expense of everyone else tomorrow.

We recently heard from a Wisconsin credit union president who testified before the Judiciary Committee about a young couple who wanted a clean financial future but got deeper in debt. What did they do? They ran up their credit card purchases. One of them pre-paid a car loan with the credit union to have the other cosigner released. Then, although they were both employed full-time, they filed for bankruptcy to wipe out their debt. Their credit union and its members had to absorb the $3,000 in credit card debt and then another couple of hundred dollars on the car itself. Bankruptcy relief was never meant to allow this kind of abuse. Hard-working Americans, including the members of credit unions nationwide, have been victimized by abusers of the current bankruptcy system long enough.

Bankruptcy abuse also hurts our Nation’s small businesses. Without reforms from this bill, losses from bankruptcy abuse will continue to break the backs of the Nation’s small businesses and retailers, which work with slim profit margins and have even smaller margins for error.

Throughout this debate, I want those who pay their bills in full and on time to understand that our attempt to re-balance some of the aspects of the bankruptcy system will have a positive impact. It will put books back on the wall they go to the store. In effect, we all pay for the bankruptcies of others through this “hidden tax.” In some respects, I suppose one could view this bill as a tax cut for the responsible people.

While one large impact of bankruptcy is felt in the wallet, perhaps the most important principle involved in this is when one borrows money, they need to take personal responsibility to pay it back. Personal responsibility is a core American value. This legislation, which has been crafted over years of debate and compromise, reflects that basic value.

We are mindful of the old adage there is no such thing as a free lunch. When some people do not pay their credit card bills, the rest of us pay for them in the form of increased prices. We do not get off. We have to pay for it. Great strain is placed on businesses, particularly small businesses, when customers do not pay for their purchases.

While we want to be fair to those who are in serious debt, we must also be mindful that sometimes it is employees and their families who have to pay through increased or even pay cuts or job loss when some do not pay their bills. No firm can expand or even maintain its operations or stay in business for long if a substantial portion of goods and services it sells is not paid for by its customers. We all simply have a stake in bankruptcy policy and, therefore, we all have a stake in this bill.

Unfortunately, our current system allows certain people with the ability to take advantage of their right to file for bankruptcy to load to advantage of the system at the expense of everyone else. Today, individuals with relatively high incomes can run up substantial debts and then too easily use bankruptcy to get out of them. In the end, all of us pay for those who abuse the system. As I will describe, one of the key improvements made by this bill is to devise a new and equitable system to see that those who declare bankruptcy will be called upon to repay a fair portion of their past debts with future earnings if they are able to do so. This is the so-called means test that I will describe in a few minutes.

First, I will take a few minutes to highlight some of the key proconsumer provisions of this bill. S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, includes a debtor’s bill of rights with new consumer protections to prevent the bankruptcy of those who are uninformed of their legal rights and needlessly pushing them into bankruptcy. This is an important improvement over current law and helps rectify the current practice whereby some, both debtors and creditors alike, lose out in the long run to some shady legal advisers who take their fees and run.

The bill also includes new consumer protections under the Truth in Lending Act, such as new required disclosures to creditors regarding monthly payments and introductory rates for credit cards. It protects consumers from unscrupulous creditors with new penalties on creditors who refuse to negotiate reasonable payment schedules outside of bankruptcy.

Our bill provides penalties on creditors who fail to properly credit planned payments in bankruptcy. It includes credit counseling programs to help people avoid the cycle of indebtedness. This is an important provision for consumers.

Except for those with evil motivations and a willingness to take advantage of the system, no one likes to be in debt. This bill helps consumers learn how to better protect their financial resources. S. 256 provides for a protection of educational savings accounts, and it gives equal protection for retirement accounts in order to reduce threats in bankruptcy. These provisions will help our children and our parents have adequate resources.

The bankruptcy legislation also contains important changes in current law to benefit women and children. We have heard some people complain that our bankruptcy laws do not adequately take care of women and children. Through our years of work on this bill, we have tried to make the law more protective in these areas, and this bill accomplishes that goal.

Current law provides that child support obligations are seventh in overall priority among unsecured claims. This bill dramatically changes that to give children preferential treatment. This bill contains a large set of provisions addressing the treatment of child support, including making domestic support obligations first in priority after certain required expenses. I will repeat that for emphasis. Child support goes from seventh to first in priority within its category for repayment under this bill. From seventh in line to top priority, this is a big change. Unfortunately, those who have slow walked this bill for the last 8 years have prevented this important change from taking effect.

The legislation also includes a provision that makes failure to pay child support a condition of getting a discharge in bankruptcy. It makes debt discharge in bankruptcy conditional upon full payment of past due child support and alimony. S. 256 makes domestic support obligations automatically nondischargeable without the costs of litigation. It prevents bankruptcy from holding up child custody, visitation, and domestic violence cases. It helps eliminate administrative roadblocks in the system so children can get the support they need. All of these measures are valuable additions and changes in the bankruptcy laws.

It is in the best interests of women and children to pass this bill. It is a tremendous improvement for children and families over current law. That is why there is such overwhelming support for this legislation from the child support professionals across the country—the very people who go after deadbeats to help get children the financial support they need.

That is not all. Let me cite a few more improvements over current law for women and children.

The bill makes the payment of child support arrears a condition of plan confirmation. It provides stronger and more comprehensive notice requirements and more information for easier child support collection. It provides help in tracking down deadbeats.

It allows for claims against a dead-beat parent’s property. It allows for
This test allows for the straight deduction of expenses incurred in maintaining the safety of the debtor and the family of the debtor from family violence.

This test includes a special circumstances safety valve that allows debtors to adjust their income or expenditures based on unforeseen circumstances such as military activation and deployment or unexpected and catastrophic medical conditions.

Finally, this bill includes a safe harbor provision which exempts debtors below their respective state median incomes.

After all of these exemptions are applied, including the safe harbor, it is estimated that 90 percent of debtors will not be affected by the changes in the repayment provisions of this bill.

Who constitutes the remaining 10 percent? They are the people who can afford to pay at least some of their debts. And that is what the means test is all about.

All of these changes that I have described are important. Many of us have worked on this bill. Frankly, some of us think this bill has already taken way too many years to complete.

I want to take a few minutes describing the extensive legislative history of the bill. This is important for many reasons. One of those reasons is that this history will reveal that this measure has already been fully debated and this bill reflects literally dozens and dozens of compromises along its 8-year journey.

I will describe the nadir of this bill when President Clinton pocket vetoed the legislation after Congress adjourned in the fall of 2000.

This bill has had broad bipartisan support from the very beginning.

In the Senate, Senators Grassley and Biden have been at this for a long time, as have many others on both sides of the aisle.

When we complete amendments over the next few days, I want my colleagues to pay close attention to those who are offering amendments.

If what occurred at the Judiciary Committee mark-up of the bill repeats itself on the floor, it might be the case that many amendments will be offered by relatively small group of Senators who have steadfastly opposed this bill each step of the way during the last 8 years. If that is the case, we must examine them with both exacting scrutiny and heavy skepticism.

It is one thing to attempt to improve a bill and bring it more to your liking, it is another matter altogether to try to gut a bill. This can be a fine line on any bill. But with a bill with the extensive history as this, it is easier to assess who is trying to get this bill over the goal line finally and who is trying to push us out of bounds and into yet another period of legislative overtime.

The House and Senate have been engaged in the process of deliberating on this issue since 1997, back during the 105th Congress. Turning back the clock to 1997, we see that the comprehensive bankruptcy reform bill was developed and passed in both bodies by overwhelming votes. The actual substance of bankruptcy reform legislation has been bipartisan throughout.

The successful work by each chamber of Congress in 1997 was followed by the appointment of conferees, negotiations with the House, and, in October of 1998, an overwhelming vote by House Members in favor of the conference report. Unfortunately, the Senate did not complete its vote on final passage before the end of the Congress.

Next, in February of 1999, Congressmen Gekas and Senator Grassley reintroduced the same bankruptcy bill agreed to by both bodies during the previous conference committee. That bill passed the House in May by an overwhelming margin. Later that same month, the Senate Judiciary Committee marked up our bill and we reported it from committee.

Finally, in February of 2000, after months of procedural delays and debate on the Senate floor, the reform legislation passed by another impressive margin of 93 to 14.

I suspect this body will approve this bill by a similar lopsided margin when a vote on final passage is taken in this Congress if we can get to a vote on final passage. There are some who have insisted they are not about touster this bill. We will have to see. But there have been far too many people, on both sides of the aisle, who promised they would work to get this bill through, and they should fight against any filibuster.

Turning back to the year 2000 after the bipartisan 83-14 vote, the Senate then requested a conference. This should be a routine matter, but the objection of a single Senator blocked the appointment of conferees. As a result, the House and Senate had to turn to an informal conference process.

With a great deal of effort by Members on both sides of the aisle, we reached a compromise agreement on over 400 pages of legislation.

Ultimately, both the House and Senate were able to pass that conference report in another series of decisive votes in the fall of 2000.

However, President Clinton chose to pocket veto the legislation and refused to sign it into law, despite the overwhelming support. Once again, the stone pushed by Sisyphus was at the bottom of the mountain.

Representative Gekas introduced the bill, yet again, in January of 2001. The conference report for that bill, H.R. 333, became the backbone of the legislation pending before us today. It too, had overwhelming support, except for what is now understood to be a poison pill amendment that we will not take the time today to discuss just how this important comprehensive change in the bankruptcy bill got waylaid in the eleventh hour.
by this problematical and, many believe, perhaps mostly hypothetical and politically motivated, provision.

We all know that this bill has repeatedly won the overwhelming approval of our colleagues in both Houses of Congress.

Before we began a conference meeting on an earlier version a few years ago I referred to that meeting as being the final leg of a legislative marathon. I was wrong then—but I hope, and I have every confidence, that this floor debate represents the final beginning of that last leg.

We succeeded in finally enacting the class action reform bill 2 weeks ago and I am hopeful that we can duplicate this success with the bankruptcy bill over the next several days.

As many have said, this is a compromise bill that enjoys broad bipartisan support among Democrats and Republicans, and conservatives and liberals.

Even after having worked for 8 years already, we agreed to make some additional compromises in the Judiciary Committee during mark-up 2 weeks ago to satisfy some concerns of our colleagues on the other side of the aisle. Those were not easy to make, but we have made them.

I should add that there are some on our side of the aisle, such as Senator CORNYN, who would like to make additional changes in this bill. He has a very substantial proposal addressing the issue of venue reform. It is an area in which he has special expertise from his experiences with some important bankruptcies that affected many citizens of Texas but were litigated out of State.

There are things I would like to see changed in the bill. But I also recognize that many have cooperated and compromised in order to reach the state where this legislation is today. Given the extensive and lengthy history of this bill, I think it best for my colleagues to refrain from offering controversial amendments on this vehicle at this time—and I will do my best for my colleagues to refrain from offering controversial amendments on this vehicle at this time—and I will do so because I know that any further amendments might scuttle this bill.

This bill provides new consumer protections, helps children in need of child support, and makes other necessary reforms to a system that is open to abuse.

I want to stress the fact that this legislation does not make it more difficult for people to file for bankruptcy, but it does eliminate some of the opportunities for abuse that exist under the current system.

This is a good bill. We should pass it promptly and send it to the House.

It is possible that during this debate that some may falsely suggest that this bill unfairly treats low-income persons. Let me tell you at the outset that the poor are not affected by the means test. The legislation provides a safe harbor for those who fall below the median income, so they are not subject to the means test at all. What the means test is designed to do, and what it will do, is to prevent abuse by those who can and should pay a portion of their debts wit future earnings. It will stop the fraud. It will stop the abuse of a system that has been going on through some who deny anyone access to bankruptcy relief. Another misconception that I have heard again and again from opponents of the bill is that this legislation will not let people file for bankruptcy relief when they need it. The fact is that this legislation will not deny anyone access to bankruptcy relief, it just requires those who have the means to repay their debts based on their income and ability to pay.

It is that simple. It is fair. It is a long overdue change for the better.

Some opponents of this legislation have also claimed that it somehow hurts women and children. This falsehood is particularly disturbing for me to hear, because I have had a long history of defending children and families in Congress, and I have worked tirelessly, provision by provision, to make this legislation dramatically improve the position of children and spouses who are entitled to domestic support. I have already told you in some detail why these allegations are baseless and how this bill works to help women and children.

I look forward to participating in this debate.

This is a very good bill.

It represents years of bipartisan, bicameral work. It is time we pass this bill. This President will sign this bill.

I hope that we will not get side-tracked by nonrelevant or counter-productive, controversial amendments on a consensus bill that has been so long in the making.

I hope there will not be any frivolous amendments or amendments designed to kill the bill or message amendments trying to make political points rather than solve the problems we have regarding bankruptcy.

Let us pass this bill for the fourth and final time and get on to other business.

I urge all of my colleagues to support S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant bill clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.
today, the textbook writers would be wise to have a lesson on the career of Howard Baker. His character and example, and the policies he advanced, would be admired by all who, unlike some of us, have not had the opportunity to know this man in person. The textbook writer should wait a while longer, however, as I hope and expect that Howard Baker’s life of public service continues, for the good of the Nation and the good of all of us. I heartily co-sponsor this resolution and offer my warmest congratulations to former Senator Baker, and his wife, former Senator Kasasebaum.

AFRICAN-AMERICAN HISTORY MONTH

Mr. SARBANES. Mr. President, it is especially appropriate that this year the theme of African-American History Month should be the Niagara Movement, for 100 years ago, in July 1905, the Niagara Movement convened for the first time to bring together a distinguished group of twenty-nine thinkers, writers, educators, attorneys, ministers and businessmen in the African-American community; among them was the Reverend George Free- 

man Bragg, for many years the pastor of St. James’ Episcopal Church in Balti-

more and the author of Men of Mary-

land, a history of African Americans in Maryland from the earliest days of the colony. Although the participants were scheduled to meet in Buffalo, they were unable to find hotel accommodations in that city, and as a consequence they moved to Fort Erie, on the Canadian side of the Falls.

The Niagara Movement symbolized a “mighty current” of protest against all the disabilities and indignities of second-class citizenship to which African-American citizens were subjected. It rejected the pernicious “separate but equal” doctrine set out 9 years earlier by the Supreme Court in Plessy v. Ferguson, and set a new standard of achievement for the protection of the civil, political, economic and social rights and opportunities our country has made of the world a neighbor-

hood. . . . our world is geographically one. Now we stand on the threshold of a new millennium, a new century, a new millennium. What will be the challenge of the new millennium? . . .

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honor the heritage and extraordinary contributions that African Americans have made in building our Nation.

We have many fallen martyrs in the civil rights movement to honor: Harriet Tubman, the pioneer of the Underground Railroad; Dr. Martin Luther King, Jr., our great Civil Rights leader; Rosa Parks, mother of the civil rights movement; and recently deceased Shirley Chisholm, champion of political firsts; to name only a few.

Arkansas has its own heroes who turned their determination into opportunity for others and helped shape history as a result.

It is perhaps the Little Rock Nine who taught America that “separate was not ‘equal.’” Nine black students—Ernest Green, Elizabeth Eckford, Gloria Ray Karlmark, Carollta Walls La-Nier, Minnijean Bowrin Trickey, Terrence Roberts, Jefferson Thomas, Thelma Mothershed Wair and Melba Pattillo Beals—defied laws and prejudice to attend the all-white Central High School and exercise their right to a better education.

Last year, I worked closely with members of the Little Rock Nine, as well as former(cor)gressional Black Caucus Chairlady, Elijah Cummings, to secure funding to build a Visitor’s Center at the Little Rock Central High School in time to commemorate the 50th Anniversary of the school’s desegregation crisis. I am thrilled Congress authorized the dollars needed for this project. We celebrate Black History Month every February, but the Visitor’s Center is open to teach stories of the civil rights movement all-year long.

Part of this Visitor’s Center will tell the story of civil rights leader Daisy Gatson Bates, who paid a personal and financial price to help the Little Rock Nine succeed. Bates also made significant strides in the courtroom and increasing public awareness through her newspaper, the Arkansas State Press, about the inequality that existed in Arkansas. Just as Arkansans broke barriers in our schools, they also played a large role in integrating our Nation’s military operations, making it the most skilled military in the world. The actions of the Tuskegee Airmen are legendary. Arkansas’ own Tuskegee Airmen include: Herbert Clark of Pine Bluff, Bluford of Lake Village, William Mattison of Conway, Woodrow Crockett of Little Rock, James Ewing of Helena, Marsille Reed of Tillar, Crockett of Little Rock, James Ewing of Helena, Marsille Reed of Tillar, and the Armed Forces. Arkansas is blessed to be the home to many of these trailblazers, including Pullitzer Prize-winning former U.S. Secretary of Transportation Roden Slater, and many individuals who may not be household names but who make an extraordinary difference in our communities. As we look back at the African Americans who brought us here today, we must also consider those who are history in the making.

The Little Rock Nine and Daisy Gatson Bates knew that education is the great equalizer. Keeping students in school and preparing them for college will pay off in dividends for communities. For students who pursue higher education, the pay margin is significant. In 2002, the average earnings for nongraduates were $18,826; for high school graduates, $27,280; for bachelor’s degree holders, $51,194; and for those with advanced degrees, $72,624.

Last week, I traveled towns in the Delta, where some rural areas suffer from unemployment rates two to three times higher than the national average, the poverty rate is more than double the national average, and access to health care is a problem. I met with middle school and high school students, sharing with them a message of commitment and responsibility. Every child should know that if they take the initiative to work hard and make good grades, this body will stand by them and match that commitment. Standing by our youth means fulfilling the promises we made to them to fully fund the No Child Left Behind Act. Most students that the No Child Left Behind Act requires them to take more tests, but they don’t understand the overall goal is to improve our schools—in poor neighborhoods and in wealthy school districts—so that they are all-prepared for the global and technologically advanced workplace.

In fulfilling Congress’ commitment to our youth, it is imperative that we support programs like the Federal TRIO programs, which help low-income, first-generation college students to make progress through the academic pipeline from middle school to post-baccalaureate programs.

I recently learned about Jessica, a high school senior who participates in the Upward Bound Program. Through the Federal TRIO program, she received tutoring and technical assistance that she needed to attend college. Jessica took the initiative to make good grades in school with her ACTs, and balance a part-time job at McDonalds. She was accepted at the University of Central Arkansas, her first college choice, and she now awaits scholarship information so she knows for sure whether UCA is in her future.

Oprah Winfrey once said “luck is a matter of preparation meeting opportunity.” Preparation is the most important part of the equation. For students to be prepared and compete in the workforce, Congress must support programs like title I, IDEA, TRIO, as well as programs that provide vocational preparation and technology in rural schools. When we underfund or slash funding for them, as the President proposes in his budget proposal, we take opportunity away from them.

African-American students are reaping the benefits of equal opportunity laws passed on to them through the sacrifice of their ancestors. However, too many African-Americans struggle financially today because they simply did not have the same opportunity in their schools or in the workplace. As a result, 40 percent of African-American seniors rely on Social Security as the primary source of income, and the program provides about three-quarters of all retirement income for African-American seniors. Statistics show, in fact, without Social Security, poverty rates for African-American seniors would more than double to 58 percent.

The Social Security safety net is at risk with the President’s privatization plan. I hope African-American families in Arkansas and throughout the country will listen closely to what Social Security’s future. The President recently stated private accounts are in the best interest of African-Americans because the accounts benefit individuals with a shorter life expectancy. To me that statement means we need to reduce the health care disparity in this country, which is something I hope the Senate will take action on this year. Weakening Social Security is not the answer.

Black History Month presents an occasion to reflect on the great contributions African-Americans have made to our country, and to celebrate the steps we have taken toward equality. But too much is left to be done to simply leave it at that. We must also remind ourselves of the work ahead and meet the commitment of those who seek opportunity.

Mrs. DOLE, Mr. President, this month we mark the 79th celebration of African American Black History Month. That was launched by civil rights pioneer Dr. Carter G. Woodson in 1926 as Black History Week and observed in Black schools and churches.
today is a month-long national tribute to the tremendous historical contributions of African Americans from all walks of life and professions. I am so very proud of the rich and vibrant African-American heritage in my home State of North Carolina. Our history is full of trailblazers, including Franklin McCain, Joseph McNeil, Ezell Blair, Jr., and David Richmond, known as the Greensboro Four because of their February 1960 sit-ins at a Woolworth Store counter in Greensboro, NC. Their sit-ins were the first significant event of this type, quickly gaining momentum and attention. In less than a week, the four North Carolina A&T freshmen had been joined by 1,000 other students from local high schools and universities. As the Greensboro News & Record stated earlier this month, the Greensboro sit-in “gave new life to the nation’s civil rights movement and helped pave the way for its triumphs later in the decade.” These individuals truly set the course for the America we strive to be, where all people are given opportunity and treated fairly, regardless of their skin color.

North Carolina, with its long and proud military history, also produced 21 of the Tuskegee Airmen. Trained in Tuskegee, AL, these brave men made up the first African-American military flying unit in World War II. I am proud to cosponsor recently introduced legislation that authorizes the President to posthumously present Gold Star Service Medals on behalf of Congress to the Tuskegee Airmen. These brave soldiers truly left their mark on history not just in battle—their great success helped pave the way for the integration of our Armed Forces in 1948.

North Carolina also has made great strides in higher education. We have 11 historically Black colleges and universities, including Shaw University in Raleigh, founded in 1865 and the oldest HBCU in the south. It was Shaw that gave the commencement address and receive an honorary degree several years ago from Livingstone College, another outstanding historically Black college in my hometown of Salisbury. I also am so very proud that my husband Bob is serving as chairman of a $50 million fundraising campaign at Bennett College in Greensboro, one of only two historically Black women’s colleges in America. Bennett College President Dr. Johnnetta Cole told me, “When I was being considered for the presidency, many of our peers expected”—and expected. His legacy of service and kindness is one that lives on today, and one that should be remembered for years to come. On this last day of Black History Month, I believe it is essential that we recognize a Negroid like Louis Southworth, whose contributions to race relations in Oregon, while great, have not yet received the attention they deserve.

In this important month, I have wanted to celebrate some of the contributions made by Black Americans in my home state of Oregon. Since Marcus Lopez, who sailed with Captain Robert Gray in 1788, became the first person of African descent known to set foot in Oregon, a great many Black Americans have helped shape the history of the state. Louis A. Southworth was a blacksmith, millwright. Though a combination of his contagious personality, appeasing fiddle playing, and an unwavering devotion to civic duty, he became one of Oregon’s most respected and well-liked citizens of his time. Born into slavery in Tennessee in 1830, he later moved with his family to Oregon in 1851. Although slavery was officially banned in Oregon, it was still practiced with some frequency. While working in his shop, Southworth soon found that people greatly enjoyed his musical talents. He was able to parlay his talents on a fiddle into an extra source of income, and at age 28, bought his freedom for $1,000. The phrase “fiddle and his fiddle, soon won over the town”—and Louis Southworth become some what of a local hero.

In 1879, he moved with his wife and adopted son to the south bank of the Alsea River. Southworth, with his family, became a farmer and raised cattle and passengers across the bay to town.

As more people began to move into the community, he donated some of his land to build a local school house and later served as chair of the school board. Along with his new life came a renewed sense of civic duty. Southworth became a dedicated political activist during the 1870s, a strong storm ravaged his small town. Unafraid of the weather, Louis Southworth rigged two oil drums to his boat for buoyancy and rowed across the bay to the polling place. As it turns out, he was the only person to cast a vote in Waldport that day. Despite the chaotic times in which he lived, Louis Southworth was embraced by his community. Before he died in 1917, his neighbors raised the $300 needed to pay off his mortgage in Corvallis, OR.

Louis Southworth provides one example of a man triumphing over seemingly insurmountable odds. As a Black man living in troubled times, his perseverance, compassion, talent, generosity, and devotion to the community service allowed him to become a respected leader. He was accepted by many of his peers, of all races, religions, and ethnic backgrounds. He was a Negroid in a long before his time was common or expected. His story is a reminder of the sacrifices of these brave servicemen will be honored on the last day of Black History Month, I believe it is important to celebrate the lives of great Americans like Louis Southworth, whose contributions to race relations in Oregon, while great, have not yet received the attention they deserve.

HONORING OUR ARMED FORCES

CORPORAL MATTHEW REED SMITH, USMC

Mr. HATCH. Mr. President, today I rise to speak on the recent passing of Corporal Matthew Reed Smith of the United States Marine Corps. Corporal Smith was a native of West Valley City, UT, who died in a helicopter crash near the town of Rutbah, Iraq. Corporal Smith was one of 29 Marines and one Navy sailor who lost their lives in that fateful accident. Today, I know the Senate will join me in honoring their memory as heroes who died in performance of their duty. The sacrifice of these brave servicemen will be remembered forever.

Corporal Smith, during his younger years, often dreamed of being in the Armed Forces. I have been told that as a child he would play make-believe with his brothers on the hill in front of their home and that he always insisted on being the “Marine.” Nicknamed the “Three Musketeers” by his mother, Corporal Smith and his two brothers grew up doing the things they loved most, camping, hunting, wrestling, and riding their motorbikes in the mountains. When Corporal Smith joined the Marines because “they were the first ones in there.” As a Marine, he fought bravely to expel the insurgents from the city of
Fallujah. There were times during the fighting when he could hear the bullets whistling past his head. His best friend lost an arm and a leg in the Battle for Fallujah.

Being unable to obtain leave in order to attend the wedding of his brother last March, members of his family made a life-size cutout of Corporal Smith and moved it around the dance floor as the night progressed. On learning of Corporal Smith’s death, his family placed the cutout in the living room of the home. That silhouette of Corporal Smith, dressed sharply in his Marine uniform, today remains in our hearts as a symbol that he served his country with honor and courage.

Recently, I had the opportunity to visit a website created to honor him. I was struck by the number of comments and sentiments that clearly showed that Corporal Smith was a true friend and loved by all who knew him. In one particularly moving tribute, a fellow mourner wrote that he could not imagine Corporal Smith departing this life “in any other way than selflessly serving others.”

Mr. President, it is a privilege to learn about the extraordinary life of such a man.

SUSPENSION OF RUSSIA FROM THE G8

Mr. LIEBERMAN. Mr. President, I rise today, along with my good friend Senator MCCAIN, to speak about a resolution that is of great importance to the cause of democracy which we have devoted America to advance at home and around the world. In November 2003 Senator MCCAIN and I were moved by Russia’s failure to adhere to democratic principles to submit a resolution to hold Russia accountable for the commitments Moscow made when first invited to participate in what became known as the G8. Since then, the situation in Russia has deteriorated. I am particularly pleased that Senators BAYH, BURNS, CHAMBLISS, SMITH, and DURBIN have joined as original co-sponsors of this resolution indicating the increasing Senatorial concern over the accelerating erosion of democratic and economic freedom in Russia. As President Bush returns from his meeting with President Putin at the summit in Bratislava, we call once again on the President of the United States and the Secretary of State to work with our partners in the G7 to condition Russia’s continued participation in the G8 on Russia’s compliance with basic standards of democracy and rule of law.

We have a real stake in Russia’s adherence to democratic norms because our commitment to Russia’s transition toward democracy is critical to secure a peaceful future with Russia. The G7 nations are highly industrialized countries bound together by fundamental principles of democracy, rule of law, a free market system, and respect for human rights. The actions of President Putin over the past few years have raised serious concerns about Russia’s commitment to these principles. There is a long list of well-documented antidemocratic developments in Russia. The Putin administration has limited elections to the presidential水平at G7 by seizing independent media organizations and suppressing the activities of independent journalists, religious organizations, and nongovernmental organizations that are all components of a healthy civil society. The Russian government’s dismantling of Yukos and the arrest of its founder Mikhail Khodorkovsky 16 months ago raised serious doubts about Russia’s commitment to free market principles and rule of law as well as respect for property and shareholder rights. The Federal Security Services, FSB, play a strong role in Russia’s power structures in a manner reminiscent of the KGB in the old regime. Putin’s support for the first fraudulent results in the Ukrainian presidential elections last year exhibited disregard for basic democratic principles. Fortunately, a democratic outcome prevailed in a new vote and Yushchenko’s victory—a very positive development for Ukraine’s and Russia’s democrats.

We were all moved by the horrific attack on the schoolchildren and families of Beslan school last September. There can be no justification for such brutal acts and we condemn them with every fiber of our soul. Our hearts and sympathy go out to the families of these victims as they continue to cope with the loss of their loved ones. The United States condemns terrorism in all forms. But the tragedy of the Beslan school should not be used by President Putin to retreat from democratic reforms. In the wake of the Beslan crisis, President Putin abolished the popular election of regional governors in favor of the KGB. These changes to the Russian political system enhance the power of the executive branch, while reducing the checks and balances that make democracies work. As former Secretary of State Colin Powell said, “We understand the need to fight against terrorism . . . but in an attempt to go after terrorists I think one has to strike a proper balance to make sure that you don’t move in a direction that takes you away from the kind of reforms or the democratic process.”

Allowing Russia to continue its involvement in the G8 and to host the 2006 G8 Summit while continuing to undermine democracy makes mockery of the very principles that bind the G8 countries together. This resolution is not anti-Russian; it is a strong show of support for Russia’s democrats who have long urged the United States to not turn a blind eye to antidemocratic developments in Russia. Sharing a deep sense of sorrow from his time in Soviet Gulag, Natan Sharansky recently told a group of Senators how deeply supported he felt when President Reagan gave his famous “evil empire” speech that honestly addressed the oppression of the Soviet system. Since then Russia has come a long way, but we must speak openly in the face of the backsliding we are seeing.

“Ionce Secretary of State Condoleezza Rice recently said, “The real doubling of our relations can only take place on the basis of common values.” To do otherwise would be to shirk our responsibilities as a leader of the democratic world. And as President Bush said so eloquently in his Inaugural Address at the State of the Union addresses, America’s security is advanced by the advancement of freedom. This resolution puts these sentiments into concrete action and I urge my fellow Senators to support it.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country. In December of 2004, a gay man was attacked outside of his Kansas City home by two unknown assailants. Floyd Elliot reported to authorities that two men held him down, cut him with a knife, and used the knife to burn letters into his skin. It looks as if the assailants were attempting to "brand" a homosexual slur onto the victim’s chest. The attack is being investigated as a hate crime.

I believe that the Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a violent act that to become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

TRIBUTE TO HARRY T. CORBETT

Mr. BOND. Mr. President, today I would like to commend Mr. Harry T. Corbett, Postmaster of the Wentzville Post Office, for his 38-year tenure with the United States Postal Service. Mr. Corbett will retire from the U.S. Postal Service on March 3, 2005. Mr. Corbett began his career with the Postal Service in March of 1967 as a substitute city carrier for the Saint Ann, Missouri Post Office. In 1980, he was named Postmaster of the Wentzville Post Office.

In the 38 years between being a substitute city carrier and Postmaster, Mr. Corbett held several positions within the postal system. In 1988, he
became a full-time city carrier and was later promoted to the position of Window Delivery Clerk in Saint Ann, Missouri. Three years later, he was reassigned to the post office as a substitute carrier, then to full-time carrier and then to Clerk Sorting Machines. In 1974, Mr. Corbett was reassigned to the Saint Louis Mail Processing Plant as a Mail Sorting Machine Clerk. Mr. Corbett obtained his first position of leadership when he was promoted to Foreman Mail 15 in December 1974. Three years later, he was promoted to Supervisor Mail 20 level.

Mr. Corbett is involved in several areas organizations and charitable causes, such as the National Association of Postmasters of the United States, Rotary Club of Wentzville, and the Wentzville Chamber of Commerce. He is a member of St. Patrick Church and sits of the Developmental Disability Resource Board of St. Charles County. In addition, he is actively involved in the Crossroads Regional Medical Center Charitable Foundation.

Mr. Corbett has been married to Nancy K. Scott Corbett for 32 years and has two sons, Bret and Jeff Corbett. Bret is married to Courtney Carrothers, and they have four grandchildren: Mackenzie, Abigail, Emma, and Kalya. Following his retirement from the United States Postal Service, Mr. Corbett looks forward to golfing, fishing, camping, and traveling. He also plans to spend quality time with his family.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate the messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

The nominations received today are printed at the end of the Senate proceedings.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–1086. A communication from the Chairman, Federal Election Commission, transmitting, pursuant to law, a report entitled "Implementation of the Government in the Sunshine Act Calendar Year 2004" received on February 16, 2005, to the Committee on Rules and Administration.

EC–1086. A communication from the Chair, U.S. Election Assistance Commission, transmitting, pursuant to law, a report entitled "Annual Report to Congress for Fiscal Year 2005" received on February 17, 2005, to the Committee on Rules and Administration.

EC–1086. A communication from the Secretary of Defense, transmitting, pursuant to law, a report entitled "Law Enforcement Reporting" (RIN0702–AA31–U) received on February 15, 2005, to the Committee on Armed Services.

EC–1088. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Tax Procedures for Overseas Contractors" (DFARS Case 2003–D031) received on February 17, 2005, to the Committee on Armed Services.

EC–1089. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "Small Business Competitiveness Demonstration Program" (DFARS Case 2003–D065) received on February 17, 2005, to the Committee on Armed Services.

EC–1090. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled "PAN Carbon Fiber–Restriction to Domestic Sources" (DFARS Case 2004–D002) received on February 17, 2005, to the Committee on Armed Services.

EC–1091. A communication from the Acting Secretary of Defense, transmitting, the report of a retirement; to the Committee on Armed Services.

EC–1092. A communication from the Chairman, Board of Governors, Federal Reserve System, transmitting, pursuant to law, its semiannual report entitled "Monetary Policy Report" received on February 16, 2005, to the Committee on Banking, Housing, and Urban Affairs.

EC–1093. A communication from the Deputy Secretary, Division of Corporation Finance, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled, "XBRL Voluntary Financial Reporting Program on the EDGAR System" (RIN3320–A352) received on February 17, 2005, to the Committee on Banking, Housing, and Urban Affairs.


EC–1095. A communication from the Board Members, Railroad Retirement Board, transmitting, pursuant to law, a report entitled "Justification of Budget Estimates for Fiscal Year 2006"; to the Committee on Health, Education, Labor, and Pensions.

EC–1096. A communication from the Parallel Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Raytheon Aircraft Company 90, 99, 100, 200, 300 and 300 Airplanes" received on February 17, 2005, to the Committee on Commerce, Science, and Transportation.

EC–1097. A communication from the Parallel Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Rockwell International Model A320, AA64 (2005–0139)" received on February 17, 2005, to the Committee on Commerce, Science, and Transportation.

EC–1098. A communication from the Regulatory Officer, Federal Motor Carrier Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "The DOT's Final Rule on IOD Actions to Support Voting Assistance to Armed Forces Outside the U.S." received on February 14, 2005, to the Committee on Armed Services.

EC–1099. A communication from the Director, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Closure of Central GOA Inshore Pacific Cod" received on February 17, 2005, to the Committee on Commerce, Science, and Transportation.


EC–1107. A communication from the Controller General of the United States, transmitting, pursuant to law, the Publicly Funded Building Projects Amendment Act of 2004; to the Committee on Homeland Security and Governmental Affairs.

EC–1108. A communication from the Director, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, a report entitled "Airworthiness Directives: Raytheon Aircraft Company 90, 99, 100, 200, 300 and 300 Airplanes" received on February 17, 2005, to the Committee on Commerce, Science, and Transportation.
annual statement, received on February 8, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1109. A communication from the Secretary of the Interior, transmitting, pursuant to law, the Institute’s report on competitive sourcing and competitions for fiscal years 2003 and 2004, received on January 25, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1110. A communication from the President, James Madison Memorial Fellowship Foundation, pursuant to law, the Foundation’s consolidated annual report, received on January 25, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1111. A communication from the Executive Associate Director, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, the report on competitive sourcing efforts for fiscal year 2004, received on February 7, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1112. A communication from the Office of the Director, National Gallery of Art, transmitting, pursuant to law, the report on competitive sourcing methods for fiscal year 2004, received on February 7, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1113. A communication from the Deputy Director, Office of Administration and Information Management, Office of Government Ethics, transmitting, pursuant to law, the report of a change concerning a vacancy, received February 7, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1114. A communication from the Deputy Director for Administration and Information Management, Office of Government Ethics, transmitting, pursuant to law, the report for competitions completed or initiated in fiscal year 2004, received on February 7, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1115. A communication from the Chairman, United States Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission’s Annual Report of the Administration of the Government in the Sunshine Act for Calendar Year 2004, received on February 7, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1116. A communication from the Under Secretary for Management, Department of Homeland Security, transmitting, pursuant to law, the Department’s annual Report to Congress on Fiscal Year 2004 Competitive Sourcing Efforts, received on February 7, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1117. A communication from the Administration, Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report on the Administration’s competitive sourcing initiative, received on February 8, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-1118. A message from the President of the United States, transmitting, pursuant to law, a notice stating that the emergency declared with respect to the Government of Cuba on February 24, 1996, as amended and expanded on February 13, 2004, to continue in effect beyond March 1, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-1119. A communication from the Counsel for Legislation and Regulations, Office of Public and Indian Housing, Department of Housing and Urban Development, transmitting, pursuant to law, the report of a rule entitled “Extension of Minimum Funding Under the Indian Housing Block Grant Program” (RIN2577-A453) received February 28, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-1120. A communication from the Acting Chief, Office of Foreign Assets Control, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled “CFR part 515, Cuban Assets Control Regulations” received on February 28, 2005.

EC-1121. A communication from the President and Chairman, Export-Import Bank of the United States, transmitting, pursuant to law, a report relative to a transaction involving U.S. exports to Austria; to the Committee on Banking, Housing, and Urban Affairs.

EC-1122. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a report entitled “Periodic Report on the National Emergency With Respect to Zimbabwe” received on February 28, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC-1123. A communication from the Deputy Director of Budget, Office of the Budget, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled “Payment in Lieu of Taxes” (RIN1908-AA09) received on February 28, 2005; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

Under the authority of the order of the Senate of February 17, 2005, the following reports of committees were submitted on February 23, 2005:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 47. A bill to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico (Rept. No. 109-7).

S. 74. A bill to designate a portion of the White Salmon River as a component of the National Wilds and Scenic Rivers System (Rept. No. 109-13).

S. 153. A bill to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the corridor, and for other purposes (Rept. No. 109-9).

S. 212. A bill to amend the Valles Caldera Preservation Act to improve the preservation of the Valles Caldera, and for other purposes (Rept. No. 109-10).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute and an amendment to the title:

S. 225. A bill to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land (Rept. No. 109-11).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 254. A bill to direct the Secretary of the Interior to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Esmeralda County, Nevada, for continued use as cemeteries (Rept. No. 109-12).

REPORTS OF COMMITTEES

The following reports of committees were submitted on February 23, 2005:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with amendments:

S. 156. A bill to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, and for other purposes (Rept. No. 109-13).

By Mr. KAPNER, from the Committee on the Judiciary:

Report to accompany S. 5, a bill to amend the procedures that apply to consideration of class action lawsuits; to report on the outcomes for class members and defendants, and for other purposes (Rept. No. 109-14).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. AKAKA (for himself, Mr. SANTARSBERGER, and Mr. CORZINE):

S. 468. A bill to amend the Higher Education Act of 1965 to enhance literacy in finance and economics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. ROCKEFELLER (for himself, Mr. LOTT, Mr. BURKHARDT, Mr. BAYH, Mr. CHAMBLISS, Ms. MIKULSKI, Mr. CORZINE, Mr. LEVIN, Mr. DEWINE, Mr. WYDEN, Mr. BOND, Mrs. FEINSTEIN, Mr. HAGEL, and Mr. HATCH):

S. 469. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income the gain from the sale of a principal residence by certain employees of the intelligence community; to the Committee on Finance.

By Mr. DODD (for himself, Mr. GRASSLEY, Mr. JOHNSON, and Mr. WYDEN):

S. 470. A bill to amend the Public Health Service Act to expand the clinical trials drug data bank; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SPECTER (for himself, Mr. HARKIN, Mr. HATCH, Mrs. FEINSTEIN, Mr. SMITH, and Mr. KENNEDY):

S. 471. A bill to amend the Public Health Service Act to provide for human embryonic stem cell research; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LEAHY:

S. 472. A bill to criminalize Internet scams involving fraudulently obtaining personal information; commonly known as phishing; to the Committee on the Judiciary.

By Ms. CANTWELL (for herself, Mr. BINGMAN, and Mr. LIEBERMAN):

S. 473. A bill to amend the Public Health Service Act to promote and improve the allied health professions; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH:

S. 474. A bill to establish the Mark O. Hatfield-Elizabeth Purse Scholarship and Excellence in Tribal Governance Foundation, and for other purposes; to the Committee on Indian Affairs.

By Mr. JOHNSON (for himself and Mr. ENZI):

S. 475. A bill to amend the Native American Housing Assistance and Self-Determination Act of 1996 and other Acts to improve housing for Indians; to the Committee on Indian Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRASSLEY (for himself, Mr. ACKERMAN, Mr. ALLARD, Mr.
At the request of Mr. ENSIGN, the name of the Senator from Texas (Mr. CORNYN), the Senator from Minnesota (Mr. COLEMAN) and the Senator from Oregon (Mr. SMITH) were added as cosponsors of S. 8, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

At the request of Mrs. CLINTON, her name was added as a cosponsor of S. 13, a bill to amend titles 10 and 38, United States Code, to expand and enhance health care, mental health, transition, and disability benefits for veterans, and for other purposes.

At the request of Mr. INHOFE, the name of the Senator from Oklahoma (Mr. COBURN) was added as a cosponsor of S. 65, a bill to amend the age restrictions for pilots.

At the request of Mr. INOUYE, the name of the Senator from Hawaii (Mr. AKARA) was added as a cosponsor of S. 84, a bill to amend the Internal Revenue Code of 1986 to allow a deduction for premiums on mortgage insurance.

At the request of Mr. BINGMAN, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 168, a bill to reauthorize additional contract authority for States with Indian reservations.

At the request of Mr. BINGMAN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 169, a bill to amend the Intermodal Surface Transportation Efficiency Act of 1991 to identify a route that passes through the States of Texas, New Mexico, Oklahoma, and Kansas as a high priority corridor on the National Highway System.

At the request of Mr. SMITH, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 191, a bill to extend certain trade preferences to certain least-developed countries, and for other purposes.

At the request of Mr. BOND, the names of the Senators from Washington (Ms. CANTWELL) and the Senator from Alabama (Mr. SESSIONS) were added as cosponsors of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

At the request of Mr. SMITH, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 311, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV.

At the request of Mr. SMITH, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 313, a bill to improve authorities to address urgent nonproliferation crises and United States nonproliferation operations.

At the request of Mr. ROCKEFELLER, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 329, a bill to amend title 11, United States Code, to increase the amount of unsecured claims for salaries and wages given priority in bankruptcy, to provide for cash payments to retirees to compensate for lost health insurance benefits resulting from the bankruptcy of their former employer, and for other purposes.

At the request of Mr. SANTORUM, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 333, a bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran.

At the request of Mr. GRAHAM, the names of the Senator from Alaska (Ms. MURKOWSKI) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 337, a bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service, to expand certain Army benefits to provide health care benefits for Reserves and their families, and for other purposes.

At the request of Mr. BINGMAN, the name of the Senator from California (Mrs. FEINSTEIN) was added as a cosponsor of S. 357, a bill to expand and enhance postbaccalaureate opportunities at Hispanic-serving institutions, and for other purposes.

At the request of Mr. LAUTENBERG, the name of the Senator from Rhode Island (Mr. CHAFEE) was added as a cosponsor of S. 368, a bill to provide assistance to reduce teen pregnancy, HIV/AIDS, and other sexually transmitted diseases and to support healthy adolescent development.

At the request of Mr. LOTT, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 370, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

At the request of Ms. COLLINS, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 380, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

At the request of Mr. ENSIGN, the names of the Senator from South Dakota (Mr. JOHNSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 392, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

At the request of Mr. ENSIGN, the names of the Senator from Wyoming (Mr. ENZI), the Senator from Texas (Mr. CORNYN), the Senator from Oklahoma (Mr. COBURN), the Senator from Utah (Mr. HATCH), the Senator from Michigan (Mr. STABENOW) and the Senator from Michigan (Mr. LEVIN) were added as cosponsors of S. 132, a bill to amend the Internal Revenue Code of
McCain) was added as a cosponsor of S. 407, a bill to restore health care coverage to retired members of the uniformed services, for the purpose of providing for other purposes.

S. 421
At the request of Mr. BOND, the names of the Senator from Washington (Mrs. Murray) and the Senator from Maryland (Ms. Mikulski) were added as cosponsors of S. 421, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 428
At the request of Mr. JEFFORDS, the name of the Senator from New York (Mr. Schumer) was added as a cosponsor of S. 427, a bill to amend the Public Utility Regulatory Policies Act of 1978 to provide for a Federal renewable portfolio standard.

S. 436
At the request of Mr. ENZI, the names of the Senator from Michigan (Ms. Stabenow) and the Senator from Washington (Ms. Cantwell) were added as cosponsors of S. 436, a bill to amend title XVIII of the Social Security Act and the Medicare Outpatient Hospital Act to provide for comprehensive inpatient and outpatient rehabilitation therapy caps.

S. RES. 4
At the request of Mr. CONRAD, the name of the Senator from Oregon (Mr. Wyden) was added as a cosponsor of S. Res. 4, a joint resolution providing for congressional disapproval of the rule of the Department of Agriculture under chapter 8 of title 5, United States Code, relating to risk zones for introduction of bovine spongiform encephalopathy.

S. RES. 38
At the request of Ms. LANDRIEU, the names of the Senator from Maryland (Mr. SARBANES) and the Senator from Massachusetts (Mr. Kerry) were added as cosponsors of S. Res. 38, a resolution apologizing to the victims of lynching and the descendants of those victims for the failure of the Senate to enact anti-lynching legislation.

S. RES. 55
At the request of Mr. GRAHAM, the name of the Senator from Louisiana (Ms. Landrieu) was added as a cosponsor of S. Res. 55, a resolution recognizing the contributions of the late Zhao Ziyang to the people of China.

S. RES. 59
At the request of Mr. SMITH, the name of the Senator from North Carolina (Mrs. Dole) was added as a cosponsor of S. Res. 59, a resolution urging the European Union to maintain its arms embargo embargo on the People’s Republic of China.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS
By Mr. AKAKA (for himself, Mr. SARBANES, and Mr. CORZINE):
S. 468. A bill to amend the Higher Education Act of 1965 to enhance the literacy in finance and economics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. AKAKA. Mr. President, I rise to reintroduce comprehensive legislation aimed at addressing the issue of economic 8- to 14-year-olds spend—from all college financial programs. This bill has the support of Senators SARBANES and CORZINE. I thank my colleagues from Maryland and New Jersey for joining me as original cosponsors of this measure. I also thank Senator ENZI, the Chairman of the Health, Education, Labor, and Pensions Committee, for working with me on financial literacy as it affects all constituencies, including college students.

The problem we are working to address with the College LIFE Act is simple. Our college students are many of America’s best and the brightest and will go on to jobs in business, education, politics, the military, the community—any area you can name. I find it wonderful that many young people are fulfilling their dreams of higher education in numbers that I was in college. In fact, as reported by the Census Bureau, college enrollment was estimated at 15.9 million for the current school year, compared to 5.7 million in 1965 when the Higher Education Act was enacted. However, I am gravely concerned, both as a member of this body and particularly as a grandparent and great-grandparent, that our young people are entering college without proper direction or good skills for financial management or economic decisionmaking.

As we work on increasing access to higher education, we must give students access to tools needed to make sound economic and financial decisions once they are on campus; however, the lack of personal finance and economics standards or implementation of existing standards in elementary and secondary education in a number of States results in many students arriving at college with little understanding of economic concepts like supply and demand or benefits versus costs, or personal finance concepts such as household money management or the importance of maintaining good credit histories. Without this basic understanding, he may have known what debt allowances, jobs, and gifts—nearly $1,300 a year or $25 a week.

The College LIFE Act represents a comprehensive approach to assist upcoming generations of Americans. It proposes four new grant programs that provide resources to encourage experiment with delivery systems—innovative methods used in or out of the classroom to increase college students’
financial literacy. Another grant would allow higher education institutions to share best practices about or create personal finance courses where none exist. A third grant would assist efforts that are looking at the best ways to integrate personal finance and economic education into high school and college curricula. This is especially important as schools are facing challenges under the No Child Left Behind Act and are tempted to focus on subjects being tested for Adequate Yearly Progress. The bill also proposes a pilot program for five higher education institutions to encourage students to take a personal finance course and participate in preventive annual credit counseling, working in conjunction with State or local programs, and nonprofit organizations selected by the local education agency or the school, and measuring the effectiveness of efforts in any behavioral changes that may result. It promotes greater collaboration with and support from Federal agencies in the form of the Financial Literacy and Education Commission. Finally, the measure emphasizes the importance of personal finance and economic education and counseling by authorizing these activities as allowable uses in existing Higher Education Act programs such as TRIO, GEAR UP, and Title III and Title V Serving Institutions.

Furthermore, I intend the reach of this bill to be beyond the traditional college student. Our returnig college students are a vital part of society—many who are already community leaders and breadwinners for their families who have already gained valuable work experience that they may use as they learn a new field or continue their undergraduate or graduate education. In addition, older adults who are entering higher education for the first time can also be lauded for their enterprise spirit in wanting to better their lives by earning an associates or bachelors degree. I anticipate that the assistance provided through the College LIFE Act will work to provide needed help to many of these students as well.

I am looking forward to continuing to work with my colleagues to have the College LIFE Act passed or included in the upcoming Higher Education Act reauthorization. I encourage my colleagues' support for this bill.

**By Mr. ROCKEFELLER** (for himself, Mr. LOTT, Mr. ROBERTS, Ms. SNOWE, Mr. BAYH, Mr. CHAMBLISS, Ms. MIKULSKI, Mr. CORZINE, Mr. LEVIN, Mr. DEWINE, Mr. WYDEN, Mr. BOND, Mr. BURBANK, Mr. HAGEL, and Mr. HATCH):

S. 460. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income the gain from the sale of a principal residence by certain employees of the intelligence community; to the Committee on Finance.

**Mr. ROCKEFELLER.** Mr. President, today I am introducing legislation to extend an important provision of the Taxpayer Relief Act of 1997 to the men and women of the United States Intelligence Community. I am pleased that in keeping with the bipartisan traditions of the Intelligence Committee, every member, Republican and Democrat, is listed as an original cosponsor.

Two years ago, on Veterans Day, President Bush signed into law an important modification to our tax code to ensure that it does not punish those who serve our country in the military and in the U.S. foreign service. Unfortunately, that legislation did not extend to intelligence officers, who serve alongside their military and diplomatic colleagues all around the world and who often face the same tax issues as their counterparts. The legislation I am introducing today makes a common sense modification to the capital gains tax exclusion rules to ensure that when selling their homes, intelligence officers do not pay more tax than they would if they did not serve their country.

The men and women of the Intelligence Community, serve with the military in Iraq, Afghanistan, Korea, and numerous other locations where we have U.S. forces deployed. They also serve in U.S. Embassies around the world. Often times they carry an added burden because they must serve undercover. Their families and friends don't know what they do. They live their cover story by day and perform their critical intelligence work by night. They work for all fifteen of the agencies included in the intelligence community and they do a remarkable job. These people are dedicated to their mission and to this country.

These patriotic individuals sacrifice a great deal on behalf of the rest of us. They uproot and relocate their families every few years. They often live in places most of us wouldn't even visit. And they rarely have the stability of life with access to modern luxuries that the rest of us take for granted. To then say that they are going to be penalized by our tax code is unacceptable.

Since 1997, our tax code has allowed Americans who pay capital gains on up to $250,000 of capital gains. Married couples can exclude $500,000 in capital gains from taxation. This provision is specifically intended only for principle residences, and therefore, sellers are required to have lived in the home for at least 2 of the 5 years prior to sale.

In 2003, Congress recognized that this residency requirement was often difficult for members of the armed forces and foreign service to satisfy. If they had been stationed away from home while serving their country, they were essentially punished with higher taxes on the sales of their homes. Congress addressed this injustice by allowing service personnel and foreign service officers who were stationed away from home to suspend the residency requirement for as many as ten years. This change allows, for example, a soldier who spent the last 7 years stationed in Germany to exclude from taxes the capital gains on the sale of his former home in the U.S., as long as he had lived in it for at least 2 of the 5 years prior to his service overseas. The change is effective on all sales after 1997, when the capital gains tax exclusion for home sales was provided to all Americans.

Fairness demands that Congress apply the same rules to intelligence officers serving their country away from home. My legislation simply inserts intelligence officers into the list of those allowed to suspend the 5 year residency test period for up to 10 years while they are stationed away from home.

I intend to work with my colleagues on the Intelligence Committee and the Finance Committee to ensure that this provision is enacted this year.

**By Mr. DODD** (for himself, Mr. GRASSLEY, Mr. JOHNSON, and Mr. WYDEN):

S. 470. A bill to amend the Public Health Service Act to expand the clinical trials drug data bank; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise today to introduce the Fair Access to Clinical Trials, FACT, Act. I want to begin by thanking Senator GRASSLEY, Senator JOHNSON, and Senator WYDEN for joining me in introducing this legislation. Our bill will create an electronic databank for clinical trials of drugs, biological products, and medical devices. Such a databank will ensure that physicians, researchers, the general public, and patients seeking to enroll in clinical trials have access to basic information about those trials. It will also provide a means for other researchers to reveal the results of clinical trials so that clinically important information will be available to all Americans, and physicians will have all the necessary information to make appropriate treatment decisions for their patients.

Events of the past year have made it clear that such a databank is needed. First, serious questions were raised about the effectiveness and safety of antidepressant medication for children and youth. It has now become clear that the existing data indicates that these drugs may very well put children at risk. However, because the data from antidepressant clinical trials was not publicly available, it took years for this risk to be realized. In the meantime, millions of children have been prescribed antidepressants by well-meaning physicians. While these drugs undoubtedly helped many of these children, they also led to greater suffering for others. Recently, it has been suggested that the risk of antidepressants might even extend beyond children.
The news is similarly disturbing for a popular class of painkillers known as Cox-2 inhibitors. These medicines, taken by millions of Americans, have been associated with an increased risk of cardiovascular adverse events, such as heart attack and stroke. It has been suggested that one of these medicines, which has since been pulled from the market, may be responsible for tens of thousands of deaths.

Unfortunately, antidepressants and Cox-2 inhibitors are just two examples of a story that has become all too common. It has been suggested that negative data might actually have been suppressed; and if this is discovered to be the case, those responsible should be dealt with harshly. However, because of what is known as “publication bias,” the information available to the public and physicians can be misleading even without nefarious motives. The simple fact is that a study with a positive result is far more likely to be published, and thus available, than a study with a negative result. Physicians and patients hear the good news, but rarely the bad news. In the end, the imbalance of available information hurts patients.

Our legislation would correct the imbalance of information, and prevent manufacturers from suppressing negative data. It would do so by creating a two-part databank, consisting of an expansion of clinicaltrials.gov—an existing registry that is operated by the National Library of Medicine, NLM—and a new database for clinical trial results.

Under the FACT Act, the registry would continue to operate as a resource for patients seeking to enroll in clinical trials for drugs and biological products intended to treat serious or life-threatening conditions—and for the first time, it would also include medical device trials. The new results database would include all trials, except for preliminary safety trials, and would require the submission of results data.

Our legislation would enforce the requirement to submit information to the databank in two ways. First, by requiring registration as a condition of Institutional Review Board, IRB, approval, no trial could begin without submitting preliminary information to the registry and database. This information would include the purpose of the trial, the data that will be collected, and the expected duration. The registry would be updated with the results data at the time of trial completion, as well as all of the information necessary to help patients enroll in the trial.

Once the trial is completed, the researcher or manufacturer would be required to submit the results to the database. If they refuse to do so, they would be subject to monetary penalties or, in the case of federally funded research, a restriction on future funding. It is my belief that these enforcement mechanisms will ensure broad compliance. If a manufacturer does not comply, this legislation also gives the Food and Drug Administration, FDA, the authority to publicize the required information.

Let me also say that any time you are collecting large amounts of data and making it public, protecting patient privacy and confidentiality must be paramount. Our legislation would in many respects mirror the Health Insurance Portability and Accountability Act. The simple fact is that under this bill, no individually identifiable information would be available to the public.

I believe that the establishment of a clinical trials databank is absolutely necessary for the health and well-being of the American public. But I would also like to highlight two other benefits that such a databank will have. First, it has the potential to reduce health care costs. Studies have shown that publication bias also leads to a bias toward new and more expensive treatment options. A databank could help make it clear that, in some cases, less expensive treatments are just as effective for patients.

In addition, a databank will ensure that the sacrifice made by patients who enroll in clinical trials is not squandered. Many patients would be less willing to participate in trials if they understood that the data are unlikely to be published if the results of the trial are negative. We owe it to patients to make sure that their participation in a trial will benefit other individuals suffering from the same illness or condition.

The financial and human associations with publication bias have recently drawn more attention from the medical community, and there is broad consensus that a clinical trials registry is one of the best ways to address the issue. Accordingly, the American Medical Association, AMA, has recommended the creation of such a databank, and the major medical journals have established a policy that they will only publish the results of trials that were registered before the trial began. Our legislation meets all of the minimum criteria for a trial registry set out by the International Committee of Medical Journal Editors.

To its credit, the pharmaceutical industry has also acknowledged the problem, and has created a database to which manufacturers can voluntarily submit clinical trials data. I applaud this step. However, if our objective is to provide the public with a complete and honest picture of information, a voluntary database is unlikely to achieve that goal. Some companies will provide information, but others may decide not to participate. We need a clinical trials framework that is not just fair to all companies, but provides patients with peace of mind that they will receive complete information about the medicines they rely on.

The American drug industry is an extraordinary success story. As a result of the innovations that this industry has provided, millions of lives have been improved and saved in our country and around the globe. Because of the importance of these medicines to our health and well-being, I have consistently supported sound public policies to help the industry to succeed. This legislation aims to build upon the successes of this industry, and help ensure that the positive changes to our health care system that prescription drugs have brought are not undermined by controversies such as the ones now surrounding antidepressants and Cox-2 inhibitors, which are at least in part based on a lack of public information. This bill will help ensure that well-informed patients will use new and innovative medicines.

I look forward to working with industry, physicians, the medical journals, patient groups, and my colleagues—including the Chairman and the Ranking Member of the Health, Education, Labor, and Pensions Committee, Senator ENZI and Senator KENNEDY—to move this legislation forward. This bill has already been endorsed by the National Organization for Rare Disorders, the American Association of Poison Control Centers, the American Academy of Child and Adolescent Psychiatry, the American Psychiatric Association, the New England Journal of Medicine, and the National Women’s Health Network. I thank these organizations for lending their expertise as we crafted this legislation.

The creation of a clinical trials databank is a critical step toward ensuring the safety of drugs, biological products, and devices in this country—but it should not be the end of our efforts. I believe that other steps are necessary to fully restore patient confidence in the safety of the medicines they rely on. I have already announced my intention to introduce another piece of legislation that will create an Office of Patient Protection within the FDA, which will be responsible for ensuring the safety of prescription drugs once they are on the market. I look forward to introducing this bill in the coming weeks.

Clinical trials are critical to protecting the safety and health of the American public, and for this reason, trial results must not be treated as information that can be hidden from scrutiny. Recent events have made it clear that a clinical trials database is needed. Patients and physicians agree that such a databank is in the interest of the public health. I urge my colleagues to support this legislation, and I am hopeful that it will become law as soon as possible.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 470
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECOND SECTION. SHORT TITLE.
This Act may be cited as the “Fair Access to Clinical Trials Act of 2005” or the “FACT Act”.

S1798
SEC. 2. PURPOSE.

It is the purpose of this Act—

(1) to create a publicly accessible national database of clinical trial information comprised of an electronic registry and a clinical trials results database;

(2) to foster transparency and accountability by heightened intervention research and development;

(3) to maintain a clinical trial registry accessible to patients and health care practitioners seeking information related to ongoing clinical trials for serious or life-threatening diseases and conditions; and

(4) to establish a clinical trials results database comprising data on publicly and privately funded clinical trial results regardless of outcome, that is accessible to the scientific community, health care practitioners, and members of the public.

SEC. 3. CLINICAL TRIALS DATA BANK.

(a) In general.—Section 402(j) of the Public Health Service Act (42 U.S.C. 282(j)) is amended—

(1) in paragraph (1)(A), by striking “for drugs for serious or life-threatening diseases and conditions”;

(2) in paragraph (2), by striking “available to individuals with serious” and all that follows through and inserting “accessible to any member of the public, health care practitioners, researchers and the scientific community. In making information about clinical trials publicly available, the Secretary shall seek to be as timely and transparent as possible.”;

(3) by redesigning paragraphs (4) and (5), as paragraphs (8) and (9), respectively;

(4) by striking paragraph (3) and inserting the following:

“(3) The database shall include the following:

(A) A registry of clinical trials (in this subparagraph referred to as the ‘registry’) of health-related interventions (whether federally or privately funded).

(B) The registry shall include information for all clinical trials conducted to test the safety or effectiveness (including comparative effectiveness) of any drug, biological product, or device (including those drugs, biological products, or devices approved or cleared by the Secretary) intended to treat serious or life-threatening diseases and conditions, except those Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device. For purposes of this section, Phase I clinical trials are trials described in section 313(a) of title 21, Code of Federal Regulations (or any successor regulations).

(C) The registry may include information for—

(I) Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device with the consent of the responsible person; and

(II) clinical trials of other health-related interventions with the consent of the responsible person.

(D) The information to be included in the registry under this subparagraph shall include the following:

(i) Descriptive information, including—

(aa) a brief title;

(bb) the drug, biological product or device to be tested;

(cc) a trial identification in lay terminology;

(dd) the trial phase;

(ee) the trial type;

(ff) the trial purpose;

(gh) the estimated completion date for the trial; and

(ii) the study sponsor and the study funding source.

(E) A description of the primary and secondary clinical outcome measures to be examined in the trial, the time at which these outcome measures will be assessed, and the dates and details of any revisions to such outcomes.

(F) Recruitment information, including eligibility and exclusion criteria, a description of whether, and through what procedure, the manufacturer or sponsor of the investigational drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularlly in children, as a statement as to whether the trial is closed to enrollment of new patients, overall trial status, individual site status, and estimated completion date. For purposes of this subparagraph, ‘clinical trial completion term’ or ‘completion term’ means the date of the last visit by subjects in the trial for the outcomes described in clause (I)(hh).”;

(Bb) as a Group C cancer drug (as defined by the National Cancer Institute).

(ii) A clinical trials results database (in this subparagraph referred to as the ‘database’) of health-related interventions (whether federally or privately funded).

(iii) The database shall include information for all clinical trials conducted to test the safety or effectiveness (including comparative effectiveness) of any drug, biological product, or device (including those drugs, biological products, or devices approved or cleared by the Secretary), except those Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device.

(iv) The database may include information for—

(I) Phase I clinical trials conducted to test solely the safety of an unapproved drug or unlicensed biological product, or pilot or feasibility studies conducted to confirm the design and operating specifications of an unapproved or not yet cleared medical device with the consent of the responsible person; and

(II) clinical trials of other health-related interventions with the consent of the responsible person.

(v) The information to be included in the database under this subparagraph shall include the following:

(I) Descriptive information, including—

(aa) a brief title;

(bb) the drug, biological product or device to be tested;

(cc) a trial identification in lay terminology;

(dd) the trial phase;

(ee) the trial type;

(ff) the trial purpose;

(gh) the estimated completion date for the trial; and

(ii) the study sponsor and the study funding source.

(ii) A description of the primary and secondary clinical outcome measures to be examined in the trial, the time at which these outcome measures will be assessed, and the dates and details of any revisions to such outcomes.

(III) The actual completion date of the trial and the reasons for any difference from such actual date and the estimated completion date submitted pursuant to subclause (I)(hh). If the trial is not completed, the term completion date and reasons for such termination.

(iii) A summary of the results of the trial in a standard, non-promotional summary format (such as ICH E3 template form), including the trial design and methodology, results of the primary clinical outcome measures as described in subclause (II), summary data tables with respect to the primary and secondary outcome measures, including information on adverse events specifying the number and type of such events, data on prespecified adverse events, data on serious adverse events, and data on overall deaths.

(iv) Any publications in peer reviewed journals relating to the trial. If the trial results are published in a peer reviewed journal, the database shall include a citation to and, when available, a link to the journal article.

(v) A description of the process used to review the results of the trial, including a statement about whether the results have been peer reviewed by reviewers independent of the sponsor of the trial.

(vi) If the trial addresses the safety, effectiveness, or benefit of a use not described in the approved labeling for the drug, biological product, or device, a statement, as appropriate, disclosing whether the data are first disclosed at the beginning of the data in the registry with respect to the trial, that the Food and Drug Administration—

(aa) is currently reviewing an application for approval of such use to determine whether the use is safe and effective;

(bb) has approved an application for approval of such use;

(cc) has reviewed an application for approval of such use but the application was withdrawn prior to approval or disapproval; or

(dd) has not reviewed or approved such use as safe and effective.

(vii) If data from the trial has not been submitted to the Food and Drug Administration, an explanation of why it has not been submitted.

(viii) A description of the protocol used in such trial to the extent necessary to evaluate the results of such trial.

(1)(A) Not later than 90 days after the date of the completion of the review by the Food and Drug Administration of information submitted by a sponsor in support of a new drug application, or a supplemental new drug application, whether or not approved by the Food and Drug Administration, the Commissioner of Food and Drugs shall make available to the public the full reviews conducted by the Administration of such application.

(1)(B) Not later than 90 days after the date of the completion of a written consultation on a drug concerning the drug’s safety conducted by the Office of Drug Safety, regarding whether initiated by such Office or outside of the Office, the Commissioner of Food and Drugs shall make available to the public a copy of such consultation in full.

(iv) Nothing in the paragraph shall be construed to alter or amend section 552 of title 5, United States Code.

(v) The information described in subparagraphs (A) and (B) of paragraph (3) shall be in a format that can be readily accessed and understood by members of the general public, including patients seeking to enroll as subjects in clinical trials.

(vi) The Secretary shall assign each clinical trial a unique identifier to be included
in the registry and in the database described in subparagraphs (A) and (B) of paragraph (3). To the extent practicable, this identifier shall be consistent with other internationally recognized identifiers.

"(7) To the extent practicable, the Secretary shall ensure that where the same information is required for the registry and the database described in subparagraphs (A) and (B) of paragraph (3), a process exists to allow the responsible person to make only one submission.", and

"(d) (1) In general.—If, by the date specified in paragraph (2), the Secretary has received a notice containing information sufficient to demonstrate to the Secretary that the information described in subparagraph (A) cannot reasonably be submitted, along with an estimated date of submission of the information described in such subparagraph,

"(2) Date specified.—The date specified in this paragraph shall be the date that is 1 year from the earlier of

"(A) the estimated completion date of the trial, as submitted under subsection (j)(3)(B)(ii); or

"(B) the actual date of the completion or termination of the trial.

"(3) Condition of Federal grants, contracts, or cooperative agreements.—

"(A) Certification of compliance.—To be eligible to receive a grant, contract, or cooperative agreement from the Secretary for the conduct or support of a clinical trial described in subsection (j)(3)(B), the principal investigator involved shall certify to the Secretary that

"(i) the investigator shall submit data to the Secretary in accordance with this subsection; and

"(ii) such investigator has complied with the requirements of this subsection with respect to other clinical trials conducted by such investigator after the date of enactment of the FACT Act.

"(B) Failure to permit certification.—An investigator that fails to submit a certification as required under subparagraph (A) shall not be eligible to receive a grant, contract, or cooperative agreement from the Secretary for the conduct or support of a clinical trial described in subsection (j)(3)(B).

"(d) (1) In general.—If, by the date specified in paragraph (2), the Secretary has not received an ongoing award, contract, or cooperative agreement.

"(5) Inclusion in registry.—

"(A) General rule.—The Secretary shall, pursuant to subsection (j)(5), include the data described in subclauses (II) through (X) of section (j)(3)(B)(iv) and submitted under this section in the database described in subsection (j).

"(B) Other data.—

"(i) In general.—The Secretary shall, pursuant to subsection (j)(5), include the data described in subclauses (II) through (X) of section (j)(3)(B)(iv) and submitted under this section in the database described in subsection (j).

"(ii) as soon as practicable after receiving such data; or

"(ii) the case of data to which clause (ii) applies, by the date described in clause (iii).

"(C) Data described in subclause (A) or clause (iv) applies to data described in clause (i) if

"(i) the principal investigator involved requests a delay in the inclusion in the database of such data, as published in a peer reviewed journal; and

"(ii) the Secretary determines that an attempt will be made to seek such publication.

"(D) Data included to the database described in subsection (j) and the database described in subclause (A) or clause (iv) of this section in the database described in subsection (j).

"(E) Submission of statement but not information.—

"(i) In general.—If, by the date specified in paragraph (2), the Secretary has received a statement described in paragraph (1)(B) but not the information described in paragraph (1)(A), the Secretary shall transmit to the principal investigator involved a notice stating that such investigator shall submit such information by the date determined by the Secretary in consultation with such investigator.

"(ii) Failure to comply with certification.—If, by the date specified by the Secretary in the notice under clause (1), the Secretary has not received the information described in paragraph (1)(B), the Secretary shall

"(D) Failure to comply with notice.—If by the date that is 30 days after the date on which the notice described in subparagraph (C) is transmitted, the Secretary has not received from the principal investigator involved the information or statement required pursuant to such notice, the Secretary may not award a grant, contract, cooperative agreement, or any other award to such principal investigator until such principal investigator submits to the Secretary the information or statement required pursuant to such notice.

"(E) Submission of statement but not information.—

"(i) In general.—If, by the date specified in paragraph (2), the Secretary has received a statement described in paragraph (1)(B) but not the information described in paragraph (1)(A), the Secretary shall transmit to the principal investigator involved a notice stating that such investigator shall submit such information by the date determined by the Secretary in consultation with such investigator.

"(ii) Failure to comply with certification.—If, by the date specified by the Secretary in the notice under clause (1), the Secretary has not received the information described in paragraph (1)(B), the Secretary shall

"(D) Failure to comply with notice.—If by the date that is 30 days after the date on which the notice described in subparagraph (C) is transmitted, the Secretary has not received from the principal investigator involved the information or statement required pursuant to such notice, the Secretary may not award a grant, contract, cooperative agreement, or any other award to such principal investigator until such principal investigator submits to the Secretary the information or statement required pursuant to such notice.

"(2) Date specified.—The date specified in this paragraph shall be the date that is 1 year from the earlier of

"(A) the estimated completion date of the trial, as submitted under subsection (j)(3)(B)(ii); or

"(B) the actual date of the completion or termination of the trial.

"(3) Condition of Federal grants, contracts, or cooperative agreements.—

"(A) Certification of compliance.—To be eligible to receive a grant, contract, or cooperative agreement from the Secretary for the conduct or support of a clinical trial described in subsection (j)(3)(B), the principal investigator involved shall certify to the Secretary that

"(i) the investigator shall submit data to the Secretary in accordance with this subsection; and

"(ii) such investigator has complied with the requirements of this subsection with respect to other clinical trials conducted by such investigator after the date of enactment of the FACT Act.

"(B) Failure to permit certification.—An investigator that fails to submit a certification as required under subparagraph (A) shall not be eligible to receive a grant, contract, or cooperative agreement from the Secretary for the conduct or support of a clinical trial described in subsection (j)(3)(B).

"(C) Failure to comply with certification.—If, by the date specified in paragraph (2), the Secretary has not received the information or statement described in paragraph (1), the Secretary shall—

"(1) in the case of data to which clause (ii) applies, by the date described in clause (iii).

"(iii) Date for inclusion in registry.—Subject to clause (iv), the date described in this clause is the earlier of

"(i) the date on which the data involved is published as provided for in clause (i); or

"(ii) the date that is 18 months after the date on which such data is submitted to the Secretary.

"(D) Extension of date.—The Secretary may extend the 18-month period described in clause (iii) for an additional 6 months if the principal investigator demonstrates to the Secretary, prior to the expiration of such 18-month period, that the involved data has been accepted for publication by a journal described in clause (ii).

"(E) Modification of data.—Prior to including data in the database under clause (ii) or (iv), the Secretary shall permit the principal investigator to modify the data involved.

"(F) Memorandum of understanding.—Not later than 6 months after the date of enactment of the FACT Act, the Secretary shall enter into a memorandum of understanding with the heads of all other Federal agencies that conduct clinical trials to include in the registry and the database clinical trials sponsored by such agencies that meet the requirements of this subsection.

"(G) Application to certain persons.—The provisions of this subsection shall apply to a responsible person described in subsections (p)(1)(A) or (I) or (p)(1)(B)(i)(II).

"(H) Trials with non-Federal support.—

"(1) In general.—The responsible person for a clinical trial described in subsection (j)(3)(B) shall, not later than the date specified in paragraph (3), submit to the Secretary—

"(i) the information described in subclauses (II) through (X) of section (j)(3)(B)(iv); and

"(B) a statement containing information sufficient to demonstrate to the Secretary that the information described in the database described in subsection (j) has been included in the registry as required pursuant to such notice, the Secretary may not award a grant, contract, cooperative agreement, or any other award to such principal investigator until such principal investigator submits to the Secretary the information required pursuant to such notice.

"(4) Rule of construction.—Nothing in this paragraph shall be construed to prevent an investigator other than the investigator described in paragraph (3)(F) from receiving an ongoing award, contract, or cooperative agreement.

February 28, 2005
of the information described in such subparagraph.

'(2) SANCTION IN CASE OF NONCOMPLIANCE.—

'(A) INITIAL NONCOMPLIANCE.—If by the date specified in subparagraph (A) the required information or statement has not been received by the Secretary under paragraph (1), the Secretary shall—

'(i) transmit to the responsible person for such trial a notice stating that such responsible person shall be liable for the civil monetary penalties provided in subparagraph (B) if the required information or statement is not received from such responsible person within 30 days of the date on which such notice is transmitted;

'(ii) include and prominently display, until such time as the Secretary receives the information described in paragraph (1), a notice stating that the results of such trials have not been reported as required by law.

'(B) CIVIL MONETARY PENALTIES FOR NONCOMPLIANCE.—

'(i) IN GENERAL.—If by the date that is 30 days after the date on which a notice described in subparagraph (A) is transmitted, the Secretary has not received from such responsible person the information or statement required pursuant to such notice, the Secretary shall, after providing the opportunity for a hearing, order such responsible person to pay a civil penalty of $10,000 for each day after such date that the information is not submitted.

'(ii) TRANSMISSION OF STATEMENT BUT NOT INFORMATION.—

'(A) GENERAL RULE.—If by the date specified in paragraph (3), the Secretary has received a statement described in paragraph (1)(B) but not the information described in paragraph (1)(A) the Secretary shall transmit to the responsible person involved a notice stating that such responsible person shall submit such information by the date determined by the Secretary in consultation with such responsible person.

'(B) ACTUAL COMPLETION DATE OR TERMINATION DATE.—

'(1) USE OF FUNDS.—

'(A) IN GENERAL.—The Secretary shall—

'(i) include and prominently display, until such time as the Secretary receives the information described in paragraph (1)(A), as part of the record of such trial in the database described in section (j)(3)(B) if the required information is not submitted to the Secretary within 30 days of the date on which such notice is transmitted; and

'(ii) transmit to the responsible person involved in such trial a notice specifying the information required to be submitted to the Secretary and stating that such responsible person shall be liable for the civil monetary penalties provided in subparagraph (D) if the required information is not submitted to the Secretary within 30 days of the date on which such notice is transmitted.

'(D) NONCOMPLIANCE.—If by the date that is 30 days after the date on which a notice described in subparagraph (C)(i)(I) is transmitted, the Secretary has not received from such responsible person the required information or statement, the Secretary, after providing the opportunity for a hearing, order such responsible person to pay a civil penalty of $10,000 for each day after such date that the information is not submitted.

'(E) NOTICE OF PUBLICATION OF DATA.—If the responsible person is the manufacturer or distributor of the drug, biological product, device, or medical product involved, the notice under subparagraphs (A)(ii) and (C)(i)(I) shall include a notice that the Secretary shall publish the data described in subsection (j)(3)(B) in the database described in section (j) if the required information has not been submitted to the Secretary within 6 months of the date that is 6 months after the date of such notice.

'(F) PUBLICATION OF DATA.—Notwithstanding section 301(j) of the Federal Food, Drug, and Cosmetic Act, section 1905 of title 18, United States Code, or any other proviso of law, if the responsible person is the manufacturer or distributor of the drug, biological product, or device involved, and if the responsible person has not submitted to the Secretary the information specified in a notice transmitted pursuant to subparagraph (A)(i) or (C)(i)(I) by the date that is 6 months after the date of such notice, the Secretary shall publish in the registry information that—

'(i) is described in subsection (j)(3)(B); and

'(ii) the responsible person has submitted to the Secretary in any application, including a supplement to such application, for the drug or device under section 505, 510, or 520 of the Federal Food, Drug, and Cosmetic Act, or for the biological product under section 351, for the biological product described in clause (i) if—

'(1) the estimated completion date of the trial submitted under subsection (j)(3)(B)(vi)(I)(hh); or

'(2) the actual date of completion or termination of the trial.

'(G) INCLUSION IN REGISTRY.—

'(1) SUBMISSION PRIOR TO NOTICE.—Nothing in subsections (k) through (l) shall be construed to prevent a principal investigator or a responsible person from submitting any information required under this subsection to the Secretary prior to receiving any notice described in such subsections.

'(2) ONGOING TRIALS.—A factually accurate statement that a clinical trial is ongoing shall be deemed to be information sufficient to demonstrate to the Secretary that the information described in subsection (j)(1)(A) and (1)(D) cannot reasonably be submitted.

'(3) INFORMATION PREVIOUSLY SUBMITTED.—Nothing in subsections (k) through (l) shall be construed to prevent a principal investigator or a responsible person from submitting any information required under this subsection to the Secretary prior to receiving any notice described in such subsections.

'(H) MODIFICATION OF CONTENT.—

'(1) SUBMISSION FORMAT AND TECHNICAL STANDARDS.—

'(A) IN GENERAL.—The Secretary shall, to the extent practicable, accept submissions required under this subsection in an electronic format and shall establish interoperable technical standards for such submissions.

'(B) CONSISTENCY OF STANDARDS.—To the extent practicable, the standards established under subparagraph (A) shall be consistent with standards adopted by the Consolidated Health Informatics Initiative (or a successor organization to such Initiative) to the extent such Initiative (or successor) is in operation.

'(C) TRIALS COMPLETED PRIOR TO ENACTMENT.—The Secretary shall establish procedures and mechanisms to allow for the involuntary submission to the database of the information described in this subsection with respect to a clinical trial completed prior to the date of enactment of the FACT Act. In cases in which it is in the interest of public health, the Secretary may require that such information from such trials be submitted to the database. Failure to comply with such requirements shall be considered a violation of this section in the database described in subsection (j).
with such a requirement shall be deemed to be a failure to submit information as required under this section, and the appropriate remedies and sanctions under this section shall apply.

(6) TRIALS NOT INVOLVING DRUGS, BIOLOGICAL PRODUCTS, OR DEVICES.—The Secretary shall establish procedures and mechanisms to allow voluntary submission to the database of the information described in subsection (j)(3)(B) with respect to clinical trials that do not involve drugs, biological products, or devices. In cases in which it is in the interest of public health, the Secretary may require that information from such trials be submitted to the database. Failure to comply with such a requirement shall be deemed to be a failure to submit information as required under this section, and the appropriate remedies and sanctions under this section shall apply.

(7) SUBMISSION OF INACCURATE INFORMATION.—

(A) IN GENERAL.—If the Secretary determines that information submitted by a principal investigator or a responsible person under this section is factually and substantively inaccurate, the Secretary shall notify the investigator or responsible person concerning such inaccuracy that includes—

(i) a summary of the inaccuracies involved; and

(ii) a request for corrected information within 30 days.

(B) AUDIT OF INFORMATION.—

(i) IN GENERAL.—The Secretary may conduct audits of any information submitted under this section.

(ii) REQUIREMENT.—Any principal investigator or responsible person that has submitted information under subsection (j) shall permit the Secretary to conduct the audit described in clause (i).

(C) CHANGES TO INFORMATION.—Any change in the information submitted by a principal investigator or a responsible person under this section shall be reported to the Secretary within 30 days of the date on which such investigator or person became aware of the change for purposes of updating the registry or the database.

(D) FAILURE TO CORRECT.—If a principal investigator or a responsible person fails to permit the Secretary to conduct a corrected information pursuant to a notice under subparagraph (A), or provide corrected information pursuant to a notice under subparagraph (C), the investigator or responsible person involved shall be deemed to have failed to submit information as required under this section and the appropriate remedies and sanctions under this section shall apply.

(E) CORRECTIONS.—

(i) IN GENERAL.—The Secretary may correct, through any means deemed appropriate by the Secretary to protect public health, any information included in the registry or the database described in subsection (j), including information from a clinical trial or a report of an adverse event acquired or produced under the authority of section 351 of this Act or of the Federal Food, Drug, and Cosmetic Act that is used to determine whether labeling or advertising is misleading.

(ii) PROCEDURES FOR PROFESSIONAL REVIEW.—This subparagraph shall not be construed to authorize the disclosure of information if—

(I) such disclosure would constitute an invasion of personal privacy;

(II) such information concerns a method or process which a trade secret is entitled to protection within the meaning of section 301 of the Federal Food, Drug, and Cosmetic Act;

(III) such disclosure would disclose confidential commercial information or a trade secret; or

(iv) the applicant described in clause (ii), unless such disclosure is necessary—

(aa) to make a correction as provided for under clause (i); and

(bb) protect the public health; or

(iv) if such disclosure relates to a biological product for which no license is in effect under subsection (k)(1), no application is in effect under section 515 of such Act.

(E) CORRECTIONS.—

(i) NOTICE.—In the case of a disclosure under clause (iv)(II), the Secretary shall notify the manufacturer or distributor of the drug, biological product, or device involved—

(I) at least 30 days prior to such disclosure; or

(II) if immediate disclosure is necessary to protect the public health, concurrently with such disclosure.

(ii) WAIVERS REGARDING CLINICAL TRIAL RESULTS.—The Secretary may waive the requirements of subsections (k)(1) and (l)(1) that the results of clinical trials be submitted to the Secretary, upon a written request from the responsible person if the Secretary determines that extraordinary circumstances justify the waiver and that providing the waiver is in the public interest or consistent with the protection of public health.

(iii) TRIALS CONDUCTED OUTSIDE OF THE UNITED STATES.—

(A) IN GENERAL.—With respect to clinical trials described in paragraph (2), the responsible person shall submit to the Secretary the information required under clause (I), and the information required under clause (II) through (X) of subsection (j)(3)(B)(iv).

(B) FAILURE TO COMPLY.—If the Secretary fails to comply with this paragraph shall be deemed to be a failure to submit information described in this paragraph, and the appropriate remedies and sanctions under this section shall apply.

(iv) CLINICAL TRIAL DESCRIBED.—A clinical trial is described in this paragraph if—

(A) such trial is conducted outside of the United States; and

(B) the data from such trial is—

(i) submitted to the Secretary as part of an application, including a supplemental application, for a drug or device under section 350, 510, 515, or 520 of the Federal Food, Drug, and Cosmetic Act or for the biological product under section 351; or

(ii) used in advertising or labeling to make a claim about the drug, device, or biological product involved.

(v) DEFINITIONS; INDIVIDUAL LIABILITY.—

(A) RESPONSIBLE PERSON.—

(i) IN GENERAL.—In this section, the term ‘responsible person’ with respect to a clinical trial means—

(I) if such clinical trial is the subject of an investigational new drug application or an application for an investigational device exemption, the sponsor of such investigational new drug application or such application for an investigational device exemption;

(ii) except as provided in subparagraph (B), if such clinical trial is not the subject of an investigational new drug application or an application for an investigational device exemption, the person that provides the largest share of the monetary support for the conduct of such trial; or

(iii) in the case in which the person described in clause (I) is a Federal or State agency, the principal investigator of such trial.

(B) NONPROFIT ENTITIES AND REQUESTING PERSONS.—

(i) NONPROFIT ENTITIES.—For purposes of subparagraph (A)(ii), if the person that provides the largest share of the monetary support for the conduct of the clinical trial involved is a nonprofit entity, the responsible person for purposes of this section shall be—

(I) the nonprofit entity; or

(II) if the nonprofit entity and the principal investigator of such trial jointly certify to the Secretary that the principal investigator will be responsible for submitting the information described in subsection (j)(3)(B) for such trial, the principal investigator.

(ii) REQUESTING PERSONS.—For purposes of subparagraph (A)(ii), if a person—

(I) has submitted a request to the Secretary to have the Secretary recognize the person as the responsible person for purposes of this section; and

(II) the Secretary determines that such person—

(aa) provides monetary support for the conduct of such trial; or

(bb) is responsible for the conduct of such trial; and

(cc) will be responsible for submitting the information described in subsection (j)(3)(B) for such trial;

such person shall be the responsible person for purposes of this section.

(2) DRUG, DEVICE, BIOLOGICAL PRODUCT.—In this section—

(A) the term ‘drug’ and ‘device’ have the meanings given such terms in section 201 of the Federal Food, Drug, and Cosmetic Act; and

(B) the term ‘biological product’ has the meaning given such term in section 351 of this Act.

(3) INDIVIDUAL LIABILITY.—

(A) LIMITATION ON LIABILITY OF INDIVIDUALS.—No individual shall be liable for any civil monetary penalty under this section.

(B) INDIVIDUALS WHO ARE RESPONSIBLE PERSONS.—If a responsible person under subparagraph (A) or (B) of paragraph (1) is an individual, such individual shall be subject to the procedures and conditions described in subsection (k).

(4) AUTHORIZATION OF APPROPRIATIONS.—

Section 402 of the Public Health Service Act (42 U.S.C. 282), as in effect on February 28, 2005, is further amended by adding at the end the following:

(a) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated, such sums as may be necessary to carry out this section.

SEC. 4. REVIEW AND APPROVAL OF PROPOSALS FOR RESEARCH.

(a) AMENDMENTS.—Section 492A(a) of the Public Health Service Act (42 U.S.C. 289a-10) is amended—

(1) in paragraph (1)(A), by striking “unless” and all that follows through the period and inserting the following: “unless—

(A) the proposal is reviewed in accordance with such section and has been recommended for approval by a majority of
the members of the Board conducting the review;

(ii) such Board has submitted to the Secretary a notification of such approval; and

(iii) such Board has submitted to the Secretary a report on the results of the study conducted under such paragraph, including recommendations for changes to the registry, the database, and the data submission requirements that would benefit the public health.

Mr. GRASSLEY. Mr. President, earlier today, Senate Bill 470 was introduced. I am pleased to sponsor the Fair Access to Clinical Trials Act of 2005, with Senator DODD. I am co-sponsoring this legislation in a sustained effort to restore public confidence in the Federal Government's food and drug safety agency. Enactment of this bill will be a meaningful step toward greater transparency and accountabilty in clinical trials and the scientific process.

The Food and Drug Administration earned its prized reputation through decades of good work on behalf of the American people. The FDA's drug approval process is considered the "Good Housekeeping Seal of Approval." However, the Vioxx disaster and its aftermath have shaken the public's confidence. American consumers demand and deserve assurances that the medicines they take are safe. The health and safety of the public must be the FDA's first and only concern. Unfortunately, reforms at the FDA are necessary to place that mission front and center once again.

I began my oversight of the FDA last year in response to concerns about the reluctance of the FDA to provide information to the public about the increased suicidal risks for young people taking anti-depressants. Last November, I chaired a groundbreaking hearing on drug safety, the FDA and Vioxx. That hearing and other critical drug safety concerns of the past year highlighted the need for reforms and more stringent oversight of the FDA. Sometimes congressional scrutiny of agency mismanagement can lead to necessary reforms. Sometimes an agency will act on its own to enhance its credibility. I have been pressing for reforms—both administrative and legislative—to bring about greater responsiveness and transparency at the FDA.

The risks and benefits of prescription drugs should be readily available to patients and doctors seeking to make informed decisions.

The FACT Act will expand www.clinicaltrials.gov to create a publically accessible national data bank of clinical trial information comprised of a clinical trial registry and a clinical trial results database. The legislation will foster transparency and accountability in health-related intervention research and development and ensure that the scientific community and the general public have access to basic information about clinical trials. Importantly, the FACT Act will maintain clinical trial registries for patients and physicians seeking information about ongoing clinical trials for serious or life-threatening diseases and conditions. The legislation will also prevent companies from withholding clinically important information about their products.

The FACT Act will maintain a clinical trial registry accessible to patients and health care providers seeking information related to ongoing clinical trials for serious or life-threatening diseases and conditions; establish a clinical trials results database of all publicly and privately funded clinical trial results that is accessible to the scientific community, health care practitioners, and members of the public; require the Food and Drug Administration (FDA) to make internal drug approval and safety reviews publicly available; build on the successful model of www.clinicaltrials.gov, which was established in 1997. The web site will continue to be run by the National Library of Medicine at the National Institutes of Health, with assistance from the FDA; apply to clinical trials for drugs, biologics, and medical devices. All trials must be registered in the database in order to obtain approval from a U.S. Institutional Review Board; require that foreign trials that are sub- mitted to the FDA be advertised to U.S. physicians be registered in the database at the time of submission; require that researchers promptly disclose the objectives, eligibility criteria, sources of funding, and anticipated enrollment of a clinical trial to the FDA; and require that the peer review process be the best safeguard for scientific accuracy.

The FACT Act will maintain a clinical trial registry accessible to patients and health care providers seeking information related to ongoing clinical trials for serious or life-threatening diseases and conditions. The legislation will also prevent companies from withholding clinically important information about their products.

The FACT Act will maintain a clinical trial registry accessible to patients and health care providers seeking information related to ongoing clinical trials for serious or life-threatening diseases and conditions; establish a clinical trials results database of all publicly and privately funded clinical trial results that is accessible to the scientific community, health care practitioners, and members of the public; require the Food and Drug Administration (FDA) to make internal drug approval and safety reviews publicly available; build on the successful model of www.clinicaltrials.gov, which was established in 1997. The web site will continue to be run by the National Library of Medicine at the National Institutes of Health, with assistance from the FDA; apply to clinical trials for drugs, biologics, and medical devices. All trials must be registered in the database in order to obtain approval from a U.S. Institutional Review Board; require that foreign trials that are sub- mitted to the FDA be advertised to U.S. physicians be registered in the database at the time of submission; require that researchers promptly disclose the objectives, eligibility criteria, sources of funding, and anticipated enrollment of a clinical trial to the FDA; and require that the peer review process be the best safeguard for scientific accuracy.
patients and their doctors. Today, Senators Dodd, Grassley, Wyden and I are introducing the Fair Access to Clinical Trials Act or FACT Act. I commend my colleagues for their hard work on this legislation. I also thank them for their commitment to ensuring that finally, objective, unbiased information can be put in the hands of consumers and doctors, reducing negative outcomes, improving patient care, and ultimately reducing costs of medications.

In recent months, we have learned that certain prescription drugs on the market today may not be as safe as we once thought. GlaxoSmithKline's antidepressant drug, Paxil, was found to increase the risk of suicide among adolescents. Further investigation of this issue indicated that some manufacturers of antidepressants highlighted positive findings of tests on youngsters, while playing down negative or inconclusive ones. In addition, the anti-inflammatory drug, Vioxx, was pulled off the market due to negative study findings, and over 27,000 sudden cardiac deaths and heart attacks may have been caused by this medication.

I find it unacceptable that current law does not require that the results of these studies on Paxil and Vioxx be made readily available to doctors and their patients. It is unacceptable that today, much of the information consumers and doctors rely on to make decisions about medications they take is based on incomplete information. Patients are often swayed by direct-to-consumer drug advertisements and doctors must rely on the information they learn at drug company sponsored conferences. Access to complete information about prescription drugs is an important consumer issue, and that is why I am introducing this legislation that would require pharmaceutical companies to fully disclose clinical drug trial information in a public database before medications are introduced on the shelves.

Under my legislation, all studies on medicines like Paxil and Vioxx would be listed in a public drug trial registry database. The database would include all the studies, both good and bad, the studies that are conducted after the drug is already on the market, and even the studies that are discontinued. Doctors and patients would have access to all data of information so they could make a clear decision on which drugs are best for any circumstance.

The drug trial database established under this legislation would be accessible to the public on a governmental Web site. The database will include information about the sponsor of the drug trial, the parameters of the study, and the outcome or results of the trial. Medical professionals ought to have complete information available when prescribing medications, and all consumers should be aware of all the effects prescription drugs can have when taken over a period of time. Common sense tells us we need transparency in the prescription drug industry when it comes to the effectiveness of medications, and this database works towards that goal and will help to hold drug companies accountable for their products on the market.

I hope the Senate and House will take up this bill and pass it. It addresses an important consumer right-to-know issue that will help to ensure that patients and doctors have the best, most accurate information at their fingertips when making life-altering medical decisions.

By Mr. LEAHY:

S. 472. A bill to criminalize Internet scams involving fraudulently obtaining personal information, commonly known as phishing; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am introducing a bill, the Anti-Phishing Act of 2005, which targets a serious threat to the security of the Internet. Phishing is a rapidly growing class of identity theft scams on the Internet that is causing both short-term losses and long-term economic damage. In the short-term, these scams defraud individuals and financial institutions. Estimates losses from phishing attacks are now in the billions of dollars, and those losses are growing. The short-term losses, however, are just a chapter in a larger story. In the long-term, phishing undermines the public's trust in the Internet's complex addressing system. In addition, phishing threatens to make us all less likely to use the Internet for secure transactions. If you can't trust where you are on the Web, you are less likely to use it for commerce and communications.

Those well versed in popular culture may guess that phishing was named after the phenomenally popular Vermont-based bank but phishing over the Internet was in fact named from the sport of fishing, as an analogy for its technique of luring Internet prey with convincing email bait. The “F” is replaced by a “P-H” in keeping with a computer hacker tradition.

Phishing attacks usually start with emails that are, in Internet jargon, “spoofed.” That is, they are made to appear to be coming from some trusted financial institution or commercial entity. The spoofed email usually asks the victim to go to a website to confirm or renew private account information. These emails offer a link that appears to take the victim to the website of the trusted institution. In fact the link takes the victim to a phoney website that is visually identical to that of the trusted institution, but is in fact run by the criminal. When the victim takes the bait and sends their account information, the criminal uses it—sometimes minutes—to transfer the victim's funds or to make purchases. Phishers are the new con artists of cyberspace.

Phishing is on the rise. The Anti-Phishing Working Group reports that the number of new phishing messages climbed at a monthly rate of 38 percent in the last six months of 2004. The number of new phishing websites has climbed 24 percent per month since last fall. And phishing attacks are increasingly sophisticated. Early phishing attacks were by novices, but there is now evidence that some attacks are backed by organized crime. Some of the attacks these days also include key-loggerware, a type of software that is secretly installed on the victim's computer to surreptitiously capture account information when the victim visits legitimate websites.

In addition, the Internet faces the threat of "pharming." This insidious crime does not rely on email bait. Rather, it attacks web browsers and the Internet's addressing system. The effect is that even individuals who type a familiar Internet destination into their web browser may be redirected to a different website with some disastrous result as clicking on the phony link in a phishing attack.

Some phishers and pharmers can be prosecuted under wire fraud or identity theft statutes, but often these prosecutions take place after someone has been defrauded. For most of these criminals, that leaves plenty of time to cover their tracks. It has been reported that the average phishing website is active on the Internet for less than six days. Moreover, the mere threat of these attacks undermines everyone's confidence in the Internet. When people cannot trust that websites are what they appear to be, they will not use the Internet for their secure transactions. Traditional wire fraud and identity theft statutes are not sufficient to respond to phishing and pharming.

The Anti-Phishing Act of 2005 protects the integrity of the Internet in two ways. First, it criminalizes the act. It makes it illegal to knowingly send out spoofed email that links to sham websites with the intention of committing a crime. Second, it criminalizes the sham websites that are the true scene of both types of crime.

There are, of course, important First Amendment concerns to be protected. The Anti-Phishing Act protects parody and political speech from being prosecuted as Phishing. We have worked closely with various public interest organizations to ensure that the Anti-Phishing Act does not impinge on the important democratic role that the Internet plays.

To many Americans, phishing and pharming are new words. They are certainly a new form of an old crime. They are also very serious, and we need to act aggressively to keep them from eroding the public's trust in online commerce and communication. I look forward to working with others in the Senate in addressing this growing threat to the Internet with effective and responsible action.
The bill offers allied health education, practice, and retention grants. Education grants will be used to expand the enrollment in allied health education programs by underrepresented racial and ethnic minority students, and provide educational opportunities through new technologies and methods, including distance-learning. Practice grants are intended to establish or expand allied health practice arrangements in non-institutional settings to demonstrate methods that will improve access to primary health care in rural areas and other medically underserved communities. Retention grants are intended to promote career advancement for allied health personnel.

Grants will also be made available to health care facilities to enable them to
ASAHP, founded in 1967, has a membership that includes 108 institutions of higher learning throughout the United States, as well as several hundred individual members. ASAHP publishes a quarterly journal and also conducts an annual survey of member institutions. The annual survey, called the "Institutional Profile Survey," is used for, among other purposes, collecting student application and enrollment data. These data substantiate that there is a pressing need to address existing allied health personnel shortages, which have been further exacerbated by declines in enrollment that have occurred for 4 straight years.

In the survey conducted during the period September-November 2004 for the 2004-2005 class starting in fall 2004, the results from 90 academic institutions indicate that in 16 of the 20 professions studied, available classroom seats were not filled. For example, only 33 percent of enrollment capacity was reached for respiratory therapy and rehabilitation programs in these schools. Given the emphasis on increasing the use of information technology in health care such as conversion to electronic patient records, that figure is disturbingly low.

Similarly, the survey shows that enrollment levels were low in the following professions: rehabilitation counseling, 44 percent, emergency medical sciences, 66 percent, cytotechnology, 69 percent, and medical technology, 69 percent. Workforce shortages already exist in the two laboratory professions and emergency medical personnel will play a key role as first responders in dealing with any bioterrorism incident that might occur.

Using data from the Institutional Profile Survey, as well as the General Accounting Office, U.S. Census Bureau, and other sources, ASAHP has compiled what I believe to be a compelling rationale to the Health Reinvestment Act that Senators Bingaman, Lieberman, and I introduce today. I ask unanimous consent that the text of this Rationale for an Allied Health Reinvestment Act from the Association of Schools of Allied Health Professions be printed in the RECORD.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

**Rationale For An Allied Health Reinvestment Act**

Led by the Association of Schools of Allied Health Professions, a Washington DC-based organization with 108 colleges and universities as members, a coalition of 30 national organizations supports the enactment of an Allied Health Reinvestment Act.

The well-being of the U.S. population depends to a considerable extent on having access to high quality health care, which requires the supply of a competent and necessary staff to test clinical and environmental samples in order to identify an epidemiologic imperatives are the driving forces behind the need to have such legislation enacted.

**The Workforce Imperative**

Many allied health professions are characterized by existing workforces, declining enrollments in academic institutions, or a combination of both factors. Hospital officials have reported vacancy rates of 10 percent among radiologists and 10 percent among laboratory technologists, plus they indicated more difficulty in recruiting these same professionals than two years prior.

Fetch, a leading global rating agency that provides the world's credit markets with credit opinions, indicates that labor expenses due to personnel shortages continue to plague hospitals and is the biggest financial concern for that sector because it typically costs upwards to twice normal equivalent wages to fill gaps with temporary agency help.

The Bureau of Labor Statistics (BLS) projects that in the period 1998-2008, a total of 93,000 positions in clinical laboratory science need to be provided in the form of creating 53,000 new jobs and filling 40,000 existing vacancies. Of the 9,000 openings per year, academic institutions are producing only 4,000 graduates. The projections in 2004 show that nine of the 10 fastest growing occupations are healthcare and computer (information technology) occupations.

Established respiratory therapy programs in 2000 graduated 5,512 students—21% fewer than the 6,692 graduates in 1999. In 2001, the number of graduates from these schools fell another 20% to 4,472. The BLS expects employment of respiratory therapists to increase faster than the average of all occupations, increasing from 21% to 35% through 2012. The aging population and attendant rise in the incidence of respiratory ailments, including asthma and COPD, and cardiopulmonary diseases drive this demand.

Employment growth in schools will result from expansion of the school-age population and extended services for disabled students. Therapists will be needed to help children with disabilities prepare to enter special education programs.

The American Hospital Association has identified declining enrollment and other factors as a factor leading to critical shortages of health care professionals. That assessment is buttressed by the findings of the National Association of Schools of Allied Health Professions. The following professions were unable to reach enrollment capacity over a three-year period: cardiovascular perfusion technology, cytotechnology, dietetics, emergency medical sciences, health administration, health information management, medical technology, occupational therapy, rehabilitation counseling, respiratory therapy, and respiratory therapy technician.

Given the level of anxiety over the possibility of terrorist acts occurring in this country, in a study released by the General Accounting Office (GAO) on April 8, 2005 that focused on the nation's adequacy of preparedness against bioterrorism, was reported that shortages in clinical laboratory personnel exist in state and local public health departments, laboratories, and hospitals. Moreover, there is a major concern that is difficult to remedy. Laboratories play a critical role in the detection and diagnosis of illnesses resulting from exposure to either biological or chemical agents. No therapy or prophylaxis can be initiated without laboratory identification and confirmation of the agent in question. Laboratory needs newly trained and necessary staff to test clinical and environmental samples in order to identify an
agent promptly so that proper treatment can be started and infectious diseases prevented from spreading.

Meanwhile, the U.S. population continues to become older and ethnically diverse. A health care workforce is needed that better reflects the population they serve. Practitioners must become more attuned to cultural differences in order to enhance the communication and enhance health care quality.

THE DEMOGRAPHIC IMPERATIVE

The U.S. Census Bureau reports that rapid growth in the population age 65 and over began in 2011 when the first of the baby-boom generation reaches age 65 and will continue for many years. The larger proportions of the population age group of 65 and over will result in part from sustained low fertility levels and from relatively larger declines in mortality at older ages in the latter part of the 20th century. From 1960 to 2000, the proportion of persons 65 and over went from 4.1 percent to 12.4 percent. In the 21st century, the total population more than tripled, while the 65 years and older population grew more than tenfold, from 3.1 million in 1900 to 35.0 million in 2000. Among the older population, the cohort of 85 years and over increased from 122,000 in 1900 to 4.2 million in 2000. Since 1940, this age group increased at a more rapid rate than 65- to 74-year-olds and 75- to 84-year-olds in the past decade. As a proportion of the older population, the 85 and over group went from being four percent of the older population to 12 percent in 2000 and 2041.

THE EPIDEMIOLOGICAL IMPERATIVE

The baby-boom generation’s movement into middle age, a period when the incidence of heart attack and stroke increases, will produce a higher demand for therapeutic services. Medical advances now enable more patients with critical problems to survive. These patients may need extensive therapy. According to Solucient, a major provider of information for health care providers, profound demographic shifts over the next twenty-five years will result in significant increases in the demand for inpatient acute care services if current utilization patterns do not change. An aging baby-boom generation, increasing life expectancy, rising fertility rates and improved maternal and infant health undoubtedly increase the volume of inpatient hospitalizations and significantly increase the mix of acute care services required by patients who enter an acute care setting. Nationally, demographic changes alone could result in a 46 percent increase in acute care bed demand by 2027. Total acute care admissions could also increase by almost 13 million cases in the next quarter-century—a growth of 41 percent from the current number of national admissions. Currently, the aged have an acute care bed rate for about 40 percent of inpatient admissions and about 49 percent of beds. By 2027, they could make up a majority of acute care services—51 percent of admissions and 59 percent of beds.

Along with the aging of the population came an increase in the number of Americans age 65 and older, and often more one, chronic condition. Today, it is estimated that 123 million Americans live with a chronic condition, and by 2020 as the population ages, that number will increase to an estimated 157 million, with 81 million of them having two or more chronic conditions. Twenty-five percent of patients with chronic conditions have more than one chronic condition, and 10 percent have some type of severity limitations. Two-thirds of Medicare spending is for beneficiaries with five or more chronic conditions.

Medical care for chronic conditions relies on family caregivers. Approximately nine million Americans provide such services, and on the average, they spend 24 hours a week doing so. Caregivers age 65-74 provide an average of 30.7 hours of care per week and individuals age 75 and older provide an average of 34.5 hours per week.

Women are more likely than men to have chronic conditions, in part because they have longer life expectancies. These same women also have longer working lives. In training, much emphasis is placed on curative forms of care, additional efforts must be devoted to slowing the progression of disease and its effects.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, SECTION 1. SHORT TITLE. This Act may be cited as the “Allied Health Reinvestment Act.”

SEC. 2. FINDINGS AND PURPOSE.

(a) Findings.—Congress makes the following findings:

(1) The United States Census Bureau and other reports highlight the increased demand for acute and chronic healthcare services among both the general population and a rapidly growing aging portion of the population.

(2) The calls for reduction in medical errors, increased patient safety, and quality of care have resulted in an amplified call for allied health professionals to provide healthcare services.

(3) Several allied health professions are characterized by workforce shortages, declining enrollments in allied health education programs, or a combination of both factors, and hospital officials have reported vacancy rates in positions occupied by allied health professionals.

(4) Many health education programs are facing significant economic pressure that could force their closure due to an insufficient number of students.

(b) Purpose.—The purpose of this Act to provide incentives for individuals to seek and complete high quality allied health education and training and provide additional funding to ensure that such education and training can be provided to allied health students so that the United States healthcare industry with have a supply of allied health professionals needed to support the health care system of the United States in this decade and beyond.

SEC. 3. AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT.

Title VII of the Public Health Service Act (42 U.S.C. 292 et seq.) is amended by adding at the end the following:

PART G—ALLIED HEALTH PROFESSIONALS

SEC. 790C. DEFINITIONS.

‘‘In this part:

(1) ALLIED HEALTH EDUCATION PROGRAM.— The term ‘allied health education program’ means any preservice educational program offered by an institution accredited by an agency or commission recognized by the Department of Education, or leading to a State certificate or license or any other educational program approved by the Secretary. Such term includes colleges, universities, or schools of allied health and equivalent entities that include programs leading to a certificate, associate, baccalaureate, or graduate level degree in an allied health profession.

(2) ALLIED HEALTH PROFESSIONS.—The term ‘allied health professions’ includes professions in the following areas at the certificate, associate, baccalaureate, or graduate level:

(A) Dental hygiene.

(B) Dietetics or nutrition.

(C) Emergency medical services.

(D) Health information management.

(E) Clinical laboratory sciences and medical technology.

(F) Cytotechnology.

(G) Occupational therapy.

(H) Physical therapy.

(I) Radiologic technology.

(J) Nuclear medical technology.

(K) Rehabilitation counseling.

(L) Respiratory therapy.

(M) Speech-language pathology and audiology.

(N) Any other profession determined appropriate by the Secretary.

(3) HEALTH FACILITY.—The term ‘health facility’ means a facility that provides health care at a community level, rural health clinic, public health clinic, or any similar healthcare facility or practice that employs allied health professionals.

SEC. 790C–1. PUBLIC SERVICE ANNOUNCEMENTS.

The Secretary shall develop and issue public service announcements that shall—

(1) advertise and promote the allied health professions;

(2) highlight the advantages and rewards of the allied health professions; and

(3) encourage individuals from disadvantaged communities and backgrounds to enter the allied health professions.

SEC. 790C–2. STATE AND LOCAL PUBLIC SERVICE ANNOUNCEMENTS.

(a) IN GENERAL.—The Secretary shall award grants to designated eligible entities to support State and local advertising campaigns that are congruent with the public service announcements issued by the Department of Education, or leading to a State certificate or license or any other educational program approved by the Secretary.

(b) ELIGIBLE ENTITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a professional, national, or State allied health association, State health care provider, or association of one or more health care facilities, or a professional, national, or State health care provider, or association of one or more health care facilities (including a hospital, nursing home, home health care agency, hospice, federally qualified health center, nurse managed health center, rural health clinic, public health clinic, or any similar healthcare facility or practice that employs allied health professionals);

(2) be a professional, national, or State allied health association, State health care provider, or association of one or more health care facilities, or a professional, national, or State health care provider, or association of one or more health care facilities (including a hospital, nursing home, home health care agency, hospice, federally qualified health center, nurse managed health center, rural health clinic, public health clinic, or any similar healthcare facility or practice that employs allied health professionals).

SEC. 790C–3. ALLIED HEALTH RECRUITMENT GRANT PROGRAM.

(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to eligible entities to increase allied health professions education opportunities.

(b) ELIGIBLE ENTITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be a professional, national, or State allied health association, State health care provider, or association of one or more health care facilities, or a professional, national, or State health care provider, or association of one or more health care facilities (including a hospital, nursing home, home health care agency, hospice, federally qualified health center, nurse managed health center, rural health clinic, public health clinic, or any similar healthcare facility or practice that employs allied health professionals)
(1) support outreach programs at elementary and secondary schools that inform guidance counselors and students of education opportunities regarding the allied health professions;

(2) carry out special projects to increase allied health education opportunities for individuals who are from disadvantaged backgrounds (including racial and ethnic minorities that are underrepresented among the allied health professions) by providing student scholarships or stipends, pre-entry preparation, and retention activities;

(3) provide assistance to public and nonprofit private educational institutions to support remedial education programs for allied health students who require assistance with math, science, English, and medical terminology;

(4) meet the costs of child care and transportation for individuals who are taking part in an allied health education program at any level; and

(5) support community-based partnerships seeking to recruit allied health professionals in rural communities and medically underserved urban communities, and other communities experiencing an allied health professions shortage.

SEC. 790C–4. GRANTS FOR HEALTH CARE ACADEMIES.

(a) IN GENERAL.—The Secretary shall award grants to eligible entities to assist such entities in collaborating to carry out programs that form education pipelines to communities experiencing an allied health education opportunities for individuals who are taking part in an allied health education program at any level; and

(b) ELIGIBLE ENTITY.—To be eligible to receive a grant under subsection (a), an entity shall—

(1) be an institution that offers allied health education programs, a health care facility, or a secondary educational institution; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

SEC. 790C–5. ALLIED HEALTH EDUCATION, PRACTICE, AND RETENTION GRANTS.

(a) EDUCATION PRIORITY AREAS.—The Secretary may award grants to or enter into contracts with eligible entities to—

(1) expand the enrollment of individuals in allied health education programs, especially underrepresented racial and ethnic minority students; and

(2) provide education through new technologies and methods, including distance-learning methodologies.

(b) PRACTICE PRIORITY AREAS.—The Secretary may award grants to or enter into contracts with eligible entities to—

(1) establish or expand allied health practice arrangements in noninstitutional settings to demonstrate methods to improve access to primary health care in rural areas and other medically underserved communities;

(2) provide care for underserved populations and other high-risk groups such as the elderly with HIV/AIDS, substance abusers, the homeless, and victims of domestic violence;

(3) provide managed care, information management, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; or

(4) develop generational and cultural competencies among allied health professionals.

(c) RETENTION PRIORITY AREAS.—

(1) IN GENERAL.—The Secretary may award grants to and enter into contracts with eligible entities to enhance the allied health professions workforce by initiating and maintaining allied health retention programs described in paragraph (2) or (3).

(2) GRANTS FOR CAREER LADDER PROGRAMS.—The Secretary shall award grants to and enter into contracts with eligible entities for programs—

(A) to promote career advancement for allied health personnel in a variety of training settings, cross training or specialty training among diverse population groups, and the advancement of individuals; and

(B) to assist individuals in obtaining the education and training required to enter the allied health professions and advance within such professions, such as by providing career counseling and mentoring.

(3) ENHANCING PATIENT CARE DELIVERY SYSTEMS.—

(A) GRANTS.—The Secretary may award grants to eligible entities to improve the retention of allied health professionals and to enhance patient care that is directly related to allied health activities by enhancing collaboration and communication among allied health professionals and other health care professionals, and by promoting allied health involvement in the organizational and clinical decision-making processes of a health care facility.

(B) PREFERENCE.—In making awards under this section, the Secretary shall give preferences to applicants that have not previously received an award under this paragraph and to applicants from rural, underserved areas.

(C) CONTINUATION OF AN AWARD.—The Secretary shall make continuation of any award under this paragraph contingent on the recipient of such award demonstrating to the Secretary measurable and substantive improvement in allied health personnel retention or patient care.

(d) ELIGIBLE ENTITY.—To be eligible to receive a grant under this section, an entity shall—

(1) be a health care facility, or any part-time course of study or, at the discretion of the Secretary, a part-time course of study and containing such information as the Secretary may require.

SEC. 790C–6. DEVELOPING MODELS AND BEST PRACTICES PROGRAM.

(a) AUTHORIZED.—The Secretary shall award grants to eligible entities to enable such entities to carry out demonstration programs using models and best practices in allied health for the purpose of developing innovative strategies or approaches for the retention of allied health professionals.

(b) ELIGIBLE ENTITY.—To be eligible to receive a grant under this section, an entity shall—

(1) be a health care facility, or any partnership or coalition containing a health care facility or allied health education program; and

(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

SEC. 790C–7. ALLIED HEALTH FACULTY LOAN PROGRAM.

(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with any institution offering an eligible allied health education program for the establishment and operation of an allied health loan fund in accordance with this section (referred to in this section as the ‘‘loan fund’’), to increase the number of qualified allied health faculty.

(b) AMENDMENTS.—Each agreement entered into under this section shall—

(1) provide for the establishment of a loan fund by the institution offering the allied health education program involved;

(2) provide for deposit in the loan fund of—

(A) the Federal capital contributions to the fund;

(B) an amount provided by the institution involved which shall be equal to not less than the amount of Federal capital contributions made to the loan fund by the institution; and

(C) any collections of principal and interest on loans made from the fund; and

(3) contain such other provisions determined appropriate by the Secretary to protect the financial interests of the United States.

(c) DISTRIBUTION OF GRANTS.—In awarding grants under this section, the Secretary shall ensure that grantees represent a variety of geographic regions and a range of different sizes of facilities located in rural, urban, and suburban areas.

(d) USE OF FUNDS.—An entity shall use amounts received under a grant under this section to carry out demonstration programs of models and best practices in allied health for the purpose of—

(1) promoting retention and satisfaction of allied health professionals;

(2) promoting opportunities for allied health professionals to engage in continuing education, career advancement, and organizational recognition; and

(3) developing continuing education programs that instruct allied health professionals in how to use emerging medical technologies and how to address current and future health care needs.

(e) AREA HEALTH EDUCATION CENTERS.—The Secretary shall award grants to area health education centers to enable such centers to enter into contracts with allied health education programs to expand the operation of area health education centers to work in communities to develop models of expansion for allied health professionals or to expand any junior and senior high school mentoring programs to include an allied health professions mentoring program.

SEC. 790C–8. ALLIED HEALTH CAREER ACADEMIES.

(a) ESTABLISHMENT.—The Secretary may determine, except that—

(1) in the case of any individual, the total amount provided for such individual shall not exceed—

(A) in the case of an individual attending a full-time course of study or, at the discretion of the Secretary, a part-time course of study in an advanced degree program; and

(B) an amount provided by the institution involved which shall be equal to not less than the amount of Federal capital contributions made to the loan fund by the institution; and

(c) contain such other provisions determined appropriate by the Secretary to protect the financial interests of the United States.

(b) LOAN PROVISIONS.—Loans from any faculty loan fund established pursuant to an agreement under this section shall be made to an individual on such terms and conditions as the Secretary may determine, except that—

(1) such terms and conditions are subject to any conditions, limitations, and requirements prescribed by the Secretary in the allied health education program may determine, except that—

(2) in the case of any individual, the total of the loans for any academic year made by
an allied health education program from loan funds established pursuant to agreements under this section may not exceed $30,000, plus any amount determined by the Secretary on an annual basis to reflect inflation;

"(3) upon completion by the individual of each of the first, second, and third year of full-time employment, as required under the loan agreement, as a faculty member in an allied health education program, the program shall cancel 20 percent of the principal and interest due on the amount of the unpaid portion of the loan on the first day of such employment;

"(4) upon completion by the individual of the fourth year of full-time employment, as required under the loan agreement, as a faculty member in an allied health education program, the program shall cancel 25 percent of the principal and interest due on the amount of the unpaid portion of the loan on the first day of such employment;

"(5) provided the cost of tuition, fees, books, laboratory expenses, and other reasonable education expenses;

"(6) the loan shall be repayable in equal or graduated periodic installments (with the right of the borrower to accelerate repayment) over the 10-year period that begins 9 months after the individual ceases to pursue a course of study in an allied health education program, and

"(7) such loan shall—

"(A) be entered into by the facility on the date that is 3 months after the individual ceases to pursue a course of study in an allied health education program, bear interest on the unpaid balance of the loan at the rate of 3 percent per year; or

"(B) subject to subsection (e), if the allied health education program determines that the individual agrees to serve as an allied health professional at a health care facility with a critical shortage of allied health professionals for a period of full-time service of not less than 2 years or for a period of part-time service in accordance with subparagraph (B).

"(B) subject to subsection (e), if the allied health education program determines that the individual agrees to serve as an allied health professional at a health care facility with a critical shortage of allied health professionals for a period of full-time service of not less than 2 years or for a period of part-time service in accordance with subparagraph (B).

"(2) PART-TIME SERVICE.—An individual may enter into a service described in subparagraph (A) on a part-time basis if the individual has a written agreement that—

"(1) is entered into by the facility and the individual and is approved by the Secretary;

"(2) provides that the period of obligated service will be extended so that the aggregate amount of service performed will equal the amount of service that would be performed through a period of full-time service of not less than 2 years;

"(d) REPORTS.—Not later than 18 months after the date of enactment of this part, and annually thereafter, the Secretary shall prepare and submit to the appropriate committees of Congress a report describing the program carried out under this section, including statements regarding—

"(1) the number of enrollees by specialty or discipline, scholarships, and grant recipients;

"(2) the number of graduates;

"(3) the amount of scholarship payments made;

"(4) which educational institution the recipients attended;

"(5) the name and placement location of the scholarship recipients at health care facilities with a critical shortage of allied health professionals;

"(6) the default rate and actions required;

"(7) the amount of outstanding default funds of the scholarship program;

"(8) to the extent that it can be determined, the reasons for the default;

"(9) the demographics of the individuals participating in the scholarship program; and

"(10) an evaluation of the overall costs and benefits of the program.

"SEC. 799C–9. GRANTS FOR CLINICAL EDUCATION, INTERNSHIP, AND RESIDENCY PROGRAMS.

"(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to eligible entities to develop clinical education, internship, and residency programs that encourage mentoring and the development of specialties.

"(b) ELIGIBLE ENTITIES.—To be eligible for a grant under this section an entity shall—

"(1) be a partnership of an allied health education program and a health care facility;

"(2) prepare and submit to the Secretary an application at such time and in such manner, and containing such information as the Secretary may require.

"(c) USE OF FUNDS.—An eligible entity shall use amounts received under a grant under this section to—

"(1) develop clinical education, internship, and residency programs and curriculum and training programs for graduates of an allied health education program;

"(2) provide support for faculty and mentors;

"(3) provide support for allied health professionals participating in clinical education, internship, and residency programs;

"SEC. 799C–10. GRANTS FOR PARTNERSHIPS.

"(a) IN GENERAL.—The Secretary shall award grants to eligible entities to establish or continue programs to provide clinical education, internship, and residency programs for graduates of allied health education programs and prepare and submit to the Secretary an application at such time and in such manner, and containing such information as the Secretary may require.

"(b) ELIGIBLE ENTITY.—To be eligible to receive a grant under this section, an entity shall—

"(1) be a partnership between an allied health education program and a health care facility; and

"(2) prepare and submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require.

"(c) USE OF FUNDS.—An eligible entity shall use amounts received under a grant under this section to—

"(1) provide employees of the health care facility that is a member of the partnership involved in advanced clinical education in an allied health education program;

"(2) establish or expand allied health practice arrangements in non-institutional settings that demonstrate methods to improve access to health care in rural and other medically underserved communities;

"(3) purchase distance learning technology to extend general clinical education, internship, and residency programs to rural areas, and to extend specialty education and training programs to all areas; and

"(4) establish or expand mentoring, clinical education, and internship programs for training in specialty care areas.

"SEC. 799C–11. ALLIED HEALTH PROFESSIONS TRAINING FOR DIVERSITY.

"The Secretary, acting in conjunction with allied health professional associations, shall develop a system for collecting and analyzing allied health workforce data gathered by the Bureau of Health Professions in the Department of Health and Human Services, the Health Resources and Services Administration, the National Institutes of Health, the Veterans Affairs, and Medicaid Services, the Department of Defense, allied health professional associations, and regional centers for health workforce studies to determine educational pipeline and practitioner shortages, and project future needs for such a workforce.

"SEC. 799C–12. ALLIED HEALTH PROFESSIONS TRAINING FUND.

"The Secretary shall include schools of allied health among the health professions schools that are eligible to receive grants under this part for the purpose of assisting such schools in supporting Centers of Excel- lence in health professions education for under-represented minority individuals.

"SEC. 799C–13. REPORTS BY GENERAL ACCOUNTING OFFICE.

"Not later than 4 years after the date of enactment of this part, the Comptroller General of the United States shall conduct an evaluation of whether the programs carried out under this part have demonstrably increased the number of applicants to allied health education programs and prepare and submit to the appropriate committees of Congress a report concerning the results of such evaluation.

"SEC. 799C–8. SCHOLARSHIP PROGRAM FOR SERVICE IN RURAL AND OTHER MEDICALLY UNDERSERVED AREAS.

"(a) PROGRAM AUTHORIZED.—The Secretary shall establish a scholarship program (referred to in this section as the ‘program’) to provide scholarships to individuals seeking allied health education who agree to provide service in rural and other medically underserved areas with allied health personnel shortages.

"(b) PREFERENCE.—In awarding scholarships under this section, the Secretary shall give preference to—

"(1) applicants who demonstrate the greatest financial need;

"(2) applicants who agree to serve in health care facilities experiencing critical health shortages in rural and other medically underserved areas;

"(3) applicants who are currently working in a health care facility who agree to serve the period of obligated service at such facility;

"(4) minority applicants; and

"(5) an interest in a practice area of allied health that has unmet needs.
SENATE RESOLUTION 68—DESIGNATING MARCH 2, 2005, AS “READ ACROSS AMERICA DAY”

...
PRIVILEGE OF THE FLOOR
Mr. LEAHY. Mr. President, I ask, on behalf of Senator BAUCUS, unanimous consent that Brian Townsend, a detailee from the IRS, be permitted to remain in the room during the consideration of S. 256, including all votes.
The PRESIDENT pro tempore. Without objection, it is so ordered.

EXTENSION LIVING WELL WEEK
Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of S. Res. 67, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk reads as follows:

A resolution (S. Res. 67) designating the second week in March 2005 as “Extension Living Well Week”.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 67) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 67

Whereas the health and well-being of the family is crucial to the functioning of the Nation, including the health and well-being of its youth, with the necessary skills and knowledge to help them achieve the best quality of life possible;

Whereas psychologically, socially, and emotionally strong families provide strength for future generations;

Whereas Extension is a nationwide educational network through the land-grant universities, funded cooperatively through the Department of Agriculture, State governments, and local county, city, and parish governments;

Whereas Extension provides non-biased, research-based information to governmental officials, youth, family, farms, businesses, and communities;

Whereas Extension education programs are developed at the grassroots level to meet local needs and are available in nearly every county and parish in the United States and its territories, from the biggest to the smallest;

Whereas information offered by Extension is provided by scientists and researchers at land-grant universities, and is made practical and relevant by Extension educators working at the local level;

Whereas Extension Family and Consumer Sciences educators are advocates for education, youth, and agriculture, and the United States must remain competitive in the global economy;

Whereas Congress, through the No Child Left Behind Act of 2001 (Public Law 107–110) and the Reading First, Early Reading First, and Improving Literacy Through School Libraries programs, has placed great emphasis on reading intervention and providing additional resources for reading assistance; and

Whereas Congress and the National Education Association, among others concerned about reading and education have joined with the National Extension Association to use March 2, the anniversary of Dr. Seuss, to celebrate reading and the birthday of the birth of Theodor Geisel, also known as Dr. Seuss, to celebrate reading; Now, therefore,

Resolved, That the Senate—

(1) designates March 2, 2005, as “Read Across America Day”; and

(2) honors Theodor Geisel, also known as Dr. Seuss, for his success in encouraging children to discover the joy of reading;

(3) encourages parents to read with their children for at least 30 minutes on Read Across America Day in honor of Dr. Seuss in celebration of reading; and

(4) encourages the people of the United States to observe the day with appropriate ceremonies and activities.

ORDERS FOR TUESDAY, MARCH 1, 2005
Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate adjourns today, it adjourn until 9:45 a.m. on Tuesday, March 1, 2005.

NOMINATIONS
Executive nominations received by the Senate February 28, 2005:

DEPARTMENT OF THE TREASURY
John C. Dugan, of Maryland, to be Comptroller of the Currency for a term of five years, Vice John D. Rauke, Jr., resigned.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
William C. Good, of North Carolina, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority, to succeed resignee Tom W. Washington, for a term of five years, Vice John Paul Hamm, resigned.

CONSUMER PRODUCT SAFETY COMMISSION
Nancy Ann Nored, of the District of Columbia, to be a Member of the Consumer Product Safety Commission for the remainder of the term expiring May 30, 2013, Vice John Paul Hamm, resigned.

Mr. FRIST. Mr. President, the Senate will resume consideration of the bankruptcy reform bill. We were able to accommodate several opening statements on the bill, and I hope that we can make real progress in the amendment process. We anticipate that amendments will be offered prior to the policy luncheon recess. However, as I mentioned earlier today, I do not anticipate a vote on any amendment until after the policy luncheon recess. Again, I encourage all Members who may have amendments to the bill to come forward today.

The PRESIDING OFFICER. The minority leader.

Mr. REID. Mr. President, at approximately 11 o’clock tomorrow, when we finish the business of the other Senator DURBIN will be here to offer the first amendment. We have had good opening statements by the two managers of the bill, I do not know if Senator HATCH will be here to offer the first amendment. We can and move forward, Senator DURBIN’s amendment will be one relative to bankruptcy.

Mr. FRIST. Mr. President, in terms of scheduling the vote—again, we will have more information on that tomorrow—again, it will be after the policy luncheon on the first amendment.

ADJOURNMENT UNTIL 9:45 A.M. TOMORROW
Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 4:37 p.m., adjourned until Tuesday, March 1, 2005, at 9:45 a.m.
The following named officer to serve as the Director, Office of Management and Budget, Vice Chairman, Office of Federal Financial Management, Office of Management and Budget, Vicksburg, Mississippi:

Linda Morison Combs, of North Carolina, to be a Member of the Board of Directors of the Office of Federal Financial Management, Office of Management and Budget, Vicksburg, Mississippi, for a term of seven years from October 1, 2005, without compensation.

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 531:

To be rear admiral

Jeffrey Clay, of Texas, to be Deputy Secretary of Energy, vice Kyle E. Moshier, treasurer.

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 531:

To be rear admiral

To be captain

The following named officer for appointment in the United States Army to the grade indicated under title 10, U.S.C., section 531:

To be major general

The following named officer for appointment in the United States Marine Corps Reserve to the grade indicated under title 10, U.S.C., section 531:

To be brigadier general

The following named officer for appointment in the United States Marine Corps to the grade indicated under title 10, U.S.C., section 531:

To be brigadier general

The following named student for regular appointment to the grade indicated in the United States Army Medical Corps under title 10, U.S.C., sections 268c and 268k:

To be colonel

The following named officer for appointment to the grade indicated in the United States Army Medical Corps under title 10, U.S.C., section 531:

To be lieutenant commander

The following named officer for appointment to the grade indicated in the United States Army Medical Corps under title 10, U.S.C., sections 268c and 268k:

To be captain

The following named student for regular appointment to the grade indicated in the United States Navy under title 10, U.S.C., sections 268c and 268k:

To be captain
SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the procedures of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, March 1, 2005 may be found in the Daily Digest of today’s RECORD.

MEETINGS SCHEDULED

MARCH 2
9 a.m.
Foreign Relations
To hold an oversight hearing to examine foreign assistance.
SD–419
9:30 a.m.
Environment and Public Works
Business meeting to consider S. 131, to amend the Clean Air Act to reduce air pollution through expansion of cap and tradewith option to provide an alternative regulatory classification for units subject to the cap and trade program.
SD–406
Appropriations
Labor, Health and Human Services, and Education Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2006 for the Department of Education.
SD–124
10 a.m.
Appropriations
Defense Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2006 for the defense budget.
SD–192
Energy and Natural Resources
To hold hearings to examine the President’s proposed budget request for fiscal year 2006 for the Forest Service.
SD–366
10:30 a.m.
Appropriations
Homeland Security Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2006 for states citizenship and immigration services; customs and border protection; immigration and customs enforcement.
SD–125

MARCH 3
4:30 p.m.
Armed Services
To receive a closed briefing regarding Department of Defense human intelligence activities.
S–407, Capitol

9:30 a.m.
Armed Services
To resume hearings to examine the proposed Defense Authorization Request for Fiscal Year 2006 and the Future Years Defense Program.
SH–216
Foreign Relations
Business meeting to consider an original resolution entitled Foreign Relations Authorization Act, fiscal years 2006 and 2007, to authorize appropriations for the State Department and international broadcasting activities for fiscal years 2006 and 2007, for foreign assistance programs for fiscal years 2006 and 2007.
SD–419
Appropriations
Interior Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2006 for the U.S. Forest Service.
SD–124
Judiciary
Business meeting to consider pending calendar business.
SD–226
Appropriations
VA, HUD, and Independent Agencies Subcommittee
To hold hearings to examine proposed budget estimates for fiscal year 2006 for the Department of Veterans Affairs.
SD–138
10 a.m.
Banking, Housing, and Urban Affairs
To hold oversight hearings to examine the Terrorism Risk Insurance Program.
SD–538
Energy and Natural Resources
To hold hearings to examine the President’s proposed budget request for fiscal year 2006 for the Department of Energy.
SD–366
Health, Education, Labor, and Pensions
To hold hearings to examine ensuring drug safety.
SD–106
2:30 p.m.
Judiciary
To hold hearings to examine the nominations of Terrence W. Boyle, of North Carolina, to be United States Circuit Judge for the Fourth Circuit, James C. Dever III, to be United States District Judge for the Eastern District of North Carolina, and Robert J. Conrad, Jr., to be United States District Judge for the Western District of North Carolina.
SD–226
Aging
To hold hearings to examine implementation of the Medicare Modernization Act regarding delivering prescription drugs to dual eligibles.
SD–628

MARCH 4

MARCH 8
9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2006.
SH–216
Rules and Administration
To hold hearings to examine S. 271, to amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees.
SR–301
10 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings to examine the reauthorization of the Commodity Futures Trading Commission.
SD–106
Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to examine S. 179, to provide for the exchange of land within the Sierra National Forest, California, S. 213, to direct the Secretary of the Interior to convey certain Federal land to Rio Arriba County, New Mexico, S. 267, to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and S. 385, to authorize the Secretary of the Interior to recruit volunteers to assist with or facilitate the activities of various agencies and offices of the Department of the Interior.
SD–366

MARCH 9
10 a.m.
Veterans’ Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the Disabled American Veterans.
345 CHOB

MARCH 10
10 a.m.
Veterans’ Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the Veterans of Foreign Wars.
SH–216
10 a.m.
Veterans’ Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Blinded Veterans Association, the Non-Commissioned Officers Association, the Military Order of the Purple Heart, the Paralyzed Veterans of America and the Jewish War Veterans.
345 CHOB

● This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.
MARCH 15
9:30 a.m.
Armed Services
To resume hearings to examine military strategy and operational requirements from combatant commanders in review of the Defense Authorization Request for fiscal year 2006.
SD-106

MARCH 17
9:30 a.m.
Armed Services
To hold hearings to examine current and future worldwide threats to the national security of the United States; to be followed by a closed hearing in SH-219.
SD-106

APRIL 14
10 a.m.
Veterans’ Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Military Officers Association of America, the National Association of State Director of Veterans Affairs, AMVETS, the American Ex-Prisoners of War, and Vietnam Veterans of America.
345 CHOB

APRIL 21
10 a.m.
Veterans’ Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Fleet Reserve Association, the Air Force Sergeants Association, the Retired Enlisted Association, and the Gold Star Wives of America.
345 CHOB

SEPTEMBER 20
10 a.m.
Veterans’ Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the American Legion.
345 CHOB
Monday, February 28, 2005

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S1725–S1812

Measures Introduced: Eight bills and two resolutions were introduced, as follows: S. 468–475, and S. Res. 67–68.

Measures Reported:

  Reported on Wednesday, February 23, during the adjournment:
  
  S. 47, to provide for the exchange of certain Federal land in the Santa Fe National Forest and certain non-Federal land in the Pecos National Historical Park in the State of New Mexico. (S. Rept. No. 109–7)

  S. 74, to designate a portion of the White Salmon River as a component of the National Wild and Scenic Rivers System. (S. Rept. No. 109–8)

  S. 153, to direct the Secretary of the Interior to conduct a resource study of the Rim of the Valley Corridor in the State of California to evaluate alternatives for protecting the resources of the Corridor. (S. Rept. No. 109–9)

  S. 212, to amend the Valles Caldera Preservation Act to improve the preservation of the Valles Caldera. (S. Rept. No. 109–10)

  S. 225, to direct the Secretary of the Interior to undertake a program to reduce the risks from and mitigate the effects of avalanches on recreational users of public land, with an amendment in the nature of a substitute. (S. Rept. No. 109–11)

  S. 254, to direct the Secretary of the Interior to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (S. Rept. No. 109–12)

  Reported on Monday, February 28:

  S. 156, to designate the Ojito Wilderness Study Area as wilderness, to take certain land into trust for the Pueblo of Zia, with amendments. (S. Rept. No. 109–13)

Measures Passed

Extension Living Well Week: Senate agreed to S. Res. 67, designating the second week of March 2005 as “Extension Living Well Week”.

Read Across America Day: Senate agreed to S. Res. 68, designating March 2, 2005, as “Read Across America Day”.

Bankruptcy Reform Act: Senate began consideration of S. 256, a bill to amend title 11 of the United States Code.

A unanimous-consent agreement was reached providing for the consideration of the bill at 10:45 a.m., on Tuesday, March 1, 2005.

Nominations Received: Senate received the following nominations:

  John C. Dugan, of Maryland, to be Comptroller of the Currency for a term of five years.

  William Cobey, of North Carolina, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority for a term expiring May 30, 2010.


  Jeffrey Clay Sell, of Texas, to be Deputy Secretary of Energy.

  Christopher J. Hanley, of Maryland, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 2006.

  Linda Morrison Combs, of North Carolina, to be Controller, Office of Federal Financial Management, Office of Management and Budget.

  2 Air Force nominations in the rank of general.

  6 Army nominations in the rank of general.

  5 Coast Guard nominations in the rank of admiral.

  4 Marine Corps nominations in the rank of general.

  6 Navy nominations in the rank of admiral.

Routine lists in the Air Force, Army, Navy.
Executive Communications: Pages S1793–94
Additional Cosponsors: Pages S1795–96
Statements on Introduced Bills/Resolutions: Pages S1796–S1810
Additional Statements: Pages S1792–93
Amendments Submitted: Page S1810
Notices of Hearings/Meetings: Pages S1810–11
Privilege of the Floor: Page S1811
Adjournment: Senate convened at 2 p.m., and adjourned at 4:37 p.m., until 9:45 a.m., on Tuesday, March 1, 2005. (For Senate’s program, see the remarks of Majority Leader in today’s Record on page S1811.)

Committee Meetings
No committee meetings were held.

House of Representatives

Chamber Action
The House was not in session today. Pursuant to H. Con. Res. 66, the House stands adjourned until 2 p.m. on Tuesday, March 1.

Committee Meetings
No committee meetings were held.

NEW PUBLIC LAWS
(For last listing of Public Laws, see DAILY DIGEST, p. D20)
S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants. Signed on February 18, 2005. (Public Law 109–2)

CONGRESSIONAL PROGRAM AHEAD
Week of March 1 through March 5, 2005

Senate Chamber
On Tuesday, at 10:45 a.m., Senate will continue consideration of S. 256, Bankruptcy Reform Act.

During the balance of the week Senate will consider any other cleared legislative and executive business.

Senate Committees

(Committee meetings are open unless otherwise indicated)

Committee on Appropriations: March 2, Subcommittee on Labor, Health and Human Services, and Education, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the Department of Education, 9:30 a.m., SD–124.

March 2, Subcommittee on Defense, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the defense budget, 10 a.m., SD–192.

March 2, Subcommittee on Homeland Security, to hold hearings to examine proposed budget estimates for fiscal year 2006 for states citizenship and immigration services/customs and border protection/immigration and customs enforcement, 10:30 a.m., SD–138.

March 3, Subcommittee on Interior, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the U.S. Forest Service, 9:30 a.m., SD–124.

March 3, Subcommittee on VA, HUD, and Independent Agencies, to hold hearings to examine proposed budget estimates for fiscal year 2006 for the Department of Veterans Affairs, 9:30 a.m., SD–138.

Committee on Armed Services: March 1, to hold hearings to examine military strategy and operational requirements from combatant commanders in review of the Defense Authorization Request for fiscal year 2006, 9:30 a.m., SH–216.

March 2, Full Committee, to receive a closed briefing regarding Department of Defense human intelligence activities, 4:30 p.m., S–407, Capitol.

March 3, Full Committee, to resume hearings to examine the proposed Defense Authorization Request for Fiscal Year 2006 and the Future Years Defense Program, 9:30 a.m., SH–216.

Committee on Banking, Housing, and Urban Affairs: March 1, to hold hearings to examine the nomination of Ronald Rosenfeld, of Oklahoma, to be a Director of the Federal Housing Finance Board, 2 p.m., SD–538.

March 3, Full Committee, to hold oversight hearings to examine the Terrorism Risk Insurance Program, 10 a.m., SD–538.

Committee on the Budget: March 1, to hold hearings to examine the President’s proposed budget for fiscal year 2006 for defense, 10 a.m., SD–608.

Committee on Energy and Natural Resources: March 1, to hold hearings to examine the President’s proposed budget request for fiscal year 2006 for the Department of the Interior, 10 a.m., SD–566.

March 2, Full Committee, to hold hearings to examine the President’s proposed budget request for fiscal year 2006 for the Department of Energy, 10 a.m., SD–566.

March 3, Full Committee, to hold hearings to examine the President’s proposed budget request for fiscal year 2006 for the Forest Service, 10 a.m., SD–566.
Committee on Environment and Public Works: March 2, business meeting to consider S. 131, to amend the Clean Air Act to reduce air pollution through expansion of cap and trade programs, to provide an alternative regulatory classification for units subject to the cap and trade program, 9:30 a.m., SD–406.

Committee on Finance: March 1, to hold hearings to examine the financial status of Pension Benefit Guaranty Corporation and the Administration’s Defined Benefit Plan Funding Proposal, 2:15 p.m., SD–215.

Committee on Foreign Relations: March 2, to hold an oversight hearing to examine foreign assistance, 9 a.m., SD–419.

March 3, Full Committee, business meeting to consider an original resolution entitled Foreign Relations Authorization Act, fiscal years 2006 and 2007, to authorize appropriations for the Department of State and international broadcasting activities for fiscal years 2006 and 2007, for foreign assistance programs for fiscal years 2006 and 2007, 9:30 a.m., SD–419.

Committee on Health, Education, Labor, and Pensions: March 1, to hold hearings to examine Food and Drug Administration’s drug approval process, 9:30 a.m., SD–160.

March 3, Full Committee, to hold hearings to examine ensuring drug safety, 10 a.m., SD–106.

Committee on the Judiciary: March 1, to hold hearings to examine the nomination of William Gerry Myers III, of Idaho, to be United States Circuit Judge for the Ninth Circuit, 9:30 a.m., SD–226.

March 3, Full Committee, business meeting to consider pending calendar business, 9:30 a.m., SD–226.

March 3, Full Committee, to hold hearings to examine the nominations of Terrence W. Boyle, of North Carolina, to be United States Circuit Judge for the Fourth Circuit, James C. Dever III, to be United States District Judge for the Eastern District of North Carolina, and Robert J. Conrad, Jr., to be United States District Judge for the Western District of North Carolina, 2:30 p.m., SD–226.

Special Committee on Aging: March 3, to hold hearings to examine implementation of the Medicare Modernization Act regarding delivering prescription drugs to dual eligibles, 2:30 p.m., SD–628.

House Chamber

Program to be announced.

House Committees

Committee on Agriculture, March 1, hearing to Review the USDA’s rule providing for Canadian beef and cattle imports, 2 p.m., 1300 Longworth.

March 3, Subcommittee on General Farm Commodities and Risk Management, hearing on the Reauthorization of the Commodity Futures Trading Commission, 10 a.m., 1300 Longworth.

Committee on Appropriations, March 1, Subcommittee on Science, the Departments of State, Justice, and Commerce, and Related Agencies, on Attorney General, 10 a.m., 2359 Rayburn.

March 2, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, on Under Secretary for Food and Safety, 9:30 a.m., 2362A Rayburn.

March 2, Subcommittee on Defense, on Army Posture, 1:30 p.m., H–140 Capitol.

March 2, Subcommittee on Foreign Operations, Export Financing, and Related Agencies, on HIV/AIDS Budget, 10 a.m., 2359 Rayburn.

March 2, Subcommittee on Interior, Environment, and Related Agencies, on Secretary of the Interior, 10 a.m., B–308 Rayburn.

March 2, Subcommittee on Military Quality of Life, and Veterans Affairs, and Related Agencies, on Department of Defense Privatization Issues, 10 a.m., and on Department of Defense Budget Overview, 1:30 p.m., H–143 Capitol.

March 2, Subcommittee on Science, the Departments of State, Justice, and Commerce, and Related Agencies, on Secretary of Commerce, 2 p.m., 2359 Rayburn.

March 2, Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, on Under Secretary for Farm and Foreign Agricultural Services, 9:30 a.m., 2362A Rayburn.

March 2, Subcommittee on Energy and Water Development, and Related Agencies, on U.S. Army Corps of Engineers, 10 a.m., and on Bureau of Reclamation, 2 p.m., 2362B Rayburn.

March 2, Subcommittee on the Department of Homeland Security, on Secretary of Homeland Security, 10 a.m., and on Transportation Security Administration, 2 p.m., 2359 Rayburn.

March 2, Subcommittee on Interior, Environment, and Related Agencies, oversight hearing on U.S. Geological Survey/Hazards: tsunamis, landslides, earthquakes, 10 a.m., and on Forest Service, 2 p.m., B–308 Rayburn.

March 2, Subcommittee on the Department of Labor, Health and Human Services, Education, and Related Agencies, on Secretary of Health and Human Services, 10 a.m., 2358 Rayburn.

March 2, Subcommittee on Military Quality of Life, and Veterans Affairs, and Related Agencies, on Army Budget, 9:30 a.m., and on Central Command, 1:30 p.m., H–143 Capitol.

Committee on Armed Services, March 2, to continue hearings on the Fiscal Year 2006 National Defense Authorization budget request, 10 a.m., 2118 Rayburn.


March 2, Subcommittee on Strategic Forces, hearing on the National Defense Authorization budget request, 2 p.m., 2118 Rayburn.

March 3, Subcommittee on Military Personnel, hearing on the Care of Injured and Wounded Service Members, 10 a.m., 2212 Rayburn.

March 3, Subcommittee on Tactical and Land Forces, hearing on the Fiscal Year 2006 National Defense Authorization budget request on the Department of Navy and Department of the Air Force Aviation Acquisition Programs, 9 a.m., 2118 Rayburn.

March 3, Subcommittee on Terrorism, Unconventional Threats and Capabilities, hearing on the Fiscal Year 2006 National Defense Authorization budget request on Tactical C-4 Systems: Why Does the DOD Have So Many Different Systems Performing the Same Functionality? 3 p.m., 2212 Rayburn.

Committee on the Budget, March 2, hearing on the Economic Outlook and Current Fiscal Issues, 10 a.m., 210 Cannon.

March 3, hearing on Members’ Day, 2 p.m., 210 Cannon.

Committee on Education and the Workforce, March 1, hearing entitled “Enforcement of Federal Anti-Fraud Laws in For-Profit Education,” 2 p.m., 2175 Rayburn.


Committee on Financial Services, March 2, oversight hearing on the Department of Housing and Urban Development, including the Department’s budget request for fiscal year 2006, 10 a.m., 2128 Rayburn.

Committee on Government Reform, March 1, Subcommittee on Federalism and the Census, hearing entitled “Strengthening Our Communities—Is it the Right Step toward Greater Efficiency and Improved Accountability?” 10 a.m., 2154 Rayburn.


March 2, Subcommittee on Government Management, Finance, and Accountability, hearing entitled “Protecting Pensions and Ensuring the Solvency of PBGC,” 2 p.m., 2247 Rayburn.


Committee on International Relations, March 1, Subcommittee on Africa, Global Human Rights and International Operations, briefing followed by a hearing on United Nations Organization Mission in the Democratic Republic of Congo: A Case for Peacekeeping Reform, 1 p.m., 2172 Rayburn.

March 2, Subcommittee on Asia and the Pacific, hearing on the Crisis in Nepal, 1:30 p.m., 2172 Rayburn.

March 2, Subcommittee on Oversight and Investigations, hearing on United Nations Operations: Integrity and Accountability, 10:30 a.m., 2172 Rayburn.

March 3, Subcommittee on Africa, Global Human Rights and International Operations and the Subcommittee on Western Hemisphere, joint hearing on Year Two of Castro’s Brutal Crackdown on Dissidents, 1:30 p.m., 2172 Rayburn.

March 3, Subcommittee on International Terrorism and Nonproliferation, hearing on Algeria’s Struggle Against Terrorism, 2 p.m., 2200 Rayburn.

Committee on the Judiciary, March 3, Subcommittee on the Constitution, hearing on H.R. 748, Child Interstate Abortion Notification Act, 2:30 p.m., 2141 Rayburn.


Committee on Resources, March 1, Subcommittee on Fisheries and Oceans, oversight hearing on the Coral Reef Conservation Act of 2000, 1 p.m., 1324 Longworth.

March 3, Subcommittee on Water and Power, oversight hearing entitled “President’s Fiscal Year 2006 Budget Request for the Bureau of Reclamation and the Water Division of the U.S. Geological Survey,” 10 a.m., 1324 Longworth.

Committee on Rules, March 1, to consider the following: H.R. 841, Continuity in Representation Act of 2005; and H.R. 27, Job Training Improvement Act of 2005, 5 p.m., H–313 Capitol.

Committee on Science, March 3, hearing on H.R. 798, Methamphetamine Remediation Research Act of 2005, 10 a.m., 2318 Rayburn.

Committee on Small Business, March 2, hearing entitled “Prescriptions for Health Care Solutions,” 2 p.m., 311 Cannon.

Committee on Transportation and Infrastructure, March 2, to consider H.R. 3, Transportation Equity Act: A Legacy for Users, 11 a.m., 2167 Rayburn.

March 3, Subcommittee on Coast Guard and Maritime Transportation, hearing on the Fiscal Year 2006 Budget for Coast Guard and Maritime Transportation Programs, and H.R. 889, Coast Guard and Maritime Transportation Act of 2005, 12 p.m., 2167 Rayburn.

Permanent Select Committee on Intelligence, March 2, executive, hearing on the Budget, 1:30 p.m., H–405 Capitol.
Next Meeting of the SENATE
9:45 a.m., Tuesday, March 1

Senate Chamber

Program for Tuesday: After the transaction of any routine morning business (not to extend beyond 60 minutes), Senate will continue consideration of S. 256, Bankruptcy Reform Act.

(Senate will recess from 12:30 p.m. until 2:15 p.m. for their respective party conferences.)

Next Meeting of the HOUSE OF REPRESENTATIVES
2 p.m., Tuesday, March 1

House Chamber

Program for Tuesday: Program to be amended.