NORTHWEST OHIO WATERSHEDS GIVEN HELP THROUGH ASSISTANCE OF CONGRESSMAN ROBERT BORSKI

(Ms. KAPTUR asked and was given permission to address the House for 1 minute.)

Ms. KAPTUR. Madam Speaker, I wish to state for the RECORD my sincere appreciation to the gentleman from Pennsylvania (Mr. BORSKI) for the enormous assistance he provided our community during the consideration of the water resources bill last week.

When we were on the floor, I did not have an opportunity to place it formally in the RECORD, but I would say that without his help, Northwestern Ohio would not have received the consideration that was placed in that bill, and I wish to acknowledge and deeply thank him for the help that he gave us. Without his assistance, our watersheds would have been given no attention, and I thank him very much.

□ 1230

BANKRUPTCY REFORM ACT OF 1999

The SPEAKER pro tempore (Mrs. EMERSON). Pursuant to House Resolution 158 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill, H.R. 833.

□ 1230

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 833) to amend title 11 of the United States Code, and for further purposes, with Mr. NETHERCUTT in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from Pennsylvania (Mr. GEKAS) and the gentleman from Michigan (Mr. CONYERS) each will control 30 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the Constitution of the United States guarantees that bankruptcy shall be available to the citizens of our Nation. Accordingly, Congresses, ever since the first moment of our new land, have incorporated into their work special provisions to accommodate those individuals who find themselves totally engulfed by debt rather than to submit them to the prison dungeons that were the plight of people previously prior to the United States.

We, our enlightened forefathers, saw fit to allow the Congress to evolve in a situation in which a fresh start would be accorded to an ordinary citizen who cannot meet his obligations; and that is where we are here today.

We, in a long line of congressional action, re-guarantee the fresh start to individuals who become so engulfed in debt that there is no other way except for the Government to discharge their obligations and to allow them to start all over again. We guarantee that in this bill.

But to balance that situation, we also provide in this bill a mechanism whereby if those individuals who file for bankruptcy can, after a careful screening, be placed in a situation where they could repay some of the debt over a period of years, then this bill accommodates that and allows people to be moved from Chapter 7, where they would have gotten that fresh start automatically, to Chapter 13, where they must work through a plan for repayment of some of the debt over a period of time.

Now, here is the thing that we must make clear to the opponents of bankruptcy reform and to the people of our country. We are talking about a dividing line caused by the median income. We provide that the median income shall be the dividing line.

In other words, people under the median income in our country who apply for bankruptcy almost certainly will be accorded almost automatically the fresh start which their financial circumstances dictate. But we also said that if the income is over the median income, then that set of financial circumstances should be more closely scrutinized to determine if any money can be repaid to this debt that has been accumulated. That is a very balanced and a fair way to approach the economic system of our Nation.

And what is that median income? We are talking about a median income of $51,000 for a family of four is the starting point. So if an individual with four people in the family is earning $30,000 or $40,000 or $50,000, that fresh start is guaranteed. But if they are earning $55,000, $60,000, $80,000, $100,000 or beyond, then that set of finances has to be looked at more closely under the provisions of our bill to see if anything should be used for repayment of some of the debt. That is fair. That is proper.

The more we do that, the less burden the rest of the taxpayers have to bear. Because the taxpayers have to pick up the slack. Consumers at the retail outlets, at the supermarkets, have to pay more. Interest rates go up, etc. The more we are able to recoup some of the debt from the high-income people, the less the burden will be on the rest of the public.

That is what the clear message is of the bankruptcy reform legislation which we have before the House today. I ask for an overwhelming vote in support of the underlying bill.

Mr. Chairman, I include for the RECORD the following letters:

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, May 3, 1999.

Hon. HENRY HYDE,
Chairman, Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR HENRY: I am writing with regard to H.R. 833, the Bankruptcy Reform Act of 1999. As you know, the regulation of securities and exchanges is a matter committed to the jurisdiction of the Committee on Commerce pursuant to Rule X of the Rules of the House of Representatives.

Section 1011 of H.R. 833, as ordered reported (''SIPC Stay''), amends the Securities Investor Protection Act of 1970 (P.L. 91–598), a statute within the jurisdiction of the Committee on Commerce. As you will recall, this provision was originally contained in the Financial Contract Netting Improvement Act of 1998, introduced in the 105th Congress as H.R. 4393 and on which the Committee on Commerce received an additional referral of the bill upon its introduction, as did the Committee on the Judiciary.

Because of the importance of this legislation, I recognize your desire to bring it before the House in an expeditious manner, and I will not exercise the Committee's right to a sequential referral. By agreeing to waive its consideration of the bill, however, the Commerce Committee does not waive its jurisdiction over H.R. 833. In addition, the Commerce Committee reserves its authority to seek conferees on any provisions of the bill that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Commerce Committee for conferees on H.R. 833 or similar legislation.

I request that you include this letter and your response as part of the RECORD during consideration of the legislation on the House floor.

Thank you for your attention to these matters. I remain,

Sincerely,

TOM BLILEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, May 3, 1999.

Hon. TOM BLILEY,
Chairman, Committee on Commerce, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR TOM: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 833, the Bankruptcy Reform Act of 1999.

I acknowledge your committee's jurisdiction over section 1011 (''SIPC Stay'') of this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forgo further action on the bill will not prejudice the Commerce Committee with respect to its jurisdictional prerogatives on this or similar provisions, and will support your request for conferees on those provisions within the Committee on the Commerce's jurisdiction should they be the subject of a House-Senate conference. I will also include a copy of your letter and this response in the CONGRESSIONAL RECORD when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

HENRY J. HYDE,
Chairman.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 5, 1999.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 833, the Bankruptcy Reform Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), who can be reached at 226–2860, Lisa Cash Driskill (for the state and local impact), who can be reached at 225–3220, and John Harris (for the private-sector impact), who can be reached at 226–6910.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE, MAY 5, 1999

H.R. 833: BANKRUPTCY REFORM ACT OF 1999

(As reported by the House Committee on the Judiciary on April 28, 1999)

SUMMARY

H.R. 833 would make many changes and additions to the laws relating to bankruptcy, including establishing a system of means-testing for determining eligibility for relief under chapter 7 of the U.S. bankruptcy code. CBO estimates that implementing H.R. 833 would cost $333 million over the 2000–2004 period—$322 million in discretionary spending, subject to appropriation of the necessary funds, and $11 million in mandatory spending. CBO also estimates that enacting this bill would decrease receipts by about $4 million over the next five years. Because the bill would affect direct spending and governmental receipts, pay-as-you-go procedures would apply. Provisions in title VIII also would affect receipts, but the Joint Committee on Taxation (JCT) has not completed an estimate of such changes at this time.

H.R. 833 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but its costs would be insignificant and would not exceed the threshold established in that act ($50 million in 1996, adjusted annually for inflation). Overall, CBO expects that enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases.

H.R. 833 would impose new private-sector mandates, as defined in UMRA, on bankruptcy attorneys, creditors, and credit and charge-card companies. CBO estimates that the costs of these mandates would exceed the $100 million (in 1996 dollars) threshold established in UMRA.

DESCRIPTION OF THE BILL'S MAJOR PROVISIONS

In addition to establishing means-testing for determining eligibility for chapter 7 bankruptcy relief, H.R. 833 would: Require the Executive Office for the United States Trustees (U.S. Trustees) to establish a test program to educate debtors on financial management; authorize 18 new temporary judgeships and extend five existing judgeships in 19 federal districts; permit courts to waive chapter 7 filing fees and other fees for debtors who could not pay such fees in installments; require that at least one out of every 250 bankruptcy cases under chapter 13 or chapter 7 be audited by an independent certified public accountant; exempt chapter 11 debtors from having to pay certain fees in connection with their bankruptcy cases; require the Administrative Office of the United States Courts (AOUSC) to receive and maintain tax returns for all chapter 7 and chapter 13 debtors; and require the AOUSC and the U.S. Trustees to collect and publish certain statistics on bankruptcy cases.

Other provisions would make various changes affecting the bankruptcy provisions for municipalities and the treatment of tax liabilities in bankruptcy cases.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

As shown in the following table, CBO estimates that implementing H.R. 833 would cost the courts, the AOUSC, and the U.S. Trustees $24 million in fiscal year 2000 and $322 million over the 2000–2004 period, subject to appropriation of the necessary funds. In addition, we estimate that mandatory spending for the salaries and benefits of bankruptcy judges would increase by less than $500,000 in 2000 and $11 million over the 2000–2004 period. Enacting the means-testing and fee waiver provisions in title I would result in a net loss in revenues of about $4 million over the next five years. The costs of this legislation fall within budget function 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2000	2001	2002	2003	2004
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Means-Testing (Section 102):					
Estimated Authorization Level	4	8	8	8	7
Estimated Outlays	4	8	8	8	7
Debtor Financial Management Training (Section 104):					
Estimated Authorization Level	4	0	0	0	0
Estimated Outlays	1	3	0	0	0
Additional Judgeships—Support Costs (Section 128):					
Estimated Authorization Level	(1)	6	11	11	12
Estimated Outlays	(1)	6	11	11	12
Chapter 7 Filing Fee Waivers (Section 148):					
Estimated Authorization Level	2	5	8	13	13
Estimated Outlays	2	5	8	13	13
Credit Counseling Certification (Section 302):					
Estimated Authorization Level	4	3	3	4	4
Estimated Outlays	2	4	3	4	4
U.S. Trustee Site Visits (Section 410):					
Estimated Authorization Level	3	2	2	2	3
Estimated Outlays	1	4	2	2	3
Audit Procedures (Section 602):					
Estimated Authorization Level	0	6	15	18	19
Estimated Outlays	0	6	15	18	19
Maintenance of Tax Returns (Section 603):					
Estimated Authorization Level	3	6	7	9	9
Estimated Outlays	3	6	7	9	9
Elimination of Quarterly Filing Fees (Section 608):					
Estimated Authorization Level	10	10	10	10	10
Estimated Outlays	10	10	10	10	10
GAO and SBA Studies (Sections 609, 613, 414):					
Estimated Authorization Level	1	(1)	0	0	0
Estimated Outlays	1	(1)	0	0	0
Compiling and Publishing Data (Sections 701–702):					
Estimated Authorization Level	0	5	9	8	8
Estimated Outlays	0	5	9	8	8
Total Discretionary Changes:					
Estimated Authorization Level	31	51	73	83	85
Estimated Outlays	24	57	73	83	85
CHANGES IN DIRECT SPENDING					
Additional Judgeships (Section 128):					
Estimated Budget Authority	(1)	2	3	3	3
Estimated Outlays	(1)	2	3	3	3
CHANGES IN REVENUES [2]					
Changes in Filing Fees (Section 102): Estimated Revenues	0	0	(1)	1	1
Chapter 7 Filing Fee Waivers (Section 148): Estimated Revenues	(1)	−1	−1	−2	−2
Total Revenue Changes: Estimated Revenues	(1)	−1	−1	−1	−1

[1] Less than $500,000.
[2] The Joint Committee on Taxation has not yet completed its review of tax provisions in title VIII.

BASIS OF ESTIMATE

For purposes of this estimate, CBO assumes that H.R. 833 will be enacted by October 1, 1999, and that all estimated authorization amounts will be appropriated for each fiscal year.

Spending Subject to Appropriation. Most of the estimated increases in discretionary spending would be required to fund the additional workload that would be imposed on the U.S. Trustees. Currently, the U.S. Trustees are funded through the bankruptcy-related fees collected by the courts. Without additional statutory authority, these fees

cannot be increased to cover any expenditures or loss of offsetting collections that would occur under the bill. Because the legislation does not provide for such increases in fees, any additional costs would be subject to the availability of appropriated funds.

Means-Testing (Section 102). This section would establish a system of means-testing for determining a debtor's eligibility for relief under chapter 7. Only those debtors whose income exceeds the regional median household income with certain adjustments would be subject to the means test. Under the means test, if the debtor is expected to have at least $6,000 over five years (after the deduction of certain allowable expenses) available to pay nonpriority unsecured claims, then the debtor would be presumed ineligible for chapter 7 relief. A debtor who could not demonstrate ''extraordinary circumstances,'' which would cause the expected disposable income to fall below the threshold, could file under other chapters of the bankruptcy code.

Although the private trustees would be responsible for conducting the initial review of a debtor's income and expenses and filing the majority of motions for dismissal or conversion, CBO expects that the workload of the U.S. Trustees would increase under the means-testing provisions. The U.S. Trustees would provide increased oversight of the work performed by the private trustees, file additional motions for dismissal or conversions, and take part in additional litigation that is expected to occur as the courts and debtors debate allowable expenses and other related issues. Although CBO cannot predict the amount of such litigation, we expect that, during the first few years following enactment of the bill, the amount of litigation could be significant, as parties test the new law's standards. In subsequent years, litigation could begin to subside as precedents are established. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require about 60 additional attorneys and analysts to address the increased workload. As a result, CBO estimates that appropriations of $35 million would be required over the next five years.

Debtor Financial Management Test Training Program (Section 104). This section would require the U.S. Trustees to establish a test training program to educate debtors on financial management. Based on information from the U.S. Trustees, CBO estimates that about 90,000 debtors would participate if such a program were administered by the U.S. Trustees in fiscal year 2001. At a projected cost of about $40 per debtor, CBO estimates that the U.S. Trustees would require an appropriation of about $4 million in 2000 to administer the program.

Addtional Judgeships—Support Costs (Section 128). This provision would extend five temporary bankruptcy judgeships and authorize 18 new temporary bankruptcy judgeships for 19 federal judicial districts. Based on information from the AOUSC, CBO assumes that one-half of the 18 new positions would be filled by the beginning of fiscal year 2001 and the other half would be filled by the start of fiscal year 2002. Also, we anticipate that all five temporary judgeships would be filled by fiscal year 2002. We expect that discretionary expenditures associated with each judgeship would average about $450,000 (in 2000 dollars), after initial costs of about $50,000. Therefore, CBO estimates that the administrative support of additional bankruptcy judges would require an appropriation of less than $500,000 in fiscal year 2000 and about $40 million over the 2000-2004 period. (Salaries and benefits for the judges are classified as mandatory spending, and those costs are described below.)

Chapter 7 Filing Fee Waivers (Section 148). This section would permit a bankruptcy court or district court to waive the chapter 7 filing fee and other fees for a debtor who is unable to pay such fees in installments. Based on information from the AOUSC, CBO expects that in fiscal year 2000 chapter 7 filing fees would be waived for about 3.5 percent of all chapter 7 filers and that the percentage waived would gradually increase to about 10 percent by fiscal year 2003. The filing fee for a chapter 7 case is $130, and income from this fee appears in two different places in the budget. Of the $130, $70 is recorded as part of the offsetting collections to the U.S. Trustee System Fund and to the AOUSC, and $15 is recorded as governmental receipts (i.e., revenues). the remaining $45 is paid to the private trustee assigned to the case and does not affect the federal budget. The AOUSC also collects an additional $30 million in miscellaneous fees with each chapter 7 filing. Taking into account how means-testing would reduce filing rates under chapter 7, CBO estimates that implementing this section would result in a loss in offsetting collections totaling $41 million over the 2000-2004 period. The loss of offsetting collections would reduce the amount available for spending by the U.S. Trustees and the AOUSC. Because this loss of fees would not be matched by a reduction in workload, additional appropriations would be required to replaced this projected loss.

Credit Counseling Certification (Section 302). This section would require the U.S. Trustees to certify, on an annual basis, that certain credit counseling services could provide adequate services to potential debtors. Based on information from the U.S. Trustees, CBO estimates that the U.S. Trustees would require additional attorneys and analysts to handle the additional workload associated with certification. CBO estimates that enacting this provision would require appropriations of $18 million over the next five years.

U.S. Trustee Site Visits in Chapter 11 Cases (Section 410). This section would expand the responsibilities of the U.S. Trustees in small business bankruptcy cases to include site visits to inspect the debtor's premises, review records, and verify that the debtor has filed tax returns. Based on information from the U.S. Trustees, CBO estimates that implementing section 410 would require about 20 additional analysts to conduct over 2,300 site visits each year. CBO estimates that the U.S. Trustees would require appropriations of about $12 million over the next five years for the salaries, benefits, and travel expenses associated with these additional personnel.

Audit Procedures (Section 602). Beginning 18 months after enactment, H.R. 833 would require that at least one out of every 250 bankruptcy cases under chapter 7 and chapter 13, plus other selected cases under those chapters, be audited by an independent certified public accountant. Based on information from the U.S. Trustees, CBO estimates that about 1.3 million cases would be subject to audits in fiscal year 2001, increasing to about 1.8 million in fiscal year 2004. CBO assumes that about 0.8 percent of all cases would be audited and that each audit would cost about $1,000 (in 2000 dollars.) CBO also expects that the U.S. Trustees would need about 10 additional analysts and attorneys to support the follow-up work associated with the audits. Thus, we estimate that implementing this provision would require appropriations of $6 million in fiscal year 2001 and $58 million over the 2000–2004 period.

Maintenance of Tax Returns (Section 603). This section would require the AOUSC to receive and retain tax returns for the three most recent years preceding the commencement of the bankruptcy case for all chapter 7 and chapter 13 debtors (about 8 million debtors over the 2004–2004 period). CBO estimates that appropriations of $34 million over the next five years would be required to store and provide access to over 20 million tax returns.

Elimination of Quarterly Filing Fees (Section 608). This section would require chapter 11 debtors whose disbursements are less than $300,000 to pay quarterly fees only until their case is converted or their plan is confirmed (whichever occurs first), beginning on October 1, 1999. Currently, these debtors pay quarterly fees even after their plan has been confirmed. These fees are recorded as offsetting collections to the U.S. Trustee System Fund and are available for spending from that account. According to the U.S. Trustees, about 4,000 cases would be affected by this provision each year and, on average, the government collects about $650 per quarter per case each year. Thus, by shortening the period during which fees are paid, the bill would reduce annual fee collections by about $10 million annually. Because this loss of offsetting collections would reduce the amount available for spending by the U.S. Trustees (for overall supervision and administration of bankruptcy cases), CBO estimates that the U.S. Trustees would require an appropriation of $10 million in fiscal year 2000 and $50 million over the next five years to compensate for the loss of quarterly filing fees.

General Accounting Office (GAO) and Small Business Administration (SBA) Studies (Sections 609, 613, and 414). Section 609 would require GAO to conduct a study regarding the impact that the extension of credit to dependents who are enrolled in postsecondary educational institutions has on bankruptcy filing rates. Section 613 would require GAO to conduct a study regarding the feasibility of requiring trustees to provide the Office of Child Support Enforcement information about outstanding child support obligations of debtors. Section 414 would require the Administrator of SBA, in consultation with the Attorney General, the U.S. Trustees, and the AOUSC, to conduct a study on small business bankruptcy issues. Based on information from GAO and SBA, CBO estimates that completing the necessary studies would cost between $500,000 and $1 million in 2000, and less than $500,000 in 2001.

Compilation and Publication of Bankruptcy Data and Statistics (Sections 701–702). H.R. 833 would require the AOUSC to collect data on chapter 7, chapter 11, and chapter 13 cases and the U.S. Trustees to make such information available to the public. CBO estimates that appropriations of about $30 million would be required over the 2000–2004 period to meet these requirements. Of the total estimated cost, about $24 million would be required for additional legal clerks, analysts, and data base support. The remainder would be incurred by the U.S. Trustees for compiling data and providing Internet access to records pertaining to bankruptcy cases.

Direct Spending and Revenues

Additional Judgeships (Section 128). CBO estimates that enacting the means-testing provision (section 102) would impose some additional workload on the courts. Section 128 would authorize 18 new temporary bankruptcy judgeships and extend five existing temporary judgeships. Based on information from the AOUSC and other bankruptcy experts, CBO expects that the increase in the number of bankruptcy judges would be sufficient to meet the increased workload. Assuming that the salary and benefits of a bankruptcy judge would average about $150,000 a year, CBO estimates that the mandatory costs associated with the salaries and benefits of these additional judgeships would be less than $500,000 in fiscal year 2000 and about $11 million over the 2000–2004 period.

Changes in Filing Fees (Section 102). The means-testing provision also could affect the

government's income from bankruptcy filing fees because it would cause changes in the number and type of bankruptcy filings. CBO projects that about 5 to 10 percent of all chapter 7 debtors (about 50,000 to 100,000 cases each year) could be subject to the means test proposed under this bill. CBO expects that those debtors who are not successful in proving ''extraordinary circumstance'' will either convert their cases to chapter 13 cases or withdraw their petitions for bankruptcy relief. Under either of these options, CBO estimates that there would be no significant effect on the federal budget because there is no fee for converting a case from chapter 7 to chapter 13, and filing fees are not refunded to debtors who withdraw their petitions for bankruptcy relief. Over the long term, CBO estimates that the federal government could collect additional revenues as more debtors file directly under chapter 13. (The government collects an additional $45 for each case filed under chapter 13 instead of chapter 7.) This increase could be partly offset by those debtors who might refrain from filing for any type of bankruptcy relief. On balance, CBO estimates that the means-testing provision would increase revenues by about $1 million beginning in 2003. This provision would have no effect on offsetting collections because there is no difference in the amount of offsetting collections collected under either chapter 7 or chapter 13, and any loss in collections would be matched by a reduction in workload.

Chapter 7 Filing Fee Waivers (Section 148). As mentioned above, this section would permit a bankruptcy court or the district court to waiver the chapter 7 filing fee and other fees for a debtor who is unable to pay such fees in installments. For each chapter 7 case filed, the federal government collects $15. Taking into account the means-testing provision and the amount of expected waivers, CBO estimates that implementing this section would result in a loss in revenues of $1 million to $2 million a year beginning in fiscal year 2001.

CBO estimates that the net effect on revenues of implementing the meanstesting and fee waiver provisions would be a loss of about $1 million annually beginning in fiscal year 2001.

Tax Provisions (Title VIII). The provisions in title VIII of the bill are currently under review by the Joint Committee on Taxation, and estimates of their effects on revenues will be provided when they are completed.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Both the means-testing and waiver of fees would affect receipts; hence, pay-as-you-go procedures would apply. The net changes in outlays and governmental receipts are show in the following table. (JCT is reviewing title VIII and has not yet completed an estimate of its effects on receipts.) For the purposes of enforcing pay-as-you-go procedures, only the effects in the current year, the budget year, and the succeeding four years are counted.

	By fiscal year, in million of dollars—										
	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Changes in outlays	0	0	2	3	3	3	3	3	3	2	2
Changes in receipts[1]	0	0	−1	−1	−1	−1	−1	−1	−1	−1	−1

[1] Estimated impact of means-testing and waiver of fees. JCT has not completed an estimate of changes in receipts for title VIII.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 833 contains an intergovernmental mandate as defined in UMRA. Overall, CBO expects that enacting this bill would benefit state and local governments by enhancing their ability to collect outstanding obligations in bankruptcy cases.

Mandates. Section 106 of the bill would preempt state laws governing contracts between a debt relief agency and a debtor, to the extent that they are inconsistent with the federal requirements set forth in this bill. Such preemptions are mandates as defined in UMRA. Because the preemption would not require states to change their laws, CBO estimates the costs to states of complying with that mandate would not be significant and would not exceed the threshold established in UMRA.

Other Impacts. The changes to bankruptcy law in the bill would affect state and local governments primarily as creditors and holders of claims for taxes or child support. In addition, it would change some of the state statutes that govern which of a debtor's assets are protected from creditors in a bankruptcy proceeding.

In 1996, a survey of the 50 states conducted by the Federation of Tax Administrators and the States' Association of Bankruptcy Attorneys indicated that more than 360,000 taxpayers in bankruptcy owed claims to states totaling about $4 billion. Of these claims, states reported collecting only about $234 million. While CBO cannot predict how much more money might be collected, it is likely that states and local governments would collect a greater share of future claims than they would have under current law.

Exemptions. Although bankruptcy is regulated according to federal statute, states are allowed to provide debtors with certain exemptions for property, insurance, and other items that are different from those allowed under the federal bankruptcy code. (Exempt property remains in possession of the debtor and is not available to pay off creditors.) In some states debtors can choose the federal or state exemption; other states require a debtor to use only the state exemptions. This bill would place a ceiling of $250,000 on the exemptions for homesteads and create a new exemption for certain retirement funds and education savings plans. These exemption standards would apply regardless of the state policy on exemptions. The new homestead exemption would make more money available to creditors in some cases, while the exemptions on retirement and education savings generally would make less money available. States would be allowed to set the homestead exemption above the federal ceiling if they specifically enacted legislation doing so.

Domestic Support Obligations. The bill would significantly enhance a state's ability to collect domestic support obligations, including child support. Domestic support obligations owed to state or local governments would be given priority over all other claims, except those same obligations owned to individuals. The bill also would require that filers under chapters 11 and 13 pay in full all domestic support obligations owed to government agencies or individuals in order to receive a discharge of outstanding debts. In addition, the automatic stay that is triggered by filing bankruptcy would not apply to domestic support obligations. Last, the bill would require bankruptcy trustees to notify individuals with domestic support claims of their right to use the services of a state child support enforcement agency and notify the agency that they have done so. The last known address of the debtors would be a part of the notification.

Tax Payment Plans. The bill would require that payment plans for tax liabilities be limited to six years and that payment amounts be regular and proportionate to payments for other obligations. Under current law, taxing authorities sometimes face payment plans that include a series of small payments followed by a large balloon payment near the end of the planned payment stream. At that point, the debtors often fail to complete their payments. This provision would require that taxes be paid at a rate proportionate to those of other debts. It also would establish interest rates to be applied to outstanding tax liabilities. Under current law, any interest charges on outstanding tax liabilities are determined at the discretion of the bankruptcy judge.

Time Limits on Tax Collection. Under some circumstances, a tax claim can qualify for priority status, and thus a state and local government would be more likely to collect the debt. However, this status is granted only if tax is assessed within a specific period of time from the date of the filing for bankruptcy. If that filing is subsequently dismissed and a new filing is made, the tax claim may lose its priority status. The bill would allow more time to pass in some circumstances, thus increasing the likelihood that state or local tax claims would maintain their priority status.

Taxes and Administrative Expenses. Under current law, certain expenses can be paid out of funds that would otherwise be available to pay tax liens on property. The bill would restrict the use of funds for administrative expenses to a limited number of circumstances, thereby making it more likely that funds would remain available to cover tax obligations.

Tax Return Filing and Government Notification. A number of provisions in the bill would require debtors to have filed tax returns, and in some cases to be current in their tax payments, before a bankruptcy case may continue. Also, debtors would be required to provide notice to state authorities in a specific manner when they pursue relief under bankruptcy law. These provisions would help states identify potential claims in bankruptcy cases where they may be owed delinquent taxes.

Priority of Payments. In some circumstances, debtors have borrowed money or incurred some new obligation that is dischargeable (able to be written-off at the end of bankruptcy) to pay for an obligation would not be dischargeable. This bill would give the new debt the same priority as the underlying debt. If the underlying debt had a priority higher than that of state or local tax liabilities, state and local governments could lose access to some funds. However, it is possible that the underlying debt could be for a tax claim, in which case the taxing authority would face no loss. Because it is unclear what types of nondischargeable are covered by new debt and the degree to which this new provision would discourage such activity, CBO can estimate neither the direction nor the magnitude of the provision's impact on states and localities.

Single Asset Cases. One provision of the bill would allow expedited bankruptcy proceeding in certain single asset cases (usually involving a large office building). State and

local governments could benefit to the extent that real property is returned to the tax rolls earlier as a result of this provision.

Municipal Bankruptcy. The bill would clarify regulations governing municipal bankruptcy actions and allow municipalities that have filed for bankruptcy to liquidate certain financial contracts.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 833 would impose new private-sector mandates on bankruptcy attorneys, creditors, and credit and charge-card companies. Bankruptcy attorneys would be required to make reasonable inquiries to confirm that the information in documents they submit to the court or the bankruptcy trustee is wellgrounded in fact. Creditors would be required to make disclosures in their agreements with debtors and provide certain notices to courts and to debtors. Credit and charge-card companies would be required to disclose minimum-payment plans in new account materials and monthly statements. CBO estimates that the costs of these mandates would exceed the $100 million (in 1996 dollars) threshold established in the UMRA.

Sections 102 and 607 would make bankruptcy attorneys liable for misleading statements and inaccuracies in schedules and documents submitted to the court or to the trustee. To avoid sanctions and potential civil penalties, attorneys would need to verify the information given to them by their clients regarding the list of creditors, assets and liabilities, and income and expenditures. Based on 1,286,000 projected filings under chapter 7 and chapter 13 and an estimated increase in attorneys' costs of $150 to $500 per case, CBO estimates that the costs to attorneys of complying with this requirement would be between $190 million and $640 million in fiscal year 2000. With the rise in projected filings over the next five years, annual costs would be $280 million to $940 million for fiscal year 2004. CBO expects bankruptcy attorneys to pass increased costs on to debtors, reducing the pool of funds available to creditors.

H.R. 833 would require a creditor with an unsecured consumer debt seeking a reaffirmation agreement with a debtor to notify the debtor of his right to a hearing to determine whether the agreement is an undue hardship, is in the debtor's best interest, or is the result of an illegal threat by the creditor. The bill also would require creditors to specify to the court and to the debtor the person designated to receive notices. Because the required disclosure could be incorporated into existing standard reaffirmation agreements, and the notice to the court and the debtor would require only minimal effort, the costs of this requirement would be relatively small.

The costs of the mandate for credit and charge-card companies are also expected to be small. H.R. 833 would require credit and charge-card companies to add a brief statement regarding the function of the minimum payment option and disadvantages of making only the minimum payment each month to the materials provided to consumers opening new accounts and to all customers' monthly statements. Credit and charge-card companies also would have to provide customers with an illustration of the length of time required to pay off a $500 balance if they make only the minimum required payment. Firms would be able to add this information to the materials they currently give to customers.

Estimate prepared by: Federal Costs: Susanne S. Mehlman (226–2860); Impact on State, Local, and Tribal Governments: Lisa Cash Driskill (225–3220); Impact on the Private Sector: John Harris (226–6910).

Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I am delighted to begin immediately by talking about the means test and other consumer provisions that will harm middle-income and low-income people.

Because contrary to the assertion of my friend, the gentleman from Pennsylvania (Mr. GEKAS), that this is going to make it better, the means test is going to make it worse. It is incorrect to assume that the effect of this bill's harmful provisions would be limited to individuals seeking bankruptcy relief who earned more than the regional median income.

First, there are numerous significant flaws in the manner in which the median income is calculated. For example, the median income figure required under this bill will be outdated and understated. This is because the bill states that the household income is to be based on the most recent census figures available as of January 1. But as of January 1, the census has information available for only the second year prior to the date.

Accordingly, during this year, 1999, census figures will be available only for 1997. At times of inflation, this 2-year lag could result, obviously, in a significant increase in the number of individuals who are subject to the motions to dismiss or convert and who may earn more than the outdated median-income figure.

Another flaw in the median-income formula is that the test measures a debtor's income based on how much the debtor earned 6 months prior to bankruptcy. If the debtor lost a good job in month three and has been working at a low-wage job ever since, the income from that good job and the help from family members would be counted as if that is what his future income would be.

In addition, this bill, unlike current law, will permit creditors and other parties and interests to bring motions to dismiss more aggressively; and well-funded creditors will have extremely wide latitude to use such motions as a tool for making bankruptcy an expensive, protracted, contentious process for honest debtors, their families and other creditors.

Now, the bill is opposed by a growing number of Members of the House of Representatives for the simple reason this bill is worse than the bill we voted on in the last Congress; and it is bad for women, children, working Americans. But the good news, if this is good news for them in the credit card industry, it is good for the credit card industry.

This means test is fatally flawed. The legislation attempts to impose a one-size-fits-all income and expense test based on IRS standards to determine who is eligible for bankruptcy relief and how much they may be required to pay their creditors.

The problem is that the formula fails to take into account such important items as child care payments, health care costs, and the costs of taking care of ill parents, to name but a few of the glaring loopholes. The IRS standards are so extreme that they have been rejected by the Congress and abandoned by the IRS; and, yet, the credit card companies would have them apply them in bankruptcy.

Now, the denials have been pouring in pretty fast here so far; and there is going to be a lot of discussion about how the bill is devastating to children and women reliant on child care and alimony payments. Repeat: The bill is devastating to children and women reliant on child care and alimony payments.

On the debtor's side, the legislation makes it far more difficult for single mothers to access the bankruptcy similar. On the creditor's side, the bill pits sophisticated credit card creditors in direct competition with alimony and child support. The attempts to fix this incorporated into the legislation are not effective and are largely redundant.

And, third, but not finally, but I am going to stop here, the bill will also lead to a loss of jobs and collective bargaining rights. The business provisions of the bill will impose harsh new time deadlines and massive new legal and paperwork requirements on small businesses and real estate concerns and, by design, will lead to premature liquidation of job loss.

This is why the largest collective bargaining organization in America has asserted that the legislation will restrict the workings of bankruptcy cases for small businesses and place numerous jobs at risk.

Now, the bill conveniently ignores the real problem of what has caused more bankruptcies, namely, the problem of credit card abuse. And is there any colleague here that does not get credit card applications monthly, weekly, occasionally daily? And, at the same time, the legislation responds to every conceivable debtor excess, real or imagined. It gives a complete pass to the transgressions of the credit card industry.

My colleagues should be on the alert. This Bankruptcy Reform Act legislation of the 106th Congress will worsen the conditions of those few people in their district, working people, honest people, who may need to access this important court. Please remember, this bill is worse than the bill we had last year.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. BOUCHER).

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Chairman, I want to express thanks to the gentleman from Pennsylvania for yielding me this time.

I am pleased to rise in strong support of the adoption of this much-needed reform to our Nation's bankruptcy laws.

In an era in which disposable incomes are growing, unemployment rates are low, and the economy is strong, consumer bankruptcy filings should be rare. Contrary, however, to this expectation, in 1998, there were 1.4 million personal bankruptcy files, a 40 percent increase from the 1996 figure. In 1996, that figure reached one million for the first time. And, in 1998, there was a full 95 percent increase in the number of personal bankruptcy files from 1990.

Bankruptcies of mere convenience are often driving this increase. Bankruptcy was never meant to be used as a financial planning tool, but it is increasingly becoming a first stop rather than a last resort, as many filers who could repay a substantial part of what they owe elect to use the complete liquidation provisions of Chapter 7 of the bankruptcy law, wipe out all of their debt, even that portion they could repay, and seek an entire fresh start.

□ 1245

Our legislation will direct more filers into Chapter 13 plans and make sure that those who can afford to repay a substantial part of their debt are required to do so.

Mr. Chairman, this is a consumer protection measure. The typical American family pays a hidden tax of $550 every year arising from the increased costs of credit and the increases in prices for goods and services occasioned by the discharge in bankruptcy of $50 billion in consumer debt on an annual basis. By requiring that people who can repay a substantial part of the debt they owe do so in Chapter 13 plans, we can greatly lessen that hidden tax, and this bill will accomplish that result.

Another key point needs to be made about the legislation. The alimony or child support recipient is clearly better off under the terms of this bill than she is under present law. At the present time she stands seventh in the rank of priority for the payment of claims in bankruptcy. She is behind farmers making claims against warehouses and grain elevators. She is behind fishermen who make claims against their warehouses.

Under this bill, the child support or alimony recipient will be elevated to the first priority. She will now stand number one in line for the payment of bankruptcy claims. And other provisions of the bill also make it easier for the bankrupt's assets to be paid to her.

The gentleman from Virginia (Mr. MORAN) will be offering amendments today that I will support and I encourage other Members to support, that will require greater disclosures on credit card statements of the costs of making the minimum monthly payment. Credit card statements would have to indicate that the ordinary finance charge on the outstanding balance would continue to accrue.

The Moran amendment supplements other new consumer protection measures that are already a part of this bill. For example, credit card companies will be prohibited from terminating a customer's account simply because that customer pays his bills on time and therefore does not accrue finance charges. That is a very appropriate change to make and is one of many consumer protection measures contained in the bill.

This is a balanced, bipartisan measure which contains new consumer protections and requires greater debt repayment by those who can afford to make that repayment. This measure, when considered on the floor of the House as a conference report last year, obtained the votes of 300 of the Members, clearly demonstrating the broad bipartisan base for enacting this reform.

I am pleased to be coauthoring this measure with the gentleman from Pennsylvania, and I want to commend him for his leadership in bringing this balanced and bipartisan bill to the floor. I am pleased to join with him in urging its passage by the House.

Mr. CONYERS. Mr. Chairman, I yield myself 1¼ minutes.

I think it is very important that we begin to deal with the alimony and child support measure head-on. It has been suggested that this is not a problem or that it has been improved upon. But actually for women whose average income was at the median during the last 100 days before the support checks stopped or women whose child care expenses exceeded IRS standards, they may be denied access to Chapter 7 and forced into a restrictive Chapter 13 repayment plan.

Secondly, the bill does not exempt child support or foster care payments from the means test definition of disposable income, and does not exclude alimony and child support payments received within 6 months after filing for bankruptcy from the property of the estate.

How can we talk about women and children are okay? This bill is presently a disaster for single mothers and their children, which number in the alimony and child support area an estimated 243,000 to 325,000 bankruptcy cases each year. The National Partnership for Women and Families have told us that the child support enforcement provision in the bill would not adequately protect parents and children.

Mr. Chairman, I yield 2½ minutes to the gentleman from Virginia (Mr. SCOTT) a distinguished member of the Committee on the Judiciary.

Mr. SCOTT. I thank the gentleman for yielding me this time.

Mr. Chairman, this bill overturns centuries of well-established laws involving bankruptcy and the principle that those who are in financial ruin can get a fresh start if they pay all they have, with certain exceptions, to their creditors. Instead, they will be required for those affected to essentially be in debtor's prison for 5 years. Those who find themselves financially overwhelmed because of a loss of a job, illness, business failure, will not get a fresh start. They will have to pay every dime they have, after food and rent and a few other expenses, to their creditors.

Now, that is not a fresh start. That is a guarantee that at the end of 5 years they will be worse off than they started. So if someone is stuck with bills, maybe a spouse had a business reversal, got sick, a spouse had joint debts and their other spouse leaves or dies, they will not get a fresh start. They will get no relief for 5 years.

Now, let us not get misled by this means test where only certain people are affected by this legislation. All that means is that it is not a bad bill for everybody, it is just a bad bill for some people. That does not make it a good bill.

Now, there are some technical problems with the legislation. First of all, the salary calculation in what you have to pay is based on the last 6 months. Part of the bankruptcy problem may be caused by the fact that you lost your job, and that calculation is obviously not effective. You may be forced to pay more than in fact you have as income. It includes as income disability benefits or veterans benefits which if you have another job you will essentially lose in the future, and it forces spouses to compete with sophisticated creditors for their child support.

But fundamentally it violates centuries of laws that provide for a fresh start. I ask that this not happen in a haphazardly drawn bill that has technical problems and which is opposed by virtually every group of experts in bankruptcy law. Mr. Chairman, I would ask that we defeat this bill.

Mr. GEKAS. Mr. Chairman, I am pleased to yield 2½ minutes to the gentlewoman from New Jersey (Mrs. ROUKEMA).

(Mrs. ROUKEMA asked and was given permission to revise and extend her remarks.)

Mrs. ROUKEMA. I thank the gentleman for yielding me this time.

Mr. Chairman, I want to offer my strong support for this legislation. It goes a long way to correct the problems of bankruptcy. But right now I want to focus on the issue of child support. I have been a pioneer in the efforts at reforming child support, and I served on the U.S. Commission for Interstate Child Support Enforcement.

Over the last 10 years we have done a great deal to enforce child support and require the legal obligations, to close that enforcement gap. But in recent years we have learned that bankruptcy is one of the loopholes that has been used. Contrary to what we have heard before, as I view this legislation, it is strong and goes a long way toward

closing the enforcement gap as it relates to the child support component.

This bill really deals with the issue in a substantive way. It includes child support payments that are moved up to number one when determining which debts are paid first in a bankruptcy case. It gives confirmation and discharge of Chapter 13 plans and makes them conditional upon the debtor's complete payment of child support. And there are other issues in here that deal directly with child support.

But I want to particularly distinguish the reform measure that was led by the gentleman from Florida (Mr. SHAW) and also joined by the gentlewoman from Texas (Ms. JACKSON-LEE), so that there was bipartisan support for this reform that will require the trustee to notify a claimant parent of the bankruptcy proceedings.

I will not go into a lot more detail, but it is a strong bill as far as closing those enforcement gaps. But I do want to commend the gentleman from Pennsylvania (Mr. GEKAS) and thank him for including my amendment on child support during the markup. That amendment requires the GAO to study the feasibility of having bankruptcy court trustees report the names of individuals filing bankruptcy to the Office of Child Support Enforcement.

This study by the GAO that we are requiring in this legislation, we in the Congress will use this study to close any remaining loopholes that may remain that are permitting people to avoid their legal child support. It will make it criminal, but at the same time we must remember that it is the children who are being abused and deprived. I lend my strong support to this and look forward to continuing to work on the basis of the GAO study.

Mr. Chairman, I rise in strong support of H.R. 833—the Bankruptcy Reform Act of 1999.

INTRODUCTION

Consumer bankruptcy reform is an important issue that needs to be addressed now. In 1997 Americans filed a record of 1.33 million consumer bankruptcy petitions representing an over 650 percent increase since 1978. Those who entered into bankruptcy erased an estimated $40 billion in consumer debt. This resulted in a hidden tax of almost $400 per household for families who have to pay monthly bills including mortgages, student loans, and insurance. It is important to note that this surge in bankruptcies in the last few years occurred at a time when the national economy has grown at a strong rate. In fact, between 1986 and 1996, real per capita annual disposable income grew by over 13 percent while personal bankruptcies more than doubled.

Bankruptcy is fast becoming the first stop financial planning tool rather than a last resort. The purpose of reform is to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system but also ensuring that the safety net of the bankruptcy code is intact for those who need it most. I am a strong supporter of the consumer bankruptcy reforms contained in the bill.

CHILD SUPPORT

What I really want to focus on in today's debate is child support. I have a long history of standing up for child support enforcement, having been a pioneer on child support reforms and having served on the U.S. Commission for Inter-State Child Support Enforcement. It's a national disgrace that our child support enforcement system continues to allow so many parents who can afford to pay for their children's support to shirk these obligations. And despite the reforms the so-called 'enforcement gap'—the difference between how much child support could be collected and how much child support is collected—has been estimated at $34 billion!

This legal abuse is a criminal violation as well as neglect of our children's most basic needs. In addition, the taxpayers are abused because billions of tax dollars are paid out because these families are falling onto the welfare roles at alarming rates.

I want to commend the Committee for their attention to child support components of this problem. I am very pleased that H.R. 833—the Bankruptcy Reform Act of 1999 strengthens child support enforcement. I thank Chairman GEKAS and the Committee for all their hard work and their reaching out to diverse groups to form a consensus that the payment of child support should be protected.

H.R. 833 stregthens Child Support Enforcement by:

Child support payments are moved to NUMBER ONE when determining which debts are paid first in a bankruptcy case. Currently, child support payments rank seventh behind such ''priorities'' as attorney's fees.

Confirmation and discharge of Chapter 13 plans are made conditional upon the debtor's complete payment of child support. This will help further ensure that child support receives the priority it deserves.

Providing that the automatic stay DOES NOT apply to a state child support collection agency that is trying to recover child support payments. I know from speaking with child support advocates in New Jersey, that this change is a top priority for them to ensure continued payment of important child support.

I also want to associate myself with an additional provision, that was added in full Committee, that will require the trustee to notify a claimant parent of the bankruptcy proceeding. This reform measure was led by Rep. Clay Shaw and me. This will ensure that claimant parents are not left out when a debtor parent enters into bankruptcy. It is important to note that this was dropped from the Conference report last year. Fortunately with Representative SHAW's leadership and with Representative JACKSON-LEE—Republicans and Democrats providing bi partisan support.

There are important reforms for any state of New Jersey and for states across the nation. In fact these provisions are welcomed improvements that will help make real and positive change.

The current child support obligation for this year in New Jersey is $767 million. The total child support payments in arrears is $1.3 Billion. Yes, I said $1.3 Billion, of which about $800 million is still collectible. Bergen county in my district, along with six other New Jersey counties, make up 53 percent of the total collections.

MY AMENDMENT

In addition, I am grateful to Chairman GEKAS and the Committee for including my amendment on child support during mark-up. My amendment requires the GAO to study the feasibility of having Bankruptcy Court trustees report the names of individuals filing bankruptcy to the Office of Child Support Enforcement. The names could then be checked against a national list of court orders for child support. Those found to have support obligations would have the support obligation listed among the debts before the Bankruptcy Court and be used to better facilitate communication between claimant parents, state agencies and the trustee.

The GAO would have 10 months from the enactment of the legislation to conduct the study and report to Congress. The study is intended to lead to effective legislation ensuring that debtor parents cannot use bankruptcy to escape their child support obligations. In other words, we want to use this study to close any remaining loopholes that avoid child support legal obligations.

CONCLUSION

These are important and significant improvements that ensure that child support enforcement is strengthened. I supported these provisions last year and plan to support them this year.

It is important to remember that failure to pay child support is not a victimless crime. The children are the first and most important victims. We must ensure that these children are taken care of and I applaud the work of the Committee to this end and will continue my work on this issue. I urge support for this important legislation.

Mr. CONYERS. Mr. Chairman, I yield myself 45 seconds.

I want to address the gentlewoman from New Jersey, whose concern about bankruptcy is well-known and remembered from the last Congress. I read to her the first paragraph of the National Women's Law Center letter sent to me only 2 weeks ago which says that ''The bankruptcy bill, H.R. 833, puts economically vulnerable women and children at greater risk. By increasing the rights of certain debtors, including credit card companies and secured creditors, the bill would set up a competition for scarce resources between parents and children owed child support and commercial creditors both during and after bankruptcy. And single parents facing financial crises—often caused by divorce, nonpayment of support, loss of job, uninsured medical expenses or domestic violence—would find it harder to access the bankruptcy process and harder, if they got there, to save their homes, cars and essential household items.''

This is a nonpartisan organization. I urge the Members to carefully consider what we are doing to our women and children.

Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. I thank the gentleman for yielding me this time.

Mr. Chairman, we have heard much about personal responsibility during the course of this debate. We have heard over and over again from members of the credit card industry that individuals must be held accountable for

their behavior and that no longer is there any stigma attached to bankruptcy.

No one disagrees with the principles of personal accountability and personal responsibility. The problem is that the rhetoric does not withstand scrutiny in terms of the evidence supporting a linkage, to establish a link between the increase in personal bankruptcy filings and the change we are told has taken place in people's attitudes about bankruptcy simply does not exist.

□ 1300

On the eve of the committee markup I finally received from the Congressional Budget Office a draft of a report which I and other minority members of the committee requested more than a year ago. It concludes, and I quote:

> At this point, we do not have a clear idea of the benefit of a needs-based bankruptcy requirement.

It further concludes, and again I am quoting:

> Available research on the behavior of personal filings over time does not paint a clear picture of whether filings respond to incentives in the bankruptcy law.

In other words, we know very little about the likely consequences of what we are doing here today. Yet we are proceeding as if the evidence was clear and compelling.

But do not be misled. This bill will not reduce the number of bankruptcy filings. Colleagues will not see a substantial difference in terms of the 1.4 million annual filings.

But there is an issue of responsibility, corporate responsibility, and I submit that if we insist on responsible lending by the credit card industry, we will reduce the number of bankruptcy filings. Because while we do not know the cause of the increase in bankruptcy filings, no one, no one can legitimately dispute that irresponsible lending practices are at the very least a contributing factor.

Instead of encouraging responsible use of credit cards and reduction of credit card debt, many credit card lenders have encouraged card holders to take on an increasing amount of debts when they can ill afford it. They have increased interest rates, they have increased fees on current accounts, they have imposed penalties on consumers who pay off credit card balances without incurring any interest charges, and we have all experienced, everyone has experienced, the aggressive marketing tactics of the credit card industry. Last year alone they sent out more than 4 billion, that is 4 billion, solicitations, many of them to students with no credit history whatsoever and consumers already in debt.

The first exhibit to my right shows one of those solicitations which went to my own college-aged daughter. It is what is known as a live loan. I do not know why it is a live loan, but it is called a live loan, which invited her to cash a negotiable check for $2,875 at 18.9 percent interest. The offer said:

> Use the money for whatever you like. No limits, no restrictions, no questions asked—

and I am quoting from the solicitation.

If my colleagues question the link between these kinds of aggressive marketing practices and the rising bankruptcy rate, I invite them to examine the second exhibit to my right. The first panel displays a credit card offer by First Consumers National Bank, a nationally chartered credit card bank owned by Spiegel and Eddie Bauer. It says, and I am quoting:

> If you filed a bankruptcy, you can get a fresh start with this First Consumers National Bank Visa Card today. Your filed bankruptcy, your filed bankruptcy, qualifies you. No need to wait for bankruptcy discharge.

That is a quotation.

The second panel also shows a letter sent to bankruptcy attorneys, and I think it is the third panel, it is the third panel. The third panel shows a letter to bankruptcy attorneys by a Minnesota company that calls itself American Bankruptcy Service. The letter seeks to enlist these attorneys as distributors. Must be like an Amway, an Amway of bankruptcy services who will market the fresh start card to their clients. It actually goes so far as to offer them a commission. For each credit card issued, it promises they will receive $10, 10 bucks if they can get out there and peddle that card.

Now a balanced bankruptcy bill would address this kind of egregious conduct. It would demand responsible behavior not only of debtors but of credit card lenders themselves and particularly those creditors whose own reckless lending practices have done so much to drive people into bankruptcy.

But this is not a balanced bill. H.R. 833 does nothing, nothing to encourage corporate responsibility. In fact, it would reward irresponsible lending by enhancing the position of credit card companies relative to other creditors. It would create a vast new system of means testing that would be implemented at taxpayer expense. In effect, the bill would turn the bankruptcy system into a public funded with our tax dollars collection agency to increase the profitability of the credit card industry.

And what would this all cost the taxpayer? According to the CBO, last year's bill would have cost $214 million over a 5-year period, but that does not include some $225 million in administrative costs required to cover the additional duties assigned to the U.S. trustees under H.R. 833. In other words, almost a half a billion dollars so that the credit card industry can enhance their bottom line.

This bill is nothing more than a public subsidy for the credit card industry, Mr. Chairman, and it deserves to be defeated.

Mr. GEKAS. Mr. Chairman, I yield 30 seconds to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, I thank the gentleman for yielding this time to me, and thank him for his leadership and those on his committee for bringing a bill before Congress that is going to have the effect of lowering interest rates and making credit more available. This bill encourages competition by reducing uncertainty.

Right now, all those credit card companies jack up their interest rates because their competition is forced to impose high interest rates to cover the ease of declaring bankruptcy.

Also let me just say that the farm provisions in this bill that extend indefinitely the provisions of chapter 12 in title 11 for farmers is very good for the agricultural community.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentlewoman from New York (Mrs. KELLY).

Mrs. KELLY. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding me the time to clarify some very important provisions in this legislation.

Mr. Chairman, I rise today in strong support for H.R. 833, the Bankruptcy Reform Act, because it boils down to two words: personal responsibility. If one assumes a debt, they should do everything in their power to pay it off. However, a safety net has to remain for those who legitimately cannot pay their debts. Creditors should be made whole, if possible.

Some of my colleagues here today are trying to paint the word creditors to mean faceless financial institutions who are tricking consumers into assuming debt. They specifically speak of credit card debt. They unfortunately failed to note that credit card debt in the United States amounts to only 3.7 percent of all consumer debt. Furthermore, only 1 percent of credit card accounts end up in bankruptcy. Of that 1 percent it is estimated that 15 percent of those accounts can afford to repay some or all of their debt.

The people who are truly being hurt by our current bankruptcy system are Americans who play by the rules and pay their debts. Bankruptcy costs the average American family an average per year of $400.

Needs-based bankruptcy reform is well overdue, and that is what H.R. 833 delivers. It is the people who game the system that we have to stop.

I have heard from my colleague from Virginia (Mr. MORAN). He stated last year more people filed for bankruptcy than graduated from college. That is a staggering fact.

I am pleased to support H.R. 833's provisions which strengthen the Bankruptcy Code protections for ex-spouses and children. They have to be supported.

In the current bankruptcy law, child support and alimony are placed seventh behind attorney fees as debt obligations. If enacted, this bill would move child support and alimony payments to first on the list of debt obligations.

Also under current law, some debtors use the automatic stay to avoid paying

child support payments after they file for bankruptcy. H.R. 833 exempts State child support authorities from the automatic stay, thus insuring less delay in the proper payment of child support.

I vehemently oppose any legislation that would reduce the ability of women and children to receive support payments.

H.R. 833 is a good bill that moves us in the right direction, and I ask my colleagues from both sides of the aisle to join me in support of this reasonable reform.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from Massachusetts (Mr. DELAHUNT).

Mr. DELAHUNT. Mr. Chairman, I thank my friend and colleague for yielding me 30 seconds.

Let us be very, very clear, and I know that most members of the committee were aware of this, but for the rest of our colleagues:

During one of our hearings there was a panel of nine witnesses, including representatives of the credit card industry and minority witnesses. I asked a question and polled each of them, and all nine unanimously stated that this bill would not lower interest rates.

So that is a red herring, I suggest. The bill should be defeated.

Mr. CONYERS. Mr. Chairman, I yield 5 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I wanted to discuss a few things about this bill: first, the alleged need for it. And I want to stress that even though I am going to say there is no necessity for this bill, the Democratic substitute answers the nonexisting problem which they posit.

We are told the need for this bill is that the American people, especially the American middle class, are a bunch of deadbeats, that there is a huge increase in bankruptcy filings, which there is, and that the reason for this huge increase in bankruptcy filings is that we have changed social mores. There is no more stigma associated with bankruptcy. People used to be very reluctant to declare bankruptcy. Now they do it as a financial planning instrument, and they are deadbeats, and, therefore, we have got to crack down on it because the credit card companies are not making enough money.

What is the truth of the matter? The truth is that is nonsense. Sure there are a lot more bankruptcy filings, but why? The figures tell a very different story.

First of all, if it were true that the reason for the increase in bankruptcy filings were a change in social mores where people are more easily going to bankruptcies, then people would be going bankrupt when they are less in debt, when they are less in trouble. The figures say differently.

In 1983, before the surge in bankruptcy filings started, the average person who filed for bankruptcy had debts equal to 74 percent of his income. If one has that much debt compared to income, they file for bankruptcy.

Today, the average bankruptcy filer has debts equal to 125 percent of his income; so people are 50 percent more desperate before they go into bankruptcy. They are less eager to file, they are more reluctant to file, they are further in the hole before they file.

So why then do we have such an increase in bankruptcy filings? Here is the answer:

If we look at society at large, not at just bankruptcy filings but at society at large, we can find two things. We find the bankruptcy filings rising, but we also find the household debt burden as a percentage of income rising right along with it. Look how those two lines match.

Mr. Chairman, credit card companies, used to be when I was in college it was hard to get credit. Today they shove it at high school kids. Today they shove credit cards at people who are already 80 percent of their income in debt, of their annual income.

□ 1315

That is the real problem, irresponsible lending by the credit card companies. More and more credit is being given to people. People are getting more and more in debt. Just as the debt-to-income ratio rises, the bankruptcy filing rate rises right in tandem.

By the way, we are told that in 1978 Congress made the bankruptcy laws easier, and in the early eighties we started seeing an increase in bankruptcy because the laws are too easy; now we have to crack down.

Look at Canada. Canada has very harsh bankruptcy laws, harsher even than they want to make our laws in this bill. It has always been very harsh, and yet they have had the same increase in bankruptcies. We can date it.

When did it start in Canada, the increase in bankruptcies? In 1968. Why 1968? That is the year when the Visa card went into Canada, and they have had the same problems we have had with very harsh bankruptcy laws.

So this is a myth. The myth that the American middle class are deadbeats and that we have to crack down and squeeze a little bit more money out of them when they go bankrupt, it is a myth.

The Democratic substitute does squeeze it, but it squeezes it in a more rational way.

Let us talk about four things that this bill does. We are told that we ought to have a means test, needs-based bankruptcy. People should not simply get a discharge of their debts; they should have to repay if they can.

I will agree to that. We all agree to that. If people can repay, they should do so, and there should be a means test to see if they can repay, but a means test should mean a means test. What is your income? What are your unavoidable expenses? The difference is how much can afford to be repaid.

What does this bill do? Does it look at current income, at anticipated income? No. It looks back at income for 6 months before one files bankruptcy and assumes that is going to be the income.

It is pretty common in this country today for someone to be making $50,000, $75,000, $80,000 a year as middle management at IBM or some other big company, laid off. Now he is making $25,000 at McDonald's or as a consultant. That is the new underemployment for the middle class, a consultant.

Well, he is making $25,000. He contracted debts based on an income of $75,000. Now he goes bankrupt. This bill does not look at his new income, which is $25,000, or his prospective income which is $25,000. They look at what his income used to be, $75,000.

Is that fair or rational? Does it make sense? No.

The other half of the means test, what are your expenses? Well, what is your rent? What is your mortgage payment? Does this means test look at this? No. It looks at what the IRS thinks in its guidelines the average mortgage or rent ought to be in the Northeast or the southwestern United States, in guidelines so harsh the Congress told IRS to junk them last year, but for bankrupts we are going to do the same.

So we have to really crack down on the debtors. What about the dishonest creditor? Sears Roebuck was adjudged to have defrauded bankrupt people, debtors, $168 million in a class action suit last year. We cannot let that happen again. Big business crooks have to be protected, so this bill says no more class action suits. Someone wants to sue the big malefactor, the big guy who is cheating people of millions of dollars, they better have a few hundred thousand dollars in legal fees. One person cannot bring that lawsuit and it cannot be done for a class. No class action lawsuits; only in bankruptcy and only against creditors.

Small businesses, this bill murders small businesses. Many small businesses reorganize in bankruptcy. They get protections from their creditors. They manage to reorganize, get out of debt, and go on. This bill imposes such rigid requirements and such time lines on them that they will liquidate and kill jobs in businesses that could have survived.

Finally, child support, they claim that this bill saves child support. No, it does not. It kills child support enforcement. How? Two ways. Chapter 7, it says that not only are child support payments nondischargeable, so is credit card debt nondischargeable, so there is more to compete with mom.

Who is going to collect the debt, mom or the credit card attorney? They say we will give priority to mom; we will give priority to child support. Priorities are irrelevant after the discharge.

When someone is not in bankruptcy court anymore, priorities do not apply,

and in Chapter 13 they say a person cannot have a Chapter 13 repayment plan accepted by the court unless all the child support is paid, there is a plan to pay all the child support. They count as child support debts owed the government, so if the means test in Chapter 13 says he can pay enough money to pay the child support to the custodial parent but not enough to pay the debt he owes to the government, not enough, cannot do it, cannot confirm a plan, too rich to go bankrupt in Chapter 7, too poor to go bankrupt in Chapter 13, cannot go bankrupt at all, and she is out there competing with every other debt collector in the world. What chance does she have?

This bill also hurts farmers. There is no reason for such a harsh, one-sided bill. The Democratic substitute is a very harsh bill. I personally would not vote for it if it were a freestanding bill. I think it is too harsh, but it does everything reasonably that should be done and does not do some of these terrible things of prohibiting class actions, murdering child support, having an unfair means test, hurting small businesses.

That is why the administration will veto the bill. That is why every union is opposed to it, every consumer group, every professional bankruptcy group. Anybody who knows anything about bankruptcy in the profession is opposed to this bill, except for the credit card issuers and the banks.

So I urge a ''yes'' vote on the Democratic substitute and a ''no'' vote on the bill.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Chairman, I rise in support of the Bankruptcy Reform Act because it is based upon a simple principle of personal responsibility. Those who buy on credit should be required to pay their bills.

Our current bankruptcy system does not hold people to that standard. In 1998, a record 1.4 million Americans went to court to have their debts erased. Some were hard-working Americans who could not afford to pay their bills and needed bankruptcy protection, but many others took advantage of a failed bankruptcy system that encourages people to avoid paying their debts.

When people who cannot pay their debts do not, middle class Americans pick up the tab because companies charge higher prices to make up for the losses. Working families in America have a hard enough time paying their own bills. They should not have to needlessly pay someone else's.

The Bankruptcy Reform Act makes the right changes to the law by requiring those who can reasonably pay at least 25 percent of their debt to do so. Lower income Americans who truly cannot get out from mountains of debt will continue to have an escape hatch.

Mr. Chairman, I urge my colleagues to again stand for the reasonable principle of personal responsibility and pass this important legislation.

Mr. GEKAS. Mr. Chairman, I yield 2½ minutes to the gentleman from New Jersey (Mr. MENENDEZ).

(Mr. MENENDEZ asked and was given permission to revise and extend his remarks.)

Mr. MENENDEZ. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding me this time and for his work on this bill, along with the gentleman from Virginia (Mr. BOUCHER) and others.

Mr. Chairman, our bankruptcy system should be a safety net for those in need, not a financial planning tool for the well-to-do. It is not fair for the large majority of working men and women who pay their bills and play by the rules to continue footing the bill and paying the price for those who abuse the bankruptcy system. It is just not right.

This bill makes sure that those who truly need the safety net of bankruptcy get it, like those who lose their job or have a medical emergency or a sick child. This bill protects those people, but it also makes sure that those higher income people, who can still repay some of their bills, do so. In my view, that is just basic personal responsibility.

Under the bill, if the debtor earns less than the median household monthly income, they can file Chapter 7, have almost all of their debts erased and be totally unaffected by the needs-based formula. If they make above the median and their monthly income is great enough to pay at least $6,000 of the unsecured debt after subtracting actual priority debts, after subtracting secured debts like their mortgage, after subtracting actual school tuition for their kids, after subtracting allowable living expenses based on IRS guidelines, then, yes, they have a Chapter 13 repayment plan.

Now, that is allowing for a lot of leeway and a lot of protection before we ask someone to pay back the people they owe.

Our colleagues, the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS), who I have a great deal of respect for, have an amendment to take the IRS living standards out of the bill and give more discretion to the judges. In my mind, that is a mistake because it is the unfettered discretion that has made the bankruptcy laws so unfair.

Under our current rules, a wealthy person can be subject to one standard for living expenses while the working man or woman is subjected to another one. I believe our Bankruptcy Code should treat everyone equally. That is what the formula does.

Worst of all, under our current system children are often the ones who get shortchanged because their support payments can be stayed during bankruptcy proceedings, all while their noncustodial parents continue to enjoy their current standard of living. So this bill ends that practice and puts child support at the very top priority during bankruptcy, where it should have been all along.

I urge my colleagues to vote for this bill. Let us bring some fairness, some justice, some standards, some protection for our children and some sense to our Bankruptcy Code.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentlewoman from Oregon (Ms. HOOLEY).

Ms. HOOLEY of Oregon. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for his work and for yielding me this time.

Mr. Chairman, I am an original cosponsor of H.R. 833, a bill that provides common sense bankruptcy reform. It has been said that over the last 7 years we have had unparalleled economic prosperity and yet the bankruptcy filings have hit an all-time high. The thing that has happened is we have had a lot of studies that have also said some of those people that are filing bankruptcies can afford to pay back some of that debt.

I am supporting this bill because it ensures those with the ability to pay that they pay, and those who legitimately need protection from creditors get it.

I hope Members will keep in mind, and we have heard this number of $51,000 for a family of four, which is the median income, they are not even affected by this legislation. If they are making $51,000, they are not affected by this legislation. For those above that threshold, there is a sensible means testing that determines whether a debtor should be able to walk away and not pay anything or at least pay part of their debt.

Mr. Chairman, this bill encourages personal responsibility, meets its obligation for children and families and saves American consumers money. I urge support for this bill.

Mr. GEKAS. Mr. Chairman, I yield 3½ minutes to the gentleman from New Jersey (Mr. ROTHMAN), a member of the committee.

(Mr. ROTHMAN asked and was given permission to revise and extend his remarks.)

Mr. ROTHMAN. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding me the time.

Mr. Chairman, I rise today in favor of H.R. 833. I believe that this legislation is important in order to restore integrity to our Nation's bankruptcy system.

While I believe in the fresh start that bankruptcy provides, and agree that there are people who legitimately need and deserve its protections, I am concerned that this last resort is currently being abused by many people. That is unfair to consumers, to creditors and to the people who truly need the system.

Also, while I support the bill, I believe that it could have been made better had we been allowed a floor vote to

eliminate the provision which allows States to opt out of the homestead exemption contained in the bill, and I hope that the various State legislatures who have been given this discretion will do so wisely.

Nevertheless, I support H.R. 833 and wish to make four points today. First, I believe that there is an urgent need for meaningful reform. It is just common sense, if someone borrows money from somebody else or they encourage them to perform some services and they consume the money or get the benefit of the services, they should pay it back if they can, because if they do not, everyone else in America pays for being a deadbeat.

Now, this bill says we do not want the rest of American families to pick up the tab for those who have avoided paying their just obligations, even though they could afford to repay all or a portion of it.

Next, there is a need to create Federal standards. More than 70 percent of the all-time 1.4 million bankruptcies were filed in Chapter 7, which means all their debts are forgiven, even without regards to income. This says, let us take a look at the regional median income. So in New Jersey, the State that I come from and represent, if someone makes $67,000, less than $67,000 for a family of four, they can discharge all their debts.

□ 1330

It is only if you make more than $67,000 that the questions start to be asked: Can you afford to repay a portion of your debt?

There is discretion involved. There are presumptions that you can afford to repay, but after child support and other legitimate, important deductions are made, the bankruptcy trustee can still use his or her judgment to take into account extraordinary circumstances, such as a decline in income or unexpected medical expenses.

The bill still truly allows those who need a fresh start to get one, but says in New Jersey if you make over $67,000 a year and can afford to repay a portion of your debt, you should.

This bill improves the current law also in several ways. It strengthens protections for vital family support obligations. It completely protects retirement plan assets from the claims of creditors, and completely protects savings accounts for post-secondary college savings accounts, up to $50,000 per child. It adds a whole host of other new consumer protections.

Therefore, as an original cosponsor of this bill, I urge my colleagues to vote in favor of this important bankruptcy reform legislation.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN), a Member who has been a bulwark in this effort and a cosponsor right from the beginning.

Mr. MORAN of Virginia. Mr. Chairman, I rise in support of the Bankruptcy Reform Act. I am a lead sponsor of the measure because the current system is broken. What was once the option of last resort has too often become the preferred option of choice. A legislative fix is necessary to distinguish between those who truly need a fresh start and those capable of assuming greater responsibility and making good on at least some of what they owe. It's the fair thing to do.

Mr. Chairman, unless we take the steps now to reform the bankruptcy system while the economic times are good, we will not have the political resolve to fix it when the economy is not so strong.

Despite this country's remarkably strong economy, wages are up, unemployment is down, interest rates and inflation are low—despite the unparalleled times that we are currently experiencing, the rate of personal bankruptcy filings has increased dramatically. That does not make sense, unless the explanation is that the system is broken.

Mr. Chairman, last year bankruptcy filings reached a record high of more than 1.4 million. That is more than the number of people who graduated from college last year.

Now we can vilify creditors and lenders, banks and mortgage companies and credit card companies, particularly credit card companies, and some of that vilification is deserved. All that unsolicited marketing, particularly of college students, is too aggressive, it is inappropriately deceptive, and it is imprudent, and we should not be condoning it.

But while many would like to blame the credit card industry for the sharp increase in bankruptcy filings, it is very important to understand that the statistics indicate that the credit card industry is not the impetus for the current bankruptcy crisis.

The vast majority of Americans recognize the personal responsibility they take in using a credit card. More than 96 percent of credit card holders pay their bills as agreed to, and only 1 percent ever end up in bankruptcy. Bank credit cards represent less than 16 percent of total debt on average bankruptcy petitions.

Mr. Chairman, according to a recent Federal Reserve Board survey, credit cards account for a mere 3.7 percent of consumer debt, hardly large enough to cause a bankruptcy crisis.

Regardless of how one feels about creditors, the key issue before us now is that many borrowers capable of repaying some or all of their obligations are not acting responsibly. Somewhere over the past decade, since 1990, the integrity of the bankruptcy process has been corrupted and an important moral principle has been eviscerated. The time-honored principle of moral responsibility and personal obligation to pay one's debts has been eroded by the convenience and ease with which one can discharge his or her obligations. It is unacceptable and unfair to those who do pay their bills to have to foot the bill for those who do not.

Mr. Chairman, it is estimated that the majority who do make good on their debts are having to pay about an average of $400 a year to make up for the bad debt of those who do not make good on their debts. That is why this legislation addresses the process. It enables those who truly need relief to get the relief. It is fair, it is a bipartisan bill, and it should be passed.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Washington (Mr. ADAM SMITH), because if there is anyone who knows about the economic impact of the bill before us, it is he.

Mr. SMITH of Washington. Mr. Chairman, this issue is all about personal responsibility, taking responsibility for one's own actions. In this case, when people do not take responsibility for their own actions, others have to pay.

We all pay more for everything that we buy because of the costs companies have to incur to cover those who do not pay their bills, and in particular, small businesses can be killed by this. If just a couple of critical creditors do not meet their obligations, small businesses can go out of business.

We have a responsibility to honor our commitments. I think the worst message that I have heard in this whole debate is that what is really to blame is the marketing, that we should blame people for advertising credit, and it is their fault, it is not the fault of the person who fell for the marketing campaign, who accepted the obligation, accepted the money. It is somebody else's fault.

When someone gets a credit card and charges it, they are responsible for paying it. Who does not know that? Everybody knows that. To say that it is not the individual's fault who has incurred the debt, but the person who gave them the credit, sends a terrible message to our country, that you do not have to be responsible for your own actions.

Second, it hurts those who can responsibly use credit. I got one of those credit card applications, 10 or 15 of them, when I was in college. I used one of them and got a credit card and I paid it off every month. Because of that, it helped me with some financial spending ability, and helped me establish credit. I would hate to think that people who can use credit responsibly would be denied it because of those who cannot.

One final point on the means testing issue. It is criticized that the means testing is based on your income from the past. First of all, what else can you base it on, really, except the existing record? But secondly, that is exactly the way we calculate child support payments, by your past income.

Just like with child support, in this bill if there is an extenuating circumstance, if you go from being a $100,000 a year marketer to somebody working for $5 an hour at McDonald's, you can go to the judge and have that taken into consideration.

It is just a misstatement of the facts to say that somehow those special circumstances are not considered in this bill. They are, just like they are in calculating child support. I do not think anybody on the other side of this debate would say that we should only base child support payments on projected future incomes, as offered by the person who has to meet the obligation.

The means testing system works, and so does the bill.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PETERSON).

Mr. PETERSON of Pennsylvania. Mr. Chairman, I thank the gentleman for yielding time to me.

Mr. Chairman, I would also like to congratulate him and all those who have worked on this legislation. This is one of the most needed pieces of legislation in the economics of this country.

At a time when we are at an all-time high economically, when our economy is growing faster than it has ever grown, we end up with the highest number of bankruptcies, 1.42 million, costing consumers over $40 billion in the past year. In 1998, more people declared bankruptcy than graduated from college. That is inconceivable in a country like this.

Why is that the case? It is because it is so easy. It is because we have current laws that allow people to choose, well, I guess it would be easier to go bankrupt, so I will do that. That is not what made this country strong. When we owe money, when we have debts, it is the responsibility of each and every one of us to pay those debts, however long we have to work, how many hours per day, how many days per week, how much effort is needed to pay our debts.

I was a businessman, a supermarket operator for 26 years. When I am out in my district, I always say to businessmen, and business is what makes this country go, that is what makes our employment base; to independent businessmen I will say, how is business? And they will say, it is good. But I so often hear the complaint, if it was not for bankruptcies, I would have had a good year. I had seven bankruptcies this year and wiped out my total profit picture.

That is happening to small businesses all over the country because people choose to go bankrupt rather than stay and fight and pay their bills, as they should have. The American economy is built on financial responsibility. That is what is different about this country. When we owe something, we pay it.

Currently, child support and alimony are only accorded seventh priority. They are going to go to the top of the list in this bill. That is why H.R. 833 is so well-designed. It put responsibility back, that when you owe money, you have to pay it. You have to make your very best effort. Bankruptcy should only be the very last extreme, where you just cannot physically do it. It is not something that you choose, it is not a choice you make. Bankruptcy should not be easy, and this bill changes that.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the distinguished minority leader, the gentleman from Missouri (Mr. RICHARD GEPHARDT) has said that, ''While I support a balanced approach to bankruptcy reform that places equal responsibility on both debtors and creditors, I must oppose H.R. 833 because it fails to strike such a balance.''

In addition, the administration has said repeatedly that they will veto this bill in its current form. The legislation is opposed by the National Bankruptcy Conference, the Commercial Law League, the National Association of Consumer Bankruptcy Attorneys, the National Association of Bankruptcy Trustees, and the National Association of Chapter 13 Trustees, the AFL, the UAW, AFCSME, UNITE, the Leadership Conference on Civil Rights, the National Partnership for Women and Families.

Please, let us make certain that we do not move bankruptcy into the dark ages. Let us reject this bill, send it back to the committee, and I hope that Members will consider favorably some amendments that could hopefully improve the bill.

Mr. GEKAS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the lines of debate are fairly clear now. We have insisted all along that our bill is a balanced approach, contrary to what the gentleman from Michigan (Mr. CONYERS) has implied, or is the implication or the inference gained by the minority leader.

When we consider the fact that we have a safe harbor for low-income and moderate-income and no-income individuals seeking the benefits of bankruptcy, on the one side, and on the other side we have the approach that those individuals in the higher-income brackets, from $50,000 and up who might have an ability to repay are accorded a mechanism for recoupment of some of that debt, then we can see that the balance is what we begin the debate with here in this Chamber.

So when it comes down to the final vote, what the individuals who are supporting this bill will be finding is a bill that fixes the loose machinery that now exists in bankruptcy.

Mr. HYDE. Mr. Chairman, I am pleased that the Committee on the Judiciary, after thorough hearings and markups, completed its consideration last week of H.R. 833 (the ''Bankruptcy Reform Act of 1999''), and reported the legislation favorably.

We are on the Floor today—relatively early in the 106th Congress—debating this omnibus bill, because bankruptcy is an important issue on the national agenda. With this auspicious beginning, I am hopeful the effort to enact major improvements in our bankruptcy law will reach fruition this session. Consumer bankruptcy reform is the centerpiece of H.R. 833, but the bill also addresses business bankruptcy, tax-related issues in bankruptcy, transnational bankruptcy, and the treatment of financial contracts.

Bankruptcy reform was a major activity of the Committee on the Judiciary in the last Congress. In September 1997, our colleague, the gentleman from Florida [Mr. MCCOLLUM], introduced H.R. 2500, the ''Responsible Borrower Protection Bankruptcy Act,'' a bill designed in part to implement the concept of needs based bankruptcy. In February 1998, the chairman of the Subcommittee on Commercial and Administrative Law—the gentleman from Pennsylvania [Mr. GEKAS]—built on this approach by introducing H.R. 3150, the ''Bankruptcy Reform Act of 1998.'' H.R. 3150 incorporated—with modifications and additions—most of H.R. 2500's consumer bankruptcy provisions while also addressing other bankruptcy related subjects. Although the House passed an amended version of H.R. 3150 and later acted favorably on the work product of a Committee of Conference, the other body did not have time before adjournment to take action on the Conference Report.

This year my Committee again devoted much attention to bankruptcy reform. The gentleman from Pennsylvania [Mr. GEKAS], who conducted important hearings on bankruptcy reform in his Subcommittee last year, deserves commendation for the scope of the testimony his Subcommittee elicited during four days of hearings this March. Witnesses represented a wide range of viewpoints.

These hearings were followed by two days of markup in the Subcommittee on Commercial and Administrative Law and five days of markup in the Full Committee on the Judiciary. The positive aspect of returning to a familiar subject was the opportunity to fashion some improvements as a result of benefitting from the thoughtful insights of knowledgeable individuals who analyzed earlier versions of the legislation.

The major objective consumer bankruptcy reform is to achieve an appropriate balance between debtor and creditor rights that will increase creditor recoveries while offering relief to deserving debtors. Those who need an immediate fresh start should get it—but those who can afford to make significant payments out of future income should be required to do so.

Under H.R. 833 as reported, individuals or couples with income levels exceeding adjusted regional median figures that take into account household size generally will not be able to remain in Chapter 7 if they can make payments of at least $100.00 per month out of future income to general unsecured creditors. Chapter 7 offers a financial fresh start—without encumbering future income—to debtors who are prepared to give up all of their nonexempt assets. Those who cannot stay in Chapter 7 as a result of the pending legislation generally will have the option of participating in a Chapter 13 repayment plan for five years and qualifying for a limited discharge eventually.

Bankruptcy reform is needed to address deficiencies in current bankruptcy processes and mitigate adverse impacts of bankruptcy filings. Congress is responding to the many developments since the Bankruptcy Code's enactment over a generation ago—including a burgeoning bankruptcy caseload that now exceeds 1.4 million annual filings.

We can seek to reduce financial losses that result from greatly increased filings while treating debtors and their spouses and children with compassion. In that regard, I plan to offer an amendment relating to the living expenses of debtors who will be channeled into five-year repayment plans.

I am optimistics that the results of my Committee's work and our actions on the Floor today will be to provide for bankruptcy processes that increase creditor recoveries and operate fairly. If so, we will be able to point to an important legislative achievement on a subject of great economic significance to the American people.

I urge my colleagues, after giving careful consideration to the amendments we will be debating today, to support passage of H.R. 833.

SHIPPING ANTITRUST HEARING WEDNESDAY; JUDICIARY TO STUDY COMPETITION IN DEREGULATED INDUSTRY

What: Oversight Hearing on ''Antitrust Aspects of the Ocean Shipping Reform Act of 1998.'' Committee on the Judiciary.

When: Wednesday, May 5, 1999, at 10:00 a.m.

Where: 2141 Rayburn House Office Building.

On May 1, legislation deregulating the ocean shipping industry went into effect, even as new issues regarding competitive practices in the industry have arisen. The justification for the industry's antitrust exemption has been called into question as it primarily benefits foreign carriers at the expense of American shippers, while a new investigation has unearthed alleged anti-competitive activity of some carriers.

Shipping's continued antitrust exemption poses the questions . . .

Did the 1998 Ocean Shipping Reform Act strike the right balance between carriers and non-vessel owning common carriers (NVOs) in allowing ocean carriers to use confidential service contracts, but not the NVOs?

Is antitrust immunity still justified in light of the new environment and the startling findings of anti-competitive activity made in a recent investigative report on the industry?

Does it make sense to continue antitrust immunity when it largely benefits foreign carriers at the expense of American shippers?

Does the Federal Maritime Commission have adequate authority to deal with the kinds of practices detailed in the new report, and what, if any, role can the Justice Department play?

These hearings will . . .

Allow a complete airing of the issues raised in the investigation by its author, FMC Commissioner Delmond Won.

Further discuss the competitive issues surrounding the newly deregulated shipping industry.

Mr. CROWLEY. Mr. Chairman, I rise today in support of H.R. 833, the ''Bankruptcy Reform Act of 1999.''

Mr. Chairman, a record 1.42 million personal bankruptcy filings were recorded in 1998, rising a staggering 500 percent since 1980. Despite strong economic growth, low unemployment and rising disposable income, personal bankruptcies are soaring, costing over $40 billion in the past year alone. Without serious reform, these trends promise to continue growing every year, costing consumers and businesses even more money.

The Bankruptcy Reform Act of 1999 is an important piece of legislation that will start to end the abuse and restore responsibility to the bankruptcy system. H.R. 833 closes loopholes in current law that encourages debtors to take advantage of the system and avoid paying their debts. Too many times debts are wiped out, instead of worked out.

This legislation provides a fair needs based system that takes debtors' special circumstances into account while assuring that those who can afford to pay are required to do so.

Additionally, this bill puts the needs of women and children first. Under current law, child support and alimony payments rank seventh on the priority lists of payments. Under H.R. 833, child support payments are raised from seventh to first giving them the long overdue priority that they need and deserve. In addition, this bill closes various loopholes in bankruptcy so that filers seeking to delay or evade their important family obligations, will not be able to do so.

Mr. Chairman, I strongly urge my colleagues support for this legislation which strikes the appropriate balance between the interests of consumers, debtors and creditors and will help restore personal responsibility and fairness to our bankruptcy system.

Mr. PACKARD. Mr. Chairman, I rise in support in H.R. 833, the Bankruptcy Reform Act of 1999. It is time we revitalize our weak bankruptcy system, which is supposed to benefit those who need it most. As the sponsor of bankruptcy reform legislation during the 105th Congress which protected churches and charities, I strongly endorse the efforts of my colleagues in crafting the bill we are debating today.

The truth is, our bankruptcy system is seriously flawed. This system allows individuals who have the ability to pay back a portion of their debts to declare bankruptcy so American taxpayers can foot the bill for them. This costs Americans an average of $550 a year in the form of higher interest rates and increased product prices.

The original reason for people to file bankruptcy was as a last resort, for those in a dire situation. Unfortunately, bankruptcy has become a way for some reckless spenders to escape their debts. There are more people declaring bankruptcy in America each year than what are graduating from college. This is absurd! H.R. 833 will give this country a need-based bankruptcy system, not an easy way out for those who choose to not repay their debts. I firmly believe this legislation will restore a sense of fairness and personal obligation to our bankruptcy system.

Finally, I would like to thank Chairman GEKAS for his hard work on this legislation and for working with me to ensure the enforcement of my legislation, H.R. 2604 from the 105th Congress. The Religious Liberty and Charitable Donation Protection Act restored the right of debtors to tithe and give charitably after declaring bankruptcy.

Mr. Chairman, what kind of system are we encouraging if we do not require people who can pay back even a portion of their debts to do so? I urge my colleagues to support H.R. 833, and restore a sense of responsibility to our bankruptcy laws.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in opposition to the passage of H.R. 833, which restructures, I believe in a negative way, the way bankruptcy is handled in the United States today.

At the outset let me say, bankruptcy is an important mechanism for many families and business-owners around the country. For many people who have filed for Chapter 7 Bankruptcy successfully, Chapter 7 has provided a ''fresh start'' and eventually helped them get them and their families on the road to recovery. But it is not a free ride. Chapter 7 involves liquidation of assets—surely a traumatizing and unpleasant situation in any person's life.

Chapter 13 is a less dramatic form of bankruptcy that allows structured repayment. It is an important option for those who have an income sufficient to eventually pay back debt over an extended period of time and maintain their current assets.

Chapter 11 bankruptcy is also important. It is the form of bankruptcy that allows commercial entities to reorganize so that they can satisfy their creditors.

The increase in the number of bankruptcies over the past few years tells Congress that we are in desperate need of bankruptcy reform. Or does it? Perhaps—as many of us Democrats have argued, we ought to be taking a closer look at banking and lending practices. Perhaps the problems, on the consumer side, is not that people have found bankruptcy laws, but rather that credit card companies and other creditors have flooded our constituency with undeserved credit lines. Will we ever find out if this is the case? No, because the Committee on Banking and Financial Services did not look at this bill.

So already, we are working under the assumption that bankruptcy reform is needed because consumers are abusing the system. This premise is a dangerous one, and it shows, because this bill is pockmarked with provisions that give power to credit card companies and collection agencies—and it does nothing to make creditors responsible for their own actions. It gives them carte blanche to lend without fear of reprisal, and creates an atmosphere strikingly similar to the one surrounding the savings and loan industry in the mid-1980s (following deregulation).

The Chairman said it himself during our markup of this bill in the Judiciary Committee when defending an amendment that he had passed. He said

I have been told with great sincerity that [my amendment] is a deal breaker. That it is a killer. That some of the credit card folks will walk away from the bill if it is passed. I found that a bit much. I asked my staff to give me a list of what the creditors are getting out of this bill. I have pages and pages and pages of advantages the creditor community is getting out of this bill. . . . I was going to read a list of what the creditors are getting out of this bill. I won't do it. I assume you know. But there are, I don't know, 12 or 13 pages of single-spaced print of changes that benefit the creditors. . . . There ought to be a little give on the part of the creditor community[,] there doesn't seem to be.

Even the Chair's cry for a ''little flexibility'' could not be heeded by the Members of his own party on the Committee. Does that tell us anything about what is pushing this bill through Congress? Are these reforms guided by reason, or by solidarity with big lenders?

Who does this bill hurt? Small business-owners, bankruptcy trustees, women and children. Why women and children? Because it contains provisions which allow credit card companies to transform their ''investments'' into non-dischargeable debt. This puts women

and children expecting domestic support on the same footing as credit card companies—and when both must fight to get the monies that they deserve, who do you think can afford to pay the better lawyers? Who do you think will get to those funds first? The credit card companies, of course. That is why this bill is strongly opposed by the National Women's Law Center.

But families and children are not the only ones hurt by this bill. It muddies the structure of the bankruptcy system. It replaces our current mechanism used to determine whether a debtor may file for Chapter 7 or Chapter 13 with an IRS ''means test'' that was developed for an entirely different purpose—collecting taxes. It is this section that has drawn the ire of consumer groups, women's and children's organizations, and the Democratic Members of our Committee—and rightfully so. It is a provision that was never recommended by the National Bankruptcy Commission, who has been the primary group studying the bankruptcy system and the need for bankruptcy reform.

Sure, the IRS-developed ''means test'' is easy to use, but does that make it right? Is it a bright line or a rubber stamp? Is it not our responsibility to look at where the bright line lies, rather than on the fact that it is a bright line? Are we allowing form to rule over substance?

At committee and at rules I offered several amendments that would have made this a better bill, a bill that would be more responsive to the needs of all Americans, and not just those that work in glass towers. I offered amendments that would have protected victims of managed care disasters and tobacco companies. I offered amendments that would have protected our seniors that rely on social security as their primary source of income. I offered amendments that would have allowed recipients of federal disaster assistance to not be penalized by the bankruptcy system. How these reasonable amendments were not accepted I cannot say—but I can say that this bill does not do right by the American people.

The bill raises more questions than it answers, especially for America's families. I urge each of you to vote against it, and work with us to provide meaningful bankruptcy reform that eschews personal and financial responsibility from both debtors and creditors.

Mr. CRAMER. Mr. Chairman, I rise in support of H.R. 833, the Bankruptcy Reform Act.

H.R. 833, is a common sense piece of legislation that reforms our deeply flawed bankruptcy system. Under our current bankruptcy system, we have seen an increase in bankruptcy filings by more than 400 percent since 1980. Last year alone, during booming economic times with historic lows in unemployment, more than 1.4 million Americans filed for bankruptcy. This is a 3.6 percent increase over the number of individuals filing for personal bankruptcy in 1997 and an increase of 94.7 percent over 1990 levels. Moreover, 70 percent of these 1.4 million bankruptcies were filed under Chapter 7, the most permissive and lenient form of bankruptcy. Under Chapter 7, individuals can simply erase most of their accumulated debt. In effect, the permissiveness of the current system, while allowing some consumers to escape their debts, ultimately harms all consumers by forcing industry to charge higher prices and impose tighter credit.

Clearly, Mr. Chairman, something is wrong with our current bankruptcy system. Our current system makes it too easy for individuals to compile huge amounts of debt and then escape responsibility for repaying those debts. For far too many individuals, bankruptcy has become an easy and convenient way to skirt their financial obligations rather than an instrument of last resort.

H.R. 833 reforms this flawed system. H.R. 833 simply says that those consumers who can afford to pay back their debt should be required to do so. This bill does this by instituting a means test that requires those individuals making more than the regional median income, and who can pay more than $6,000 in debts over five years to file for Chapter 13 bankruptcy, as opposed to Chapter 7. By doing this, the bill prevents individuals with high incomes from walking away from their debts. At the same time, the bill continues to provide those individuals in need of bankruptcy protection with the opportunity to file for the more lenient Chapter 7 bankruptcy. The bill also attempts to discourage individuals from repeatedly filing for bankruptcy protection by terminating the automatic stay against collection of debts for an individual who files for bankruptcy within one year of clearing up an earlier bankruptcy.

Mr. Chairman, H.R. 833 is a good bill that cuts down on the blatant abuse of the current system by instituting several much needed reforms. This bill restores balance, accountability, and common sense to our deeply flawed system. Some, I know will argue that the bill is extreme and will end up harming families who are in desperate need of bankruptcy relief. But, Mr. Chairman, I believe this bill strikes the right balance between seeking to protect those in most dire need, while restoring personal responsibility to our bankruptcy system.

Therefore, Mr. Chairman, I urge my colleagues to support H.R. 833.

Mr. BEREUTER. Mr. Chairman, this Member rises today to express his support for H.R. 833, the Bankruptcy Reform Act, of which he is an original cosponsor.

First, this Member would thank the distinguished gentleman from Pennsylvania [Mr. GEKAS], Chairman of the Judiciary Subcommittee on Commercial and Administrative Law, for introducing this bill. This Member would also like to express his appreciation to the distinguished gentleman from Illinois [Mr. HYDE], the Chairman of the Judiciary Committee, for his efforts in getting this measure to the House Floor for consideration.

This Member supports the Bankruptcy Reform Act for numerous reasons; however, the most important reasons include the following:

First, and of preeminent importance to the nation's agriculture sector, this Member supports the provision in H.R. 833 which permanently extends Chapter 12 of the Bankruptcy Code for family farmers. Chapter 12 bankruptcy allows family farmers to reorganize their debts as compared to liquidating their assets. Chapter 12 bankruptcy has been a viable option for family farmers nationwide. It has allowed family farmers to reorganize their assets in a manner which balances the interests of creditors and the future success of the involved farmer.

If Chapter 12 bankruptcy provisions are not permanently extended for family farmers, this will have a drastic impact on an agricultural sector already reeling from low commodity prices. Not only will many family farmers have to end their operations, but also land values will likely plunge downward. Such a decrease in land values will affect both the ability of family farmers to earn a living and the manner in which banks, making agricultural loans, conduct their lending activities. This Member has received many contacts from his constituents regarding the extension of Chapter 12 bankruptcy because of the situation now being faced by our nation's farm families—although the U.S. economy is generally healthy, it is clear that agricultural sector is hurting.

Second, this Member supports the provision in H.R. 833 which provides for a means testing (needs-based) formula when determining whether an individual should file for Chapter 7 or Chapter 13 bankruptcy. The vast majority of bankruptcy filers—approximately 70%—choose Chapter 7 of the Bankruptcy Code, which erases all debts. Some Chapter 7 filers actually have the capacity to repay some of what they owe, but they choose Chapter 7 bankruptcy and are able to walk away from these debts. For example, the stories in which an individual filed for Chapter 7 bankruptcy and then goes out takes a nice vacation and/or buys a new car are too common. Moreover, the status quo is costing the average American individual and family in increased costs for consumer goods and credit because of the amount of debt which is never repaid to creditors.

As a response to these concerns, the means test of H.R. 833 will help ensure that high income filers, who could repay some of what they owe, are required to file Chapter 13 bankruptcy as compared to Chapter 7. This needs-based system takes a debtor's income, expenses, obligations and any special circumstances into account when determining whether he or she has the capacity to repay a portion of their debts. However, this bill still preserves the right to file bankruptcy, for an individual or family who legitimately need a ''fresh start'', which was the original intent behind bankruptcy legislation.

Third, this Member also supports the positive steps that H.R. 833 takes in ensuring that those who owe child support and alimony payments are not allowed to evade this vital, familial responsibility by filing bankruptcy. The bill moves child support payments and alimony into the highest payment priority.

In closing, this Member would encourage his colleagues to support H.R. 833, the Bankruptcy Reform Act.

Ms. ROYBAL-ALLARD. Mr. Chairman, I rise in opposition to this bill.

I would gladly vote for H.R. 833 if it were a ''balanced and sensible'' bankruptcy reform bill. Unfortunately, H.R. 833 fails to include reasonable consumer protections.

Because the closed rule prevented Mr. DELAHUNT, Mr. WATT, Mr. LAFALCE and I from offering an amendment to ensure that the credit industry assumes its responsibility for the dramatic rise in consumer debt this bill allows misleading and coercive practices to continue.

My staff collected credit card solicitations they receive in the mail. In a matter of weeks, we amassed dozens of solicitations, offering free cookbooks, calling cards, sweatshirts, and frequent flyer miles. All promoted low teaser rates in giant print. But you need a magnifying glass to see the permanent rate, which can jump to 25%.

With these aggressive marketing techniques, fundamental bankruptcy reform must

include reasonable consumer protections. Without them, H.R. 833 is a lost opportunity for this House.

I urge my colleagues to oppose the bill.

The CHAIRMAN pro tempore (Mr. LAHOOD). All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment under the 5-minute rule and is considered as read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 833

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Reform Act of 1999''.

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

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs based bankruptcy

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Notice of alternatives.
Sec. 104. Debtor financial management training test program.

Subtitle B—Consumer Bankruptcy Protections

Sec. 105. Definitions.
Sec. 106. Enforcement.
Sec. 107. Sense of the congress.
Sec. 108. Discouraging abusive reaffirmation practices.
Sec. 109. Promotion of alternative dispute resolution.
Sec. 110. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 111. Dual use debit card.
Sec. 112. Enhanced disclosures under an open-end credit plan.
Sec. 113. Protection of savings earmarked for the postsecondary education of children.
Sec. 114. Effect of discharge.
Sec. 115. Limiting trustee liability.
Sec. 116. Reinforce the fresh start.
Sec. 117. Discouraging bad faith repeat filings.
Sec. 118. Curbing abusive filings.
Sec. 119. Debtor retention of personal property security.
Sec. 120. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 121. Giving secured creditors fair treatment in chapter 13.
Sec. 122. Restraining abusive purchases on secured credit.
Sec. 123. Fair valuation of collateral.
Sec. 124. Domiciliary requirements for exemptions.
Sec. 125. Restrictions on certain exempt property obtained through fraud.
Sec. 126. Rolling stock equipment.
Sec. 127. Discharge under chapter 13.
Sec. 128. Bankruptcy judgeships.
Sec. 129. Additional amendments to title 11, United States Code.
Sec. 130. Amendment to section 1325 of title 11, United States Code.
Sec. 131. Application of the codebtor stay only when the stay protects the debtor.
Sec. 132. Adequate protection for investors.
Sec. 133. Limitation on luxury goods.
Sec. 134. Giving debtors the ability to keep leased personal property by assumption.
Sec. 135. Adequate protection of lessors and purchase money secured creditors.
Sec. 136. Automatic stay.
Sec. 137. Extend period between bankruptcy discharges.
Sec. 138. Definition of domestic support obligation.
Sec. 139. Priorities for claims for domestic support obligations.
Sec. 140. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 141. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 142. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 143. Continued liability of property.
Sec. 144. Protection of domestic support claims against preferential transfer motions.
Sec. 145. Clarification of meaning of household goods.
Sec. 146. Nondischargeable debts.
Sec. 147. Monetary limitation on certain exempt property.
Sec. 148. Bankruptcy fees.
Sec. 149. Collection of child support.
Sec. 150. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 151. Clarification of postpetition wages and benefits.
Sec. 152. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 153. Automatic stay inapplicable to certain proceedings against the debtor.

TITLE II—DISCOURAGING BANKRUPTCY ABUSE

Sec. 201. Reenactment of chapter 12.
Sec. 202. Meetings of creditors and equity security holders.
Sec. 203. Protection of retirement savings in bankruptcy.
Sec. 204. Protection of refinance of security interest.
Sec. 205. Executory contracts and unexpired leases.
Sec. 206. Creditors and equity security holders committees.
Sec. 207. Amendment to section 546 of title 11, United States Code.
Sec. 208. Limitation.
Sec. 209. Amendment to section 330(a) of title 11, United States Code.
Sec. 210. Postpetition disclosure and solicitation.
Sec. 211. Preferences.
Sec. 212. Venue of certain proceedings.
Sec. 213. Period for filing plan under chapter 11.
Sec. 214. Fees arising from certain ownership interests.
Sec. 215. Claims relating to insurance deposits in cases ancillary to foreign proceedings.
Sec. 216. Defaults based on nonmonetary obligations.
Sec. 217. Sharing of compensation.
Sec. 218. Priority for administrative expenses.

TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

Sec. 301. Definition of disinterested person.
Sec. 302. Miscellaneous improvements.
Sec. 303. Extensions.
Sec. 304. Local filing of bankruptcy cases.
Sec. 305. Permitting assumption of contracts.

TITLE IV SMALL BUSINESS BANKRUPTCY PROVISIONS

Sec. 401. Flexible rules for disclosure Statement and plan.
Sec. 402. Definitions.
Sec. 403. Standard form disclosure Statement and plan.
Sec. 404. Uniform national reporting requirements.
Sec. 405. Uniform reporting rules and forms for small business cases.
Sec. 406. Duties in small business cases.
Sec. 407. Plan filing and confirmation deadlines.
Sec. 408. Plan confirmation deadline.
Sec. 409. Prohibition against extension of time.
Sec. 410. Duties of the United States trustee.
Sec. 411. Scheduling conferences.
Sec. 412. Serial filer provisions.
Sec. 413. Expanded grounds for dismissal or conversion and appointment of trustee or examiner.
Sec. 414. Study of operation of title 11 of the United States Code with respect to small businesses.
Sec. 415. Payment of interest.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

Sec. 601. Creditor representation at first meeting of creditors.
Sec. 602. Audit procedures.
Sec. 603. Giving creditors fair notice in chapter 7 and 13 cases.
Sec. 604. Dismissal for failure to timely file schedules or provide required information.
Sec. 605. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 606. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 607. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 608. Elimination of certain fees payable in chapter 11 bankruptcy cases.
Sec. 609. Study of bankruptcy impact of credit extended to dependent students.
Sec. 610. Prompt relief from stay in individual cases.
Sec. 611. Stopping abusive conversions from chapter 13.
Sec. 612. Bankruptcy appeals.
Sec. 613. GAO study.

TITLE VII—BANKRUPTCY DATA

Sec. 701. Improved bankruptcy statistics.
Sec. 702. Uniform rules for the collection of bankruptcy data.
Sec. 703. Sense of the Congress regarding availability of bankruptcy data.

TITLE VIII—BANKRUPTCY TAX PROVISIONS

Sec. 801. Treatment of certain liens.
Sec. 802. Effective notice to government.
Sec. 803. Notice of request for a determination of taxes.
Sec. 804. Rate of interest on tax claims.
Sec. 805. Tolling of priority of tax claim time periods.
Sec. 806. Priority property taxes incurred.
Sec. 807. Chapter 13 discharge of fraudulent and other taxes.
Sec. 808. Chapter 11 discharge of fraudulent taxes.
Sec. 809. Stay of tax proceedings.
Sec. 810. Periodic payment of taxes in chapter 11 cases.
Sec. 811. Avoidance of statutory tax liens prohibited.
Sec. 812. Payment of taxes in the conduct of business.
Sec. 813. Tardily filed priority tax claims.
Sec. 814. Income tax returns prepared by tax authorities.
Sec. 815. Discharge of the estate's liability for unpaid taxes.
Sec. 816. Requirement to file tax returns to confirm chapter 13 plans.

Sec. 817. Standards for tax disclosure.
Sec. 818. Setoff of tax refunds.
TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES
Sec. 901. Amendment to add chapter 15 to title 11, United States Code.
Sec. 902. Amendments to other chapters in title 11, United States Code.
TITLE X—FINANCIAL CONTRACT PROVISIONS
Sec. 1001. Treatment of certain agreements by conservators or —receivers of insured depository institutions.
Sec. 1002. Authority of the corporation with respect to failed and failing institutions.
Sec. 1003. Amendments relating to transfers of qualified financial contracts.
Sec. 1004. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 1005. Clarifying amendment relating to master agreements.
Sec. 1006. Federal Deposit Insurance Corporation Improvement Act of 1991.
Sec. 1007. Bankruptcy Code amendments.
Sec. 1008. Recordkeeping requirements.
Sec. 1009. Exemptions from contemporaneous execution —requirement.
Sec. 1010. Damage measure.
Sec. 1011. Sipc stay.
Sec. 1012. Asset-backed securitizations.
Sec. 1013. Federal Reserve collateral requirements.
Sec. 1014. Effective date; application of — amendments.
TITLE XI—TECHNICAL CORRECTIONS
Sec. 1101. Definitions.
Sec. 1102. Adjustment of dollar amounts.
Sec. 1103. Extension of time.
Sec. 1104. Technical amendments.
Sec. 1105. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1106. Limitation on compensation of professional persons.
Sec. 1107. Special tax provisions.
Sec. 1108. Effect of conversion.
Sec. 1109. Allowance of administrative expenses.
Sec. 1110. Priorities.
Sec. 1111. Exemptions.
Sec. 1112. Exceptions to discharge.
Sec. 1113. Effect of discharge.
Sec. 1114. Protection against discriminatory treatment.
Sec. 1115. Property of the estate.
Sec. 1116. Preferences.
Sec. 1117. Postpetition transactions.
Sec. 1118. Disposition of property of the estate.
Sec. 1119. General provisions.
Sec. 1120. Appointment of elected trustee.
Sec. 1121. Abandonment of railroad line.
Sec. 1122. Contents of plan.
Sec. 1123. Discharge under chapter 12.
Sec. 1124. Bankruptcy cases and proceedings.
Sec. 1125. Knowing disregard of bankruptcy law or rule.
Sec. 1126. Transfers made by nonprofit charitable corporations.
Sec. 1127. Prohibition on certain actions for failure to incur finance charges.
Sec. 1128. Protection of valid purchase money security interests.
Sec. 1129. Trustees.
TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS
Sec. 1201. Effective date; application of amendments.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs based bankruptcy

SEC. 101. CONVERSION.

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

SEC. 102. DISMISSAL OR CONVERSION.

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

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

''§ 707. Dismissal of a case or conversion to a case under chapter 13'';

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)''; and

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

(i) in the first sentence—

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

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

(III) by striking ''substantial abuse'' and inserting ''abuse''; and

(ii) by striking the second and third sentences and inserting the following:

''(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income less estimated administrative expenses and reasonable attorneys' fees, and amounts set forth in clauses (ii) for monthly expenses (which shall include, if applicable, the continuation of actual expenses of a dependent child under the age of 18 for tuition, books, and required fees at a private elementary or secondary school, not exceeding $10,000 per year, which amount shall be adjusted pursuant to section 104(b)), (iii) for monthly payments on account of secured debts, and (iv) for monthly unsecured priority debt payments, and multiplied by 60 months is not less than $6,000.

''(ii) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's applicable monthly expenses for the categories specifically listed as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. In addition, if it is demonstrated that it is reasonable and necessary, the debtor may also subtract an allowance of up to 5% of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service. Notwithstanding any other provision of this clause, the debtor's monthly expenses shall not include any payments for debts.

''(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition, and dividing that total by 60 months.

''(iv) The debtor's monthly unsecured priority debt payments (including payments for priority child support and alimony claims) shall be calculated as the total amount of unsecured debts entitled to priority, and dividing the total by 60 months.

''(v) For the purposes of this subsection, a family or household shall consist of the debtor, the debtor's spouse, and the debtor's dependents, but not a legally separated spouse unless the spouse files a joint case with the debtor.

''(B) In any proceeding brought under this subsection, the presumption of abuse may be rebutted only by demonstrating extraordinary circumstances that require additional expenses or adjustment of current monthly income. In order to establish extraordinary circumstances, the debtor must itemize each additional expense or adjustment of income and provide documentation for such expenses or adjustment of income and a detailed explanation of the extraordinary circumstances which make such expenses or adjustment of income necessary and reasonable. The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustment to income are required. The presumption of abuse may be rebutted only if such additional expenses or adjustments to income cause the debtor's current monthly income less estimated administrative expenses and reasonable attorneys' fees, and the amounts set forth in clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than $6,000.

''(C) As part of the schedule of current income and expenditures required under section 521 of this title, the debtor shall include a statement of the debtor's current monthly income, and the calculations which determine whether a presumption arises under subparagraph (A)(i), showing how each amount is calculated. The bankruptcy rules promulgated under section 2075 of title 28, United States Code, shall prescribe a form for such statement and may provide general rules on its content.

''(D) No judge, United States trustee, panel trustee, bankruptcy administrator or other party in interest shall bring a motion under this paragraph if the debtor and the debtor's spouse combined, as of the date of the order for relief, have current monthly total income equal to or less than the regional median household monthly income calculated on a semiannual basis for a household of equal size. However, for a household of more than 4 individuals, the median income shall be that of a household of 4 individuals plus $583 for each additional member of that household.

''(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in paragraph (2)(A)(i) does not apply or has been rebutted, the court shall consider—

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

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

''(4)(A) If a panel trustee appointed under section 586(a)(1) of title 28 or bankruptcy administrator brings a motion for dismissal or conversion under this subsection and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter violated Rule 9011, the court shall assess damages which may include ordering:

''(i) the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting the motion, including reasonable attorneys' fees.

''(ii) the assessment of an appropriate civil penalty against the counsel for the debtor; and

''(iii) the payment of the civil penalty to the panel trustee, bankruptcy administrator or the United States trustee.

''(B) In the case of a petition filed under sections 301, 302, or 303 of this title and supporting lists, schedules and documents filed under section 521(a)(1) of this title, the signature of an attorney on the petition shall constitute a certificate that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition; and

''(ii) determined that the petition, lists, schedules, and documents—

''(I) are well grounded in fact; and

''(II) are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and do not constitute an abuse under paragraph (1) of this subsection.

''(5) The court may award a debtor all reasonable costs in contesting a motion filed by a party in interest (not including a trustee or the United States trustee) under this subsection (including reasonable attorneys' fees) if—

''(A) the court does not grant the motion; and

''(B) the court finds that—

''(i) the position of the party that brought the motion was not substantially justified; or

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

''(6) However, only the court, the United States trustee, or the trustee may file a motion to dismiss or convert a case under this subsection if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.

''(7) In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

''(8) Not later than 3 years after the date of enactment of the Bankruptcy Reform Act of 1999, the Director of the Executive Office for United States Trustees shall submit a report, to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, containing its findings regarding the utilization of the Internal Revenue Service standards for determining the current monthly expenses under section 707(b)(1)(A)(ii) of title 11, United States Code, of debtors and the impact that the application of such standards has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to such title, consistent with the Director's findings.''.

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

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

''(10A) 'current monthly income' means the average monthly income from all sources derived which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether it is taxable income, in the 180 days preceding the date of determination, and includes any amount paid by anyone other than the debtor or, in a joint case, the debtor and the debtor's spouse, on a regular basis to the household expenses of the debtor or the debtor's dependents and, in a joint case, the debtor's spouse if not otherwise a dependent, but excludes payments to victims of war crimes or crimes against humanity;''; and

(2) by inserting after paragraph (17) the following:

''(17A) 'estimated administrative expenses and reasonable attorneys' fees' means 10 percent of projected payments under a chapter 13 plan;''.

(c) ADMINISTRATIVE PROVISIONS.—Section 704 of title 11, United States Code, is amended—

(1) in paragraph (8) by striking ''and'' at the end;

(2) in paragraph (9) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(10)(A) With respect to an individual debtor, the trustee shall review all materials filed by the debtor, consider all information presented at the first meeting of creditors, and within 10 days after the first meeting of creditors file with the court a statement as to whether the debtor's case should be presumed to be an abuse under section 707(b) of this title. The court shall provide a copy of such statement to all creditors within 5 days after such statement is filed. If, based on the filing of such statement with the court, the trustee determines that the debtor's case should be presumed to be an abuse under section 707(b) of this title and if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief, when multiplied by 12, is not less than the highest national median family income reported for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, then the trustee shall within 30 days of the filing of such statement, either—

''(i) file a motion to dismiss or convert under section 707(b) of this title; or

''(ii) file a statement setting forth the reasons the trustee or bankruptcy administrator does not believe that such a motion would be appropriate.

''(B) Notwithstanding subparagraph (A), for purposes of this paragraph the national family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.''.

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

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

SEC. 103. NOTICE OF ALTERNATIVES.

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

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

''(1) a brief description of—

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

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

''(2) statements specifying that—

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

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

SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

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

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

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

(c) EVALUATION.—(1) During the 1-year period referred to in subsection (b), the Director shall evaluate the effectiveness of—

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

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

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

Subtitle B—Consumer Bankruptcy Protections

SEC. 105. DEFINITIONS.

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

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

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

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

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

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

''(12B) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—

''(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor; or

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

(b) CONFORMING AMENDMENT.—In section 104(b)(1) by inserting ''101(3),'' after ''sections''.

SEC. 106. ENFORCEMENT.

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

''§ 526. Debt relief agency enforcement

''(a) A debt relief agency shall not—

''(1) fail to perform any service which the debt relief agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue and misleading or which upon the exercise of reasonable care, should be known by the debt relief agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission,

what services the debt relief agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

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

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

''(c) NONCOMPLIANCE.—

''(1) Any contract between a debt relief agency and an assisted person for bankruptcy assistance which does not comply with the material requirements of this section shall be treated as void and may not be enforced by any Federal or State court or by any other 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 which the debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if the debt relief agency is found, after notice and hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section with respect to a bankruptcy case or related proceeding of the assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or related proceeding which is dismissed or converted because of the debt relief agency's intentional or negligent failure to file bankruptcy papers, including papers specified in section 521 of this title; or

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

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

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

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

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

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

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

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

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

''(c) RELATION TO STATE LAW.—This section shall not annul, alter, affect or exempt any person subject to those 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.''.

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

''526. Debt relief agency enforcement.''.

SEC. 107. SENSE OF THE CONGRESS.

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

SEC. 108. DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES.

Section 524 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) in paragraph (2)—

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

(ii) in subparagraph (B) by adding ''and'' at the end; and

(iii) by adding at the end the following:

''(C) if the consideration for such agreement is based on a wholly unsecured consumer debt (except for debts owed to creditors defined in section 461(b)(1)(A)(iv) of title 12, United States Code), such agreement contains a clear and conspicuous statement which advises the debtor—

''(i) that the debtor is entitled to a hearing before the court at which the debtor shall appear in person and at which the court will decide whether the agreement is an undue hardship, not in the debtor's best interest, and not the result of a threat by the creditor to take any action that cannot be legally taken or that is not intended to be taken; and

''(ii) that if the debtor is represented by counsel, the debtor may waive the debtor's right to such a hearing by signing a statement waiving the hearing, stating that the debtor is represented by counsel, and identifying such counsel;''; and

(B) in paragraph (6)(A)—

(i) by striking ''and'' at the end of clause (i);

(ii) by striking the period at the end of clause (ii) and inserting ''; and''; and

(iii) by adding at the end thereof the following:

''(iii) not entered into by the debtor as the result of a threat by the creditor to take any action that cannot be legally taken or that is not intended to be taken.''; and

(2) in the 3d sentence of subsection (d)—

(A) by striking ''of this section'' and inserting a comma; and

(B) by inserting after ''such agreement'' the following:

''or if the consideration for such agreement is based on a wholly unsecured consumer debt (except for debts owed to creditors defined in section 461(b)(1)(A)(iv) of title 12, United States Code) and the debtor has not waived the debtor's right to a hearing on the agreement in accordance with subsection (c)(2)(C) of this section''.

SEC. 109. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

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

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based wholly on unsecured consumer debts by not more than 20 percent, if the debtor can prove by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency acting on behalf of the debtor, and if—

''(A) such offer was made within the period beginning 60 days before the filing of the petition;

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

''(C) no part of the debt under the alternative repayment schedule is nondischargeable, is entitled to priority under section 507 of this title, or would be paid a greater percentage in a chapter 13 proceeding than offered by the debtor.

''(2) The debtor shall have the burden of proving that the proposed alternative repayment schedule was made in the 60-day period specified in subparagraph (A) and that the creditor unreasonably refused to consider the debtor's proposal.''.

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

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

SEC. 110. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) STUDY REQUIRED.—During the period beginning 180 days after the date of enactment of this Act and ending 18 months after the date of the enactment, the Board of Governors of the Federal Reserve System (in this section referred to as the ''Board'') shall conduct a study and submit to Congress a report (including recommendations for any appropriate legislation) regarding—

(1) whether a consumer engaging in an open-end credit transaction (as defined pursuant to section 103 of the Truth in lending Act) secured by the consumer's principal dwelling is provided adequate information under Federal law, including under section 127A of the Truth in Lending Act, regarding the tax deductibility of interest paid on such transaction; and

(2) whether a consumer engaging in a closed-end credit transaction (as defined pursuant to section 103 of the Truth in Lending Act) secured by the consumer's principal dwelling is provided adequate information regarding the tax deductibility of interest paid on such transaction.

In conducting such study, the Board shall specifically consider whether additional disclosures are necessary with respect to such open-end or closed-end credit transactions in which the amount of the credit extended exceeds the fair market value of the dwelling.

(b) REGULATIONS.—If the Board determines that additional disclosures are necessary in connection with transactions described in subsection (a), the Board, pursuant to its authority under the Truth in Lending Act, may promulgate regulations that would require such additional disclosures. Any such regulations promulgated by the Board under this section shall not take effect before the end of the 36-month period after the date of the enactment of this Act.

SEC. 111. DUAL USE DEBIT CARD.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (in this section referred to as the ''Board'') shall conduct a study of existing protections provided to consumers to limit their liability for unauthorized use of a debit card or similar access device.

(b) SPECIFIC CONSIDERATIONS.—In conducting the study required by subsection (a), the Board shall specifically consider the following—

(1) the extent to which existing provisions of section 909 of the Electronic Fund Transfer Act and the Board's implementing regulations provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Funds Transfer Act or the Board's implementing regulations thereto are necessary to provide adequate protection for consumers in this area.

(c) REPORT AND REGULATIONS.—Not later than 2 years after the date of the enactment of this Act, the Board shall make public a report on its findings with respect to the adequacy of existing protections afforded consumers with respect to

unauthorized-use liability for debit cards and similar access devices. If the Board determines that such protections are inadequate, the Board, pursuant to its authority under the Electronic Funds Transfer Act, may issue regulations to address such inadequacy. Any regulations issued by the Board shall not be effective before 36 months after the date of the enactment of this Act.

SEC. 112. ENHANCED DISCLOSURES UNDER AN OPEN-END CREDIT PLAN.

(a) INITIAL AND ANNUAL MINIMUM PAYMENT DISCLOSURE.—Section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)) is amended by adding at the end the following:

''(9) In the case of any credit or charge card account under an open-end consumer credit plan on which a minimum monthly or periodic payment will be required, other than an account described in paragraph (8)—

''(A) the following statement: 'The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance.';

''(B) if the plan provides that the consumer will be permitted to forgo making a minimum payment during a specified billing cycle, a statement, if applicable, that if the consumer chooses to forgo making the minimum payment, finance charges will continue to accrue; and

''(C) an example, based on an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and a $500 outstanding balance, showing the estimated minimum periodic payment, and the estimated period of time it would take to repay the $500 outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.

''(10) With respect to one billing cycle per calendar year, the creditor shall transmit the information required under paragraph (9) to each consumer to whom the creditor is required to transit a statement pursuant to subsection (b) for such billing cycle. The creditor shall also transmit to such consumer for such cycle a worksheet prescribed by the Board to assist the consumer in determining the consumer's household income and debt obligations.''.

(b) PERIODIC MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11) The following statement: 'The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance.' ''.

(c) ENFORCEMENT.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) In promulgating regulations to implement the disclosure of an example required under subsection (a)(9)(C) and (a)(10), the Board shall set forth a model disclosure to accompany the example stating that the credit features shown are only an example which does not obligate the creditor, but is intended to illustrate the approximate length of time it could take to repay using the assumptions set forth in subsection (a)(9)(C) without regard to any other factors that could impact an approximate repayment period, including other credit features or the consumer's payment or other behavior with respect to the account. Compliance with the disclosures required under subsection (a)(9)(C) and (a)(10) shall be enforced exclusively by the Federal agencies set forth in section 108.''.

(d) REGULATORY IMPLEMENTATION.—The Board of Governors of the Federal Reserve System (in this section referred to as the ''Board'') shall promulgate regulations implementing the amendments made by subsections (a) and (b). Such regulations shall take effect no earlier than the end of the 36-month period beginning on the date of the enactment of this Act.

(e) STUDY REQUIRED.—The Board shall conduct a study to determine whether consumers have adequate information about borrowing activities which may result in financial problems. In studying this issue, the Board shall consider the extent to which—

(1) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(2) minimum periodic payment features offered in connection with open-end credit plans impact consumer default rates;

(3) consumers always make only the minimum payment throughout the life of the plan;

(4) consumers are aware that making only minimum payments will increase the cost and repayment period of an open-end loan; and

(5) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(f) REPORT TO CONGRESS.—Before the end of the 2-year period beginning on the date of the enactment of this Act, the Board shall submit to Congress a report containing the findings of the Board in connection with the study required under subsection (e).

(g) REGULATIONS.—The Board shall, by regulation promulgated pursuant to its authority under the Truth in Lending Act, require additional disclosures to consumers regarding minimum payment features, including periodic statement disclosures, if the Board determines that such disclosures are necessary based on its findings. Any such regulations promulgated by the Board shall not take effect earlier than January 1, 2002.

SEC. 113. PROTECTION OF SAVINGS EARMARKED FOR THE POSTSECONDARY EDUCATION OF CHILDREN.

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

(1) in subsection (b)(2)—

(A) in subparagraph (A) by striking ''and'' at the end;

(B) in subparagraph (B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) except as provided in paragraph (n), funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not less than 365 days before the date of entry of the order of relief but only to the extent such funds—

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

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

(2) by adding at the end the following:

''(n) For purposes of subsection (b)(3)(C), funds placed in an education individual retirement account shall not be exempt under this subsection—

''(1) unless the designated beneficiary of such account was a dependent child of the debtor for the taxable year for which the funds were placed in such account; and

''(2) to the extent such funds exceed—

''(A) $50,000 in the aggregate in all such accounts having the same designated beneficiary; or

''(B) $100,000 in the aggregate in all such accounts attributable to all such dependent children of the debtor.''.

SEC. 114. EFFECT OF DISCHARGE.

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

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of any injunction under subsection (a)(2) which has arisen at the time of the failure.

''(j)(1) An individual who is injured by the willful failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

''(A) the greater of—

''(i) the amount of actual damages; or

''(ii) $1,000; and

''(B) costs and attorneys' fees.

''(2) An action to recover for a violation specified in paragraph (1) may not be brought as a class action.''.

SEC. 115. LIMITING TRUSTEE LIABILITY.

(a) QUALIFICATION OF TRUSTEE.—Section 322 of title 11, United States Code, is amended—

(1) in subsection (a) by adding at the end the following:

''The trustee in a case under this title is not liable personally or on such trustee's bond for acts taken within the scope of the trustee's duties or authority as delineated by other sections of this title or by order of the court, except to the extent that the trustee acted with gross negligence. Gross negligence shall be defined as reckless indifference or deliberate disregard of the trustee's fiduciary duty.''; and

(2) in subsection (c) by inserting ''for any acts within the scope of the trustee's authority defined in subsection (a)'' before the period at the end.

(b) ROLE AND CAPACITY OF TRUSTEE.—Section 323 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting at the end the following: ''in the trustee's official capacity as representative of the estate'' before the period at the end; and

(2) by adding at the end the following:

''(c) The trustee in a case under this title may not be sued, either personally, in a representative capacity, or against the trustee's bond in favor of the United States—

''(1) for acts taken in furtherance of the trustee's duties or authority in a case in which the debtor is subsequently determined to be ineligible for relief under the chapter in which the trustee was appointed; or

''(2) for the dissemination of statistics and other information regarding a case or cases, unless the trustee has actual knowledge that the information is false.

''(d) The trustee in a case under this title may not be sued in a personal capacity without leave of the bankruptcy court in which the case is pending.''.

SEC. 116. REINFORCE THE FRESH START.

(a) RESTORATION OF AN EFFECTIVE DISCHARGE.—Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''by any court'',

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

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

SEC. 117. DISCOURAGING BAD FAITH REPEAT FILINGS.

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

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

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

(3) by adding at the end the following new paragraphs:

''(3) If a single or joint case is filed by or against an individual debtor under chapter 7,

11, or 13 (other than a case refiled under a chapter other than chapter 7 after dismisssal under section 707(b) of this title), and if a single or joint case of the debtor was pending within the previous 1-year period but was dismissed, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case. Upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

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

''(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

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

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

''(4) If a single or joint case is filed by or against an individual debtor under this title (other than a case refiled under a chapter other than chapter 7 after a dismissal under section 707(b) of this title), and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, the stay under subsection (a) will not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. If a party in interest requests within 30 days of the filing of the later case, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A stay imposed pursuant to the preceding sentence will be effective on the date of entry of the order allowing the stay to go into effect. A case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

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

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

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

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

SEC. 118. CURBING ABUSIVE FILINGS.

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

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

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

(3) by adding at the end the following:

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

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

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

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

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

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

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

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

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

SEC. 119. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521—

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

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

(C) by adding at the end the following:

''(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 45 days after the first meeting of creditors under section 341(a)—

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

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

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

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

SEC. 120. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended as follows—

(1) in section 362—

(A) by striking ''(e), and (f)'' in subsection (c) and inserting in lieu thereof ''(e), (f), and (h)''; and

(B) by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following:

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

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

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

unless the court determines on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's

interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine an order, the stay shall terminate upon the conclusion of the proceeding on the motion.''; and

(2) in section 521, as amended by sections 603 and 604—

(A) in paragraph (2) by striking ''consumer'';

(B) in paragraph (2)(B)—

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

(ii) by striking ''forty-five day'' the second place it appears and inserting ''30-day'';

(C) in paragraph (2)(C) by inserting ''except as provided in section 362(h) of this title'' before the semicolon; and

(D) by inserting after subsection (b) the following:

''(c) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 121. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

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

''(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328 of this title, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

SEC. 122. RESTRAINING ABUSIVE PURCHASES ON SECURED CREDIT.

Section 506 of title 11, United States Code, is amended by adding at the end the following:

''(e) In an individual case under chapter 7, 11, 12, or 13—

''(1) subsection (a) shall not apply to an allowed claim to the extent attributable in whole or in part to the purchase price of personal property acquired by the debtor within 5 years of the filing of the petition, except for the purpose of applying paragraph (3) of this subsection;

''(2) if such allowed claim attributable to the purchase price is secured only by the personal property so acquired, the value of the personal property and the amount of the allowed secured claim shall be the sum of the unpaid principal balance of the purchase price and accrued and unpaid interest and charges at the contract rate;

''(3) if such allowed claim attributable to the purchase price is secured by the personal property so acquired and other property, the value of the security may be determined under subsection (a), but the value of the security and the amount of the allowed secured claim shall be not less than the unpaid principal balance of the purchase price of the personal property acquired and unpaid interest and charges at the contract rate; and

''(4) in any subsequent case under this title that is filed by or against the debtor in the 2-year period beginning on the date the petition is filed in the original case, the value of the personal property and the amount of the allowed secured claim shall be deemed to be not less than the amount provided under paragraphs (2) and (3) less any payments actually received.''.

SEC. 123. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by adding at the end the following: ''In the case of an individual debtor under chapters 7 and 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purpose, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.''.

SEC. 124. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(2)(A) of title 11, United States Code, is amended—

(1) by striking ''180'' and inserting ''730''; and

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

SEC. 125. RESTRICTIONS ON CERTAIN EXEMPT PROPERTY OBTAINED THROUGH FRAUD.

Section 522 of title 11, United States Code, as amended by section 113, is amended—

(1) in subsection (b)(2)(A) by inserting ''subject to subsection (o),'' before ''any property''; and

(2) by adding at the end the following:

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

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

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

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

shall be reduced to the extent such value is attributable to any portion of any property that the debtor disposed of in the 730-day period ending of the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b) if on such date the debtor had held the property so disposed of.''.

SEC. 126. ROLLING STOCK EQUIPMENT.

(a) IN GENERAL.—Section 1168 of title 11, United States Code, is amended to read as follows:

''§1168. Rolling stock equipment

''(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that the right to take possession and enforce those other rights and remedies shall be subject to section 362 of this title, if—

''(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind described in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

''(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default or event of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

''(2) The equipment described in this paragraph—

''(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.

''(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.''.

(b) AIRCRAFT EQUIPMENT AND VESSELS.—Section 1110 of title 11, United States Code, is amended to read as follows:

"§ 1110. Aircraft equipment and vessels

''(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

''(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 of this title if—

''(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

''(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

''(3) The equipment described in this paragraph—

''(A) is—

''(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

''(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.''.

SEC. 127. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5) of this title;

''(2) of the kind specified in paragraph (2), (4), (3)(B), (5), (8), or (9) of section 523(a) of this title;

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 128. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 1999''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the southern district of Florida.

(D) Two additional bankruptcy judgeships for the district of Maryland.

(E) One additional bankruptcy judgeship for the eastern district of Michigan.

(F) One additional bankruptcy judgeship for the southern district of Mississippi.

(G) One additional bankruptcy judgeship for the district of New Jersey.

(H) One additional bankruptcy judgeship for the eastern district of New York.

(I) One additional bankruptcy judgeship for the northern district of New York.

(J) One additional bankruptcy judgeship for the southern district of New York.

(K) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(L) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(M) One additional bankruptcy judgeship for the western district of Tennessee.

(N) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) that—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1);

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under section 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 remain applicable to such temporary judgeship position.

(d) TECHNICAL AMENDMENT.—The first sentence of section 152(a)(1) of title 28, United States Code, is amended to read as follows: ''Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.''.

(e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—Section 156 of title 28, United States Code, is amended by adding at the end the following new subsection:

''(g)(1) In this subsection, the term 'travel expenses'—

''(A) means the expenses incurred by a bankruptcy judge for travel that is not directly related to any case assigned to such bankruptcy judge; and

''(B) shall not include the travel expenses of a bankruptcy judge if—

''(i) the payment for the travel expenses is paid by such bankruptcy judge from the personal funds of such bankruptcy judge; and

''(ii) such bankruptcy judge does not receive funds (including reimbursement) from the United States or any other person or entity for the payment of such travel expenses.

''(2) Each bankruptcy judge shall annually submit the information required under paragraph (3) to the chief bankruptcy judge for the district in which the bankruptcy judge is assigned.

''(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to the applicable district (including the travel expenses of the chief bankruptcy judge of such district).

''(B) The annual report under this paragraph shall include—

''(i) the travel expenses of each bankruptcy judge, with the name of the bankruptcy judge to whom the travel expenses apply;

''(ii) a description of the subject matter and purpose of the travel relating to each travel expense identified under clause (i), with the name of the bankruptcy judge to whom the travel applies; and

''(iii) the number of days of each travel described under clause (ii), with the name of the bankruptcy judge to whom the travel applies.

''(4)(A) The Director of the Administrative Office of the United States Courts shall—

''(i) consolidate the reports submitted under paragraph (3) into a single report; and

''(ii) annually submit such consolidated report to Congress.

''(B) The consolidated report submitted under this paragraph shall include the specific information required under paragraph (3)(B), including the name of each bankruptcy judge with respect to clauses (i), (ii), and (iii) of paragraph (3)(B).''.

SEC. 129. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

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

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

SEC. 130. AMENDMENT TO SECTION 1325 OF TITLE 11, UNITED STATES CODE.

Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''to unsecured creditors'' after ''to make payments'';

(2) in paragraph (2)—

(A) by inserting ''current monthly'' before ''income'';

(B) by striking ''and which is not'' and inserting ''less amounts'';

(C) by inserting after ''received by the debtor'', ''(other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law and which is reasonably necessary to be expended)''; and

(D) in subparagraph (A) by inserting after ''dependent of the debtor'' the following: '', as determined in accordance with section 707(b)(2)(A) and if applicable 707(b)(2)(B)''.

SEC. 131. APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR.

Section 1301(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) Notwithstanding subsection (c) and except as provided in subparagraph (B), in any case in which the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) shall apply to that creditor for a period not to exceed 30 days beginning on the date of the order for relief, to the extent the creditor proceeds against—

''(i) the individual that received that consideration; or

''(ii) property not in the possession of the debtor that secures that claim.

''(B) Notwithstanding subparagraph (A), the stay provided by subsection (a) shall apply in any case in which the debtor is primarily obligated to pay the creditor in whole or in part with respect to a claim described in subparagraph (A) under a legally binding separation or property settlement agreement or divorce or dissolution decree with respect to—

''(i) an individual described in subparagraph (A)(i); or

''(ii) property described in subparagraph (A)(ii).

''(3) Notwithstanding subsection (c), the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease.''.

SEC. 132. ADEQUATE PROTECTION FOR INVESTORS.

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

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 118, is amended—

(1) in paragraph (19) by striking ''or'' at the end;

(2) in paragraph (20) by striking the period at the end and a inserting ''; or''; and

(3) by inserting after paragraph (20) the following:

''(21) under subsection (a), of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.''.

SEC. 133. LIMITATION ON LUXURY GOODS.

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

''(C)(i) for purposes of subparagraph (A), consumer debts owed to a single creditor and aggregating more than $250 for 'luxury goods or services' incurred by an individual debtor on or within 90 days before the order for relief under this title, or cash advances aggregating more than $250 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 90 days before the order for relief under this title, are presumed to be nondischargeable; and

''(ii) for purposes of this subparagraph—

''(I) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor; and

''(II) the term 'an extension of consumer credit under an open end credit plan' has the same meaning such term has for purposes of the Consumer Credit Protection Act;''.

SEC. 134. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.

Section 365 of title 11, United States Code, is amended by adding at the end the following:

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

''(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may, at its option, condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days of the notice from the creditor the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection. Nothing in this paragraph shall require a debtor to assume a lease, or a creditor to permit assumption.

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

SEC. 135. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.

(a) IN GENERAL.—Chapter 13 of title 11, United States Code, is amended by adding after section 1307 the following:

''§1307A. Adequate protection in chapter 13 cases

''(a)(1)(A) On or before the date that is 30 days after the filing of a case under this chapter, the debtor shall make cash payments in an amount determined under paragraph (2), to—

''(i) any lessor of personal property; and

''(ii) any creditor holding a claim secured by personal property to the extent that the claim is attributable to the purchase of that property by the debtor.

''(B) The debtor or the plan shall continue making the adequate protection payments required under subparagraph (A) until the earlier of the date on which—

''(i) the creditor begins to receive actual payments under the plan; or

''(ii) the debtor relinquishes possession of the property referred to in subparagraph (A) to—

''(I) the lessor or creditor; or

''(II) any third party acting under claim of right, as applicable.

''(2) The payments referred to in paragraph (1)(A) shall be the contract amount and shall reduce any amount payable under section 1326(a) of the title.

''(b)(1) Subject to the limitations under paragraph (2), the court may, after notice and hearing, change the amount and timing of the dates of payment of payments made under subsection (a).

''(2)(A) The payments referred to in paragraph (1) shall be payable not less frequently than monthly.

''(B) The amount of payments referred to in paragraph (1) shall not be less than the amount of any weekly, biweekly, monthly, or other periodic payment scheduled as payable under the contract between the debtor and creditor.

''(c) Notwithstanding section 1326(b), the payments referred to in subsection (a)(1)(A) shall be continued in addition to plan payments under a confirmed plan until actual payments to the creditor begin under that plan, if the confirmed plan provides—

''(1) for payments to a creditor or lessor described in subsection (a)(1); and

''(2) for the deferral of payments to such creditor or lessor under the plan until the payment of amounts described in section 1326(b).

''(d) Notwithstanding sections 362, 542, and 543, a lessor or creditor described in subsection (a) may retain possession of property described in that subsection that was obtained in accordance with applicable law before the date of filing of the petition until the first payment under subsection (a)(1)(A) is received by the lessor or creditor.

''(e) On or before 60 days after the filling of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide each creditor or lessor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1307A. Adequate protection in chapter 13 cases.''.

SEC. 136. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, as amended by sections 118 and 132, is amended—

(1) in paragraph (20), by striking ''or'' at the end;

(2) in paragraph (21), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (21) the following:

''(22) under subsection (a) of any transfer that is not avoidable under section 544 of this title and that is not avoidable under section 549 of this title;

''(23) under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement and the debtor has not paid rent to the lessor pursuant to the terms of the lease agreement or applicable State law after the commencement and during the course of the case;

''(24) under subsection (a)(3), of the commencement or continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property in which the debtor resides as a tenant under a rental agreement that has terminated pursuant to the lease agreement or applicable State law;

''(25) under subsection (a)(3), of any eviction, unlawful detainer action, or similar proceeding, if the debtor has previously filed within the last year and failed to pay post-petition rent during the course of that case; or

''(26) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs.''.

SEC. 137. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8) by striking ''six'' and inserting ''8''; and

(2) in section 1328 by adding at the end the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 of this title if the debtor has received a discharge in any case filed under this title within 5 years of the order for relief under this chapter.''.

SEC. 138. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

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

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

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

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; 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, without regard to whether such debt is expressly so designated;

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

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

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

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

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.''.

SEC. 139. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

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

(1) by striking paragraph (7);

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

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

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

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

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

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

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

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

''(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

''(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

''(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.''.

SEC. 140. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

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

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

(2) in section 1325(a)—

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

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

(C) by adding at the end the following:

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

(3) in section 1328(a), as amended by section 127, in the matter preceding paragraph (1), by inserting '', and with respect to a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before or after the petition was filed) have been paid'' after ''completion by the debtor of all payments under the plan''.

SEC. 141. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, as amended by sections 118, 132, and 136, is amended—

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

''(2) under subsection (a)—

''(A) of the commencement or continuation of an action or proceeding for—

''(i) the establishment of paternity; or

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

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

(2) in paragraph (25), by striking ''or'' at the end;

(3) in paragraph (26), by striking the period at the end and inserting a semicolon; and

(4) by inserting after paragraph (26) the following:

''(27) under subsection (a) with respect to the withholding of income pursuant to an order as specified in section 466(b) of the Social Security Act (42 U.S.C. 666(b)); or

''(28) under subsection (a) with respect to—

''(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7));

''(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)); or

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

SEC. 142. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

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

(1) in subsection (a), by striking paragraph (5) and inserting the following:

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

(2) in subsection (a)(15)—

(A) by inserting ''or'' after ''court of record,'';

(B) by striking ''unless—'' and all that follows through ''debtor'' the last place it appears; and

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

SEC. 143. CONTINUED LIABILITY OF PROPERTY.

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

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

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

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

SEC. 144. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

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

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

SEC. 145. CLARIFICATION OF MEANING OF HOUSEHOLD GOODS.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (27) the following:

''(27A) 'household goods' includes tangible personal property normally found in or around a residence, but does not include motorized vehicles used for transportation purposes;''.

SEC. 146. NONDISCHARGEABLE DEBTS.

Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a debt that is nondischargeable by reason of section 727, 1141, 1228(a), 1228(b), or 1328(c), or any other provision of this subsection, if the debtor incurred the debt to pay such a nondischargeable debt with the intent to discharge in bankruptcy the newly-created debt, except that all debts incurred to pay nondischargeable debts, without regard to intent, are nondischargeable if incurred within 90 days of the filing of the petition;''.

SEC. 147. MONETARY LIMITATION ON CERTAIN EXEMPT PROPERTY.

Section 522 of title 11, United States Code, as amended by section 125, is amended—

(1) in subsection (b)(2)(A) by striking ''subsection (o)'' and inserting ''subsections (o) and (p)'' before ''any property''; and

(2) by adding at the end the following:

''(p)(1) Except as provided in paragraphs (2) and (3), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any interest that exceeds $250,000 in value, in the aggregate, in—

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

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

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

''(3) Paragraph (1) shall not apply to debtors if applicable State law expressly provides by a statute enacted after the effective date of this paragraph that such paragraph shall not apply to debtors.''.

SEC. 148. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

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

(2) by adding at the end the following:

''(f)(1) Pursuant to procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual debtor who is unable to pay such fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7 of title 11.

''(2) The district court or the bankruptcy court may also waive for such debtors other fees prescribed pursuant to subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed pursuant to such subsections for other debtors and creditors.''.

SEC. 149. 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) by inserting ''(a)'' before ''The trustee'',

(2) in paragraph (9) by striking ''and'' at the end,

(3) in paragraph (10) by striking the period and inserting ''; and'', and

(4) by adding at the end the following:

''(11) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (b).

''(b)(1) In any case described in subsection (a)(11), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and

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

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

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

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

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor; and

''(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.

''(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii)(III) the last known address of the debtor.

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

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (d).'', and

(2) by adding at the end the following:

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

''(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and

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

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

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

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

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor; and

''(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.

''(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii) the last known address of the debtor.

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

SEC. 150. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

(a) IN GENERAL.—Section 541(b) of title 11 of the United States Code is amended—

(1) by striking ''or'' at the end of paragraph (4)(B)(ii);

(2) by striking the period at the end of paragraph (5) and inserting ''; or''; and

(3) by inserting after paragraph (5) the following:

''(7) any amount or interest in property to the extent that an employer has withheld amounts from the wages of employees for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974, or to the extent that the employer has received amounts as a result of payments by participants or beneficiaries to an employer for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974.''.

(b) APPLICATION OF AMENDMENT.—The amendment made by this section shall not apply to cases commenced under title 11 of the United States Code before the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 151. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal law, without regard to when the original unlawful act occurred or to whether any services were rendered;''.

SEC. 152. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) in subparagraph (B) by adding ''or'' at the end; and

(3) by adding at the end the following:

''(C) under subsection (a) of—

''(i) the withholding of income for payment of a domestic support obligation pursuant to a judicial or administrative order or statute for such obligation that first becomes payable after the date on which the petition is filed; or

''(ii) the withholding of income for payment of a domestic support obligation owed directly to the spouse, former spouse or child of the debtor or the parent of such child, pursuant to a judicial or administrative order or statute for such obligation that becomes payable before the date on which the petition is filed unless the court finds, after notice and hearing, that such withholding would render the plan infeasible;''.

SEC. 153. AUTOMATIC STAY INAPPLICABLE TO CERTAIN PROCEEDINGS AGAINST THE DEBTOR.

Section 362(b)(2) of title 11, United States Code, as amended by section 153, is amended—

(1) in subparagraph (B) by striking ''or'' at the end;

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

''(D) the commencement or continuation of a proceeding concerning a child custody or visitation;

''(E) the commencement or continuation of a proceeding alleging domestic violence; or

''(F) the commencement or continuation of a proceeding seeking a dissolution of marriage, except to the extent the proceeding concerns property of the estate;''.

TITLE II—DISCOURAGING BANKRUPTCY ABUSE

SEC. 201. REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—Chapter 12 of title 11 of the United States Code, as in effect on March 31, 1999, is hereby reenacted.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on March 31, 1999.

SEC. 202. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

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

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, as amended by sections 113, 125, and 147 is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking ''(2)(A)'' and inserting:

''(3) Property listed in this paragraph is—

''(A) subject to subsections (o) and (p),'';

(ii) in subparagraph (B), by striking ''and'' at the end;

(iii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(D) 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) by striking paragraph (1) and inserting:

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

(C) in the matter preceding paragraph (2)—

(i) by striking ''(b)'' and inserting ''(b)(1)'';

(ii) by striking ''paragraph (2)'' both places it appears and inserting ''paragraph (3)'';

(iii) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)''; and

(iv) by striking ''Such property is—''; and

(D) by adding at the end of the subsection the following:

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

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

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

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

''(ii) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986.

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

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

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

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

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

(2) in subsection (d)—

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

(B) by adding at the end the following:

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

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, and 141 is amended—

(1) in paragraph (27), by striking ''or'' at the end;

(2) in paragraph (28), by striking the period and inserting ''; or'';

(3) by inserting after paragraph (28) the following:

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

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

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

(4) by adding at the end of the flush material following paragraph (29) the following: ''Paragraph (29) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (29) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking ''or'' at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting ''; or''; and

(3) by adding at the end the following:

''(19) 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, pursuant to—

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

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

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

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

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(29) of this title.''.

SEC. 204. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are amended by striking ''10'' each place it appears and inserting ''30''.

SEC. 205. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

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

''(4)(A) Subject to subparagraph (B), in any case under any chapter in this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B)(i) The court may extend the period determined under subparagraph (A) for 120 days upon motion of the trustee or the 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.''.

SEC. 206. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

Section 1102(a)(2) of title 11, United States Code, is amended by inserting before the first sentence the following: ''On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.''.

SEC. 207. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended by inserting at the end thereof:

''(i) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.''.

SEC. 208. LIMITATION.

Section 546(c)(1)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''45''.

SEC. 209. AMENDMENT 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) in subparagraph (A) after ''awarded'', by inserting ''to an examiner, chapter 11 trustee, or professional person''; and

(B) by redesignating subdivisions (A) through (E) as clauses (i) through (iv), respectively; and

(2) by adding at the the following:

''(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.''.

SEC. 210. POSTPETITION DISCLOSURE AND SOLICITATION.

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

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

SEC. 211. PREFERENCES.

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

(1) by amending paragraph (2) to read as follows:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

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

(2) in paragraph (7) by striking ''or'' at the end;

(3) in paragraph (8) by striking the period at the end and inserting ''; or''; and

(4) 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. 212. VENUE OF CERTAIN PROCEEDINGS.

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

SEC. 213. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

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

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (1), on''; and

(2) by adding at the end the following:

''(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

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

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

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

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

SEC. 215. CLAIMS RELATING TO INSURANCE DEPOSITS IN CASES ANCILLARY TO FOREIGN PROCEEDINGS.

Section 304 of title 11, United States Code, is amended to read as follows:

''§ 304. Cases ancillary to foreign proceedings

''(a) For purposes of this section—

''(1) the term 'domestic insurance company' means a domestic insurance company, as such term is used in section 109(b)(2);

''(2) the term 'foreign insurance company' means a foreign insurance company, as such term is used in section 109(b)(3);

''(3) the term 'United States claimant' means a beneficiary of any deposit referred to in subsection (b) or any multibeneficiary trust referred to in subsection (b);

''(4) the term 'United States creditor' means, with respect to a foreign insurance company—

''(A) a United States claimant; or

''(B) any business entity that operates in the United States and that is a creditor; and

''(5) the term 'United States policyholder' means a holder of an insurance policy issued in the United States.

''(b) The court may not grant relief under chapter 15 of this title 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.''.

SEC. 216. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

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

(1) in subsection (b)—

(A) in paragraph (1)(A) by striking the semicolon at the end and inserting the following: ''other than a default that is a breach of a provision relating to—

''(i) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret), if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

''(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;''; and

(B) by amending paragraph (2)(D) to read as follows:

''(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret) or under an unexpired lease of real or personal property.'';

(2) in subsection (c)—

(A) in paragraph (2) by adding ''or'' at the end;

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

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

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

(4) in subsection (f)(1) by striking ''; except that'' and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by inserting ''or of a kind that section 365(b)(1)(A) of this title expressly does not require to be cured'' before the semicolon at the end;

(2) in subparagraph (C) by striking ''and'' at the end;

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

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

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, 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. 217. SHARING OF COMPENSATION.

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

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

SEC. 218. PRIORITY FOR ADMINISTRATIVE EXPENSES.

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

(1) by deleting ''and'' at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting ''; and'';

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

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of one year following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor; and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6).''.

TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

SEC. 301. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

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

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

SEC. 302. MISCELLANEOUS IMPROVEMENTS.

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

''(h)(1) Subject to paragraphs (2) and (3) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)).

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

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

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

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

''(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request or that the exigent circumstances require filing before such 5-day period expires; and

''(iii) is satisfactory to the court.

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

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

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

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

(3) by adding at the end the following:

''(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 unless the debtor resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to provide service to the additional individuals who would be required to compete the instructional course by reason of the requirements of this section. Each United States trustee or bankruptcy administrator that makes such a determination shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, as amended by section 137, is amended by adding at the end the following:

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

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

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

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 604 and 120, is amended by adding at the end the following:

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

''(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the credit counseling service referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

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

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

''The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and a list of instructional courses concerning personal financial management that have been approved by—

''(1) the United States trustee; or

''(2) the bankruptcy administrator for the district.''.

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

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

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

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

''(13A) 'debtor's principal residence' means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer;'';

(2) by inserting after paragraph (27A), as added by section 318 of this Act, the following:

''(27B) 'incidental property' means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;'';

(3) in section 362(b), as amended by sections 117, 118, 132, 136, 141 203, 818, and 1007,—

(A) in paragraph (28) by striking ''or'' at the end thereof;

(B) in paragraph (29) by striking the period at the end and inserting ''; or''; and

(C) by inserting after paragraph (29) the following:

''(30) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable nonbankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a).''; and

(4) by amending section 1322(b)(2) to read as follows:

''(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor's principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;''.

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

''(j) If one case commenced under chapter 7, 11, or 13 of this title is dismissed due to the creation of a debt repayment plan administered by a credit counseling agency approved pursuant to section 111 of this title, then for purposes of section 362(c)(3) of this title the subsequent case commenced under any such chapter shall not be presumed to be filed not in good faith.''.

(g) RETURN OF GOODS SHIPPED.—Section 546(g) of title 11, United States Code, as added by section 222(a) of Public Law 103–394, is amended to read as follows:

''(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553 of this title, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and hearing, that a return is in the best interests of the estate, the debtor, with the consent of the creditor, and subject to the prior rights, if any, of third parties in such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.''.

SEC. 303. EXTENSIONS.

Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended—

(1) in subparagraph (A), in the matter following clause (ii), by striking ''or October 1, 2002, whichever occurs first''; and

(2) in subparagraph (F)—

(A) in clause (i)—

(i) in subclause (II), by striking ''or October 1, 2002, whichever occurs first''; and

(ii) in the matter following subclause (II), by striking ''October 1, 2003, or''; and

(B) in clause (ii), in the matter following subclause (II)—

(i) by striking ''before October 1, 2003, or''; and

(ii) by striking '', whichever occurs first''.

SEC. 304. LOCAL FILING OF BANKRUPTCY CASES.

Section 1408 of title 28, United States Code, is amended—

(1) by striking ''Except'' and inserting ''(a) Except''; and

(2) by adding at the end the following:

''(b) For the purposes of subsection (a), if the debtor is a corporation, the domicile and residence of the debtor are conclusively presumed to be where the debtor's principal place of business in the United States is located.''.

SEC. 305. PERMITTING ASSUMPTION OF CONTRACTS.

(a) Section 365(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) The trustee may not assume or assign an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

''(A)(i) applicable law excuses a party to the contract or lease from accepting performance from or rendering performance to an assignee of the contract or lease, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties; and

''(ii) the party does not consent to the assumption or assignment; or

''(B) the contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

''(2) Notwithstanding paragraph (1)(A) and applicable nonbankruptcy law, in a case under chapter 11 of this title, a trustee in a case in which a debtor is a corporation, or a debtor in possession, may assume an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties.

''(3) The trustee may not assume or assign an unexpired lease of the debtor of nonresidential real property, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if the lease has been terminated under applicable nonbankruptcy law before the order for relief.''.

(b) Section 365(d) of title 11, United States Code, is amended by striking paragraphs (5), (6), (7), (8), and (9), and redesignating paragraph (10) as paragraph (5).

(c) Section 365(e) of title 11, United States Code, is amended to read as follows:

''(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

''(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

''(B) the commencement of a case under this title; or

''(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

''(2) Paragraph (1) does not apply to an executory contract or unexpired lease of the debtor if the trustee may not assume or assign, and the debtor in possession may not assume, the contract or lease by reason of the provisions of subsection (c) of this section.''.

(d) Section 365(f)(1) of title 11, United States Code, is amended by striking the semicolon and all that follows through ''event''.

TITLE IV SMALL BUSINESS BANKRUPTCY PROVISIONS

SEC. 401. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

(a) Section 1125(a)(1) of title 11, United States Code, is amended by inserting before the semicolon following:

''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''.

(b) Section 1125(f) of title 11, United States Code, is amended to read as follows:

''(f) Notwithstanding subsection (b)—

''(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

''(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 402. DEFINITIONS.

(a) DEFINITIONS. Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor; and

''(51D) 'small business debtor' means (A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $4,000,000 (excluding debts owed to 1 or more affiliates or insiders), except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than $4,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business'' .

SEC. 403. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

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

(2) economy and simplicity for debtors.

SEC. 404. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports; and

''(4) whether the debtor is—

''(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

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

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 405. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

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

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

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance 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 small business debtor to understand its financial condition and plan its future.

SEC. 406. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the United States Code is amended by inserting after section 1114 the following:

''§ 1115. Duties of trustee or debtor in possession in small business cases

''(a) In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its responsible individual, meetings scheduled by the court or the United States trustee, including initial debtor interviews and meetings of creditors convened under section 341 of this title;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2) of this title, maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns;

''(B) subject to section 363(c)(2) of this title, timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

''(C) subject to section 363(c)(2) of this title, establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof or a responsible time set by the court, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units unless the court waives this requirement after notice and hearing; and

''(7) allow the United States trustee, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

''1115. Duties of trustee or debtor in possession in small business cases.''.

SEC. 407. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121(e) of title 11, United States Code, is amended to read as follows:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless a trustee has been appointed under this chapter, or unless the court, on request of a party in interest and after notice and hearing, shortens such time;

''(2) the debtor shall file a plan, and any necessary disclosure statement, not later than 90 days after the date of the order for relief, unless the United States Trustee has appointed under section 1102(a)(1) of this title a committee of unsecured creditors that the court has determined, before the 90 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; and

''(3) the time periods specified in paragraphs (1) and (2) of this subsection and the time fixed in section 1129(e) of this title for confirmation of a plan, may be extended only as follows:

''(A) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions, cumulatively not to exceed 60 days, if the movant establishes—

''(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b) of this title; and

''(ii) that there is a reasonable possibility the court will confirm a plan within a reasonable time;

''(B) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions in excess of those authorized under subparagraph (A) of this paragraph, if the movant establishes:

''(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b)(3) of this title; and

''(ii) that it is more likely than not that the court will confirm a plan within a reasonable time; and

''(C) a new deadline shall be imposed whenever an extension is granted.''.

SEC. 408. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the debtor shall confirm a plan not later than 150 days after the date of the order for relief unless—

''(1) the United States Trustee has appointed, under section 1102(a)(1) of this title, a committee of unsecured creditors that the court has determined, before the 150 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; or

''(2) such 150-day period is extended as provided in section 1121(e)(3) of this title.''.

SEC. 409. PROHIBITION AGAINST EXTENSION OF TIME.

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting ''; and''; and

(2) by adding at the end the following:

''(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.''.

SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE.

(a) DUTIES OF THE UNITED STATES TRUSTEE.—Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G) by striking ''and at the end'';

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases'';

(2) in paragraph (5) by striking ''and at the end'';

(3) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(4) by inserting after paragraph (7) the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor's viability, inquire about the debtor's business plan, explain the debtor's obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

''(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(8) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.''.

SEC. 411. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking '', may'';

(2) by amending paragraph (1) to read as follows:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''; and

(3) in paragraph (2) by striking ''unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure'', and inserting ''may''.

SEC. 412. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by section 302, is amended—

(1) in subsection (i) as so redesignated by section 122—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.''; and

(2) by inserting after subsection (j), as added by section 302, the following:

''(k)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) of thissection shall not apply in a case in which the debtor—

''(A) is a debtor in a case under this title pending at the time the petition is filed;

''(B) was a debtor in a case under this title which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a case under this title in which a chapter 11, 12, or 13 plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has succeeded to substantially all of the assets or business of a debtor described in subparagraph (A), (B), or (C).

''(2) This subsection shall not apply—

''(A) to a case initiated by an involuntary petition filed by a creditor that is not an insider or affiliate of the debtor; or

''(B) after such time as the debtor, after notice and a hearing, demonstrates by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor and not foreseeable at the time the earlier case was filed; and that it is more likely than not that the court will confirm a plan, other than a liquidating plan, within a reasonable time.''.

SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE OR EXAMINER.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) Except as provided in paragraphs (2) and (4) of this subsection, and in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, or appoint a trustee or examiner under section 1104(e) of this title, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

''(2) The court may decline to grant the relief specified in paragraph (1) of this subsection if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—

''(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

''(B) if the cause is an act or omission of the debtor that—

''(i) there exists a reasonable justification for the act or omission; and

''(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

''(3) For purposes of this subsection, cause includes—

''(A) substantial or continuing loss to or diminution of the estate;

''(B) gross mismanagement of the estate;

''(C) failure to maintain insurance that poses a material risk to the estate or the public;

''(D) unauthorized use of cash collateral harmful to 1 or more creditors;

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

''(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) of this title;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or bankruptcy administrator;

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

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144 of this title;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan; and

''(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

''(4) The court may grant relief under this subsection for cause as defined in subparagraphs C, F, G, H, or K of paragraph 3 of this subsection only upon motion of the United States trustee or bankruptcy administrator or upon the court s own motion.

''(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE OR EXAMINER.—Section 1104 of title 11, United States Code, is amended by adding at the end the following:

''(e) If grounds exist to convert or dismiss the case under section 1112 of this title, the court may instead appoint a trustee or examiner, if it determines that such appointment is in the best interests of creditors and the estate.''.

SEC. 414. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation

with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

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

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

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

SEC. 415. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

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

(2) by amending subparagraph (B) to read as follows:

''(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by amending the last sentence to read as follows:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562'' after ''557,''.

TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors and activities related thereto in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 602. AUDIT PROCEDURES.

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a) by amending striking paragraph (6) to read as follows:

''(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and''; and

(2) by adding at the end the following:

''(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants.

''(B) Those procedures shall—

''(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

''(ii) 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;

''(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

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

''(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

''(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

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

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code; 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, United States Code.''.

(b) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as amended by section 603, is amended in paragraphs (3) and (4) by adding ''or an auditor appointed pursuant to section 586 of title 28, United States Code'' after ''serving in the case''.

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

(1) by deleting ''or'' at the end of paragraph (2);

(2) by substituting ''; or'' for the period at the end of paragraph (3); and

(3) by adding the following at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; 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 conducted pursuant to section 586(f) of title 28, United States Code.''.

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

SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(B) by adding the following at the end:

''If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, 'notice' shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324 of this title.'';

(2) by adding at the end the following:

''(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. After 5 days following receipt of such notice, any notice the court or the debtor is required to give the creditor shall be given at that address.

''(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

''(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 604, 120, and 302, is amended—

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

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

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

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

''(ii) a schedule of current monthly income and current expenditures prepared in accordance with section 707(b)(2);

''(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

''(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) of this title indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b) of this title; or

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

''(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

''(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;'';

(3) by adding at the end the following:

''(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents at a reasonable cost within 5 business days after such request.

''(2) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case, and the court shall make such plan available to the creditor who requests such plan at a reasonable cost and not later than 5 days after such request.

''(f) An individual debtor in a case under chapter 7 or 13 shall file with the court—

''(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

''(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's current monthly income and expenditures in the preceding tax year and current monthly income less expenditures for the month preceding the statement prepared in accordance with section 707(b)(2) that shows how the amounts are calculated—

''(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

''(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

''(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

''(h)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include reasonable restrictions on creditor access to tax information that is required to be provided under this section to verify creditor identity and to restrict use of the information except with respect to the case.

''(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

''(A) assesses the effectiveness of the procedures under paragraph (1) to provide timely and sufficient information to creditors concerning the case; and

''(B) if appropriate, includes proposed legislation—

''(i) to further protect the confidentiality of tax information or to make it better available to creditors; and

''(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.

''(i) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c) Section 1324 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''After''; and

(2) by inserting at the end thereof—

''(c) Whenever a party in interest is given notice of a hearing on the confirmation or modification of a plan under this chapter, such notice shall include the information provided by the debtor on the most recent statement filed with the court pursuant to section 521(a)(1)(B)(ii) or (f)(4) of this title.''.

SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by section 603 is amended by inserting after subsection (a) the following:

''(b)(1) Notwithstanding section 707(a) of this title, and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after such request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.''.

SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

(a) HEARING.—Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

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

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.''.

SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years. If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, 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. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.'';

(2) in section 1325(b)(1)(B) as amended by section 130—

(A) by striking ''three year period'' and inserting ''applicable commitment period''; and

(B) by inserting at the end of subparagraph (B) the following: ''The 'applicable commitment period' shall be 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 the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.''; and

(3) in section 1329—

(A) by striking in subsection (c) ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''; and

(B) by inserting at the end of subsection (c) the following:

''The duration period shall be 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the current monthly total income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census

for a family of 4 individuals plus $583 for each additional member of the family.''.

SEC. 607. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

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

SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking ''until the case is converted or dismissed, whichever occurs first''; and

(2) in the 2d sentence—

(A) by striking ''The'' and inserting ''Until the plan is confirmed or the case is converted (whichever occurs first) the''; and

(B) by striking ''less than $300,000;'' and inserting ''less than $300,000. Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be''.

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study regarding the impact that the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled in post-secondary educational institutions,

has on the rate of cases filed under title 11 of the United States Code; and

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

SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

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

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required by for good cause as described in findings made by the court.''.

SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

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

(2) in subparagraph (B)—

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

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

(3) by adding at the end the following:

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

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

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

SEC. 612. BANKRUPTCY APPEALS.

Title 28 of the United States Code is amended by inserting after section 1292 the following:

''§ 1293. Bankruptcy appeals

''(a) The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

''(1) Final orders and judgments entered by bankruptcy courts and district courts in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, including final orders in proceedings regarding the automatic stay of section 362 of title 11.

''(2) Interlocutory orders entered by bankruptcy courts and district courts granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, other than interlocutory orders in proceedings regarding the automatic stay of section 362 of title 11.

''(3) Interlocutory orders of bankruptcy courts and district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.

''(4) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.

''(b) Final decisions, judgments, orders, and decrees entered by a bankruptcy appellate panel under subsection (b) of this section.

''(c)(1) The judicial council of a circuit may establish a bankruptcy appellate panel composed of bankruptcy judges in the circuit who are appointed by the judicial council, which panel shall exercise the jurisdiction to review orders and judgments of bankruptcy courts described in paragraphs (1)–(4) of subsection (a) of this section unless—

''(A) the appellant elects at the time of filing the appeal; or

''(B) any other party elects, not later than 10 days after service of the notice of the appeal;

to have such jurisdiction exercised by the court of appeals.

''(2) An appeal to be heard by a bankruptcy appellate panel under this subsection (b) shall be heard by 3 members of the bankruptcy appellate panel, provided that a member of such panel may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

''(3) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel.''.

SEC. 613. GAO STUDY.

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

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

TITLE VII—BANKRUPTCY DATA

SEC. 701. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Office').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than October 31, 2000, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current monthly income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

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

''(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of

property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel and damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of 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. 702. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Title 28 of the United States Code is amended by inserting after section 589a the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

''(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

''(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

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

''589b. Bankruptcy data.''.

SEC. 703. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of the Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the 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 the Judicial Conference of the United States may determine; and

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

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

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

TITLE VIII—BANKRUPTCY TAX PROVISIONS

SEC. 801. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

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

(2) in subsection (b)(2), after ''507(a)(1)'', insert ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

''(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

''(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.''.

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

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

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

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.

(a) EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.—Section 342 of title 11, United States Code, as amended by section 603, is amended by adding at the end the following:

''(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

''(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.''.

(b) ADOPTION OF RULES PROVIDING NOTICE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor's case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) EFFECT OF FAILURE OF NOTICE.—Section 342 of title 11, United States Code, as amended by section 603 and subsection (a), is amended by adding at the end the following:

''(i) A notice that does not comply with subsections (d) and (e) shall not be effective unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

''(1) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

''(2) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.''.

SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended by striking ''Unless'' at the beginning of the second sentence thereof and inserting ''If the request is made substantially in the manner designated by the governmental unit and unless''.

SEC. 804. RATE OF INTEREST ON TAX CLAIMS.

(a) AMENDMENT.—Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 511. Rate of interest on tax claims

''If any provision of this title requires the payment of interest on a tax claim or requires the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be as follows:

''(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title, secured tax claims, and administrative tax claims paid under section 503(b)(1) of this title, the rate shall be determined under applicable nonbankruptcy law.

''(2) In the case of all other tax claims, the minimum rate of interest shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, plus 3 percentage points.

''(A) In the case of claims for Federal income taxes, such rate shall be subject to any adjustment that may be required under section 6621(d) of the Internal Revenue Code of 1986.

''(B) In the case of taxes paid under a confirmed plan or reorganization, such rate shall be determined as of the calendar month in which the plan is confirmed.''.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

''511. Rate of interest on tax claims.''.

SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.

Section 507(a)(8)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after ''petition'' and before the semicolon '', plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title''; and

(2) amend clause (ii) to read as follows:

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

''(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

''(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

''(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.''.

SEC. 806. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.

Section 1328(a)(2) of title 11, United States Code, is amended by inserting ''(1),'' after ''paragraph''.

SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

''(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.''.

SEC. 809. STAY OF TAX PROCEEDINGS.

(a) SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting '', in respect of a tax liability for a taxable period ending before the order for relief.''.

(b) APPEAL OF TAX COURT DECISIONS PERMITTED.—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking ''or'' at the end;

(2) in subparagraph (D) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.''.

SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking ''and'' at the end; and

(2) in subparagraph (C)—

(A) by striking ''deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,'' and inserting ''regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,'';

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

(3) by adding at the end the following:

''(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.''.

SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting '', except where such purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;''.

SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) Such taxes shall be paid when due in the conduct of such business unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

''(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

''(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after ''estate,'' and before ''except'' the following: ''whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c) by inserting '', including the payment of all ad valorem property taxes in respect of the property'' before the period at the end.

SEC. 813. 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 ''on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee's final report or the date on which the trustee commences final distribution under this section''.

SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting ''or equivalent report or notice,'' after ''a return,'';

(2) in clause (i)—

(A) by inserting ''or given'' after ''filed''; and

(B) by striking ''or'' at the end;

(3) in clause (ii)—

(A) by inserting ''or given'' after ''filed''; and

(B) by inserting '', report, or notice'' after ''return''; and

(4) by adding at the end the following:

''(iii) for purposes of this subsection, a return—

''(I) must satisfy the requirements of applicable nonbankruptcy law, and 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 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 similar State or local law; and

''(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or''.

SEC. 815. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 140, is amended—

(1) in paragraph (6) by striking ''and'' at the end;

(2) in paragraph (7) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, as amended by section 135, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 3-year period ending on the date of filing of the petition.

''(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

''(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date;

''(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law; and

''(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

''(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection; and

''(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

''(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.''.

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

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

''(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting '', and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

SEC. 817. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after ''records,'' the following: ''including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,'';

(2) by inserting ''such'' after ''enable''; and

(3) by striking ''reasonable'' where it appears after ''hypothetical'' and by striking ''typical of holders of claims or interests'' after ''investor''.

SEC. 818. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, and 203, is amended—

(1) in paragraph (29) by striking ''or'';

(2) in paragraph (30) by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (30) the following:

''(31) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—

''(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or

''(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.''.

TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''1501. Purpose and scope of application.
''SUBCHAPTER I—GENERAL PROVISIONS
''1502. Definitions.
''1503. International obligations of the United States.
''1504. Commencement of ancillary case.
''1505. Authorization to act in a foreign country.
''1506. Public policy exception.
''1507. Additional assistance.
''1508. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''1509. Right of direct access.
''1510. Limited jurisdiction.
''1511. Commencement of case under section 301 or 303.
''1512. Participation of a foreign representative in a case under this title.
''1513. Access of foreign creditors to a case under this title.
''1514. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''1515. Application for recognition of a foreign proceeding.
''1516. Presumptions concerning recognition.
''1517. Order recognizing a foreign proceeding.
''1518. Subsequent information.
''1519. Relief that may be granted upon petition for recognition of a foreign proceeding.
''1520. Effects of recognition of a foreign main proceeding.
''1521. Relief that may be granted upon recognition of a foreign proceeding.
''1522. Protection of creditors and other interested persons.
''1523. Actions to avoid acts detrimental to creditors.
''1524. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''1527. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''1528. Commencement of a case under this title after recognition of a foreign main proceeding.
''1529. Coordination of a case under this title and a foreign proceeding.
''1530. Coordination of more than 1 foreign proceeding.
''1531. Presumption of insolvency based on recognition of a foreign main proceeding.
''1532. Rule of payment in concurrent proceedings.

''§ 1501. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity identified by exclusion in subsection 109(b);

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

''(3) an entity subject to a proceeding under the Securities Investor Protection Act, 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.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 1502. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title; and

''(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 1503. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

''§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

''§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 1507. Additional assistance

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, upon recognition of a foreign proceeding, the court may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 1508. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 1509. Right of direct access

''(a) A foreign representative may commence a case under section 1504 of this title by filing with the court a petition for recognition of a foreign proceeding under section 1515 of this title.

''(b) If the court grants recognition under section 1515 of this title, and subject to any limitations that the court may impose consistent with the policy of this chapter—

''(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

''(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) A request for comity or cooperation by a foreign representative in a court in the United States shall be accompanied by a certified copy of an order granting recognition under section 1517 of this title.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510 of this title, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United State to collect or recover a claim which is the property of the debtor.''.

''§ 1510. Limited jurisdiction

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) must be accompanied by certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

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

''Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

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

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 1514. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 1515. Application for recognition of a foreign proceeding

''(a) A foreign representative applies to the court for recognition of the foreign proceeding

in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

''§ 1516. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding as defined in section 101 and that the person or body is a foreign representative as defined in section 101, the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 1517. Order recognizing a foreign proceeding

''(a) Subject to section 1506, after notice and a hearing an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

''(3) the petition meets the requirements of section 1515.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed under section 350.

''§ 1518. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 1519. Relief that may be granted upon petition for recognition of a foreign proceeding

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''§ 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 with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.''.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

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

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''§ 1522. Protection of creditors and other interested persons

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

''§ 1523. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 1524. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

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

''(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

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

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''§ 1527. Forms of cooperation

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 1529. Coordination of a case under this title and a foreign proceeding

''Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

''(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

''§ 1530. Coordination of more than 1 foreign proceeding

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

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

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

''§ 1532. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''15. Ancillary and Other Cross-Border Cases ..... 1501''.

SEC. 902. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: '', and this chapter, sections 307, 304, 555 through 557, 559, and 560 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(j) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

''(2) section 1509 applies whether or not a case under this title is pending.''.

(b) DEFINITIONS.—Paragraphs (23) and (24) of title 11, United States Code, are amended to read as follows:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15,'' after ''chapter''.

(4) Section 305(a)(2) of title 11, United States Code, is amended to read:

''(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''.

(5) Section 508 of title 11, United States Code, is amended by striking subsection (a) and by striking out the letter ''(b)'' at the beginning of the second paragraph.

TITLE X—FINANCIAL CONTRACT PROVISIONS

SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR —RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting '', resolution or order'' after ''any similar agreement that the Corporation determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans

or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase agreement, reverse repurchase agreement, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) mean an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;

''(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), or (IV).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.''.

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A), by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(2) in subparagraph (A)(i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration'';

(3) by amending subparagraph (A)(ii) to read as follows:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''; and

(4) by amending subparagraph (E)(ii) to read as follows:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

SEC. 1002. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(2) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers'' after ''the appointment''.

SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property pursuant to subparagraph (A)(i), the conservator or receiver for such depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITION.—For purposes of this section, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Corporation by regulation to be a financial institution.''.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended by amending the flush material following clause (ii) to read as follows: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver, in the case of a receivership, or the business day following such transfer, in the case of a conservatorship.''.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is further amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(A) or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this subsection, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A) of this subsection.

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of subsection (e)(9)—

''(i) a bridge bank; or

''(ii) a depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between such institution and the Corporation as receiver for a depository institution in default.''.

SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is further amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''.

SEC. 1005. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS 1 AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(2) in paragraph (11), by adding before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(3) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(4) by adding at the end the following new paragraph:

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11) and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code) and shall not be stayed, avoided, or otherwise limited by any State or Federal law other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970.''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 408; and

(2) by adding after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency except—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meaning as in section 1(b) of the International Banking Act.''.

SEC. 1007. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B) or (C); or

''(E) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract, option, agreement, or transaction on the date of the filing of the petition;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and replacing it with ''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—

''(i) an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities; or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests; with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described above, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;

and, for purposes of this paragraph, 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;'';

(D) in paragraph (48) by inserting ''or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or an equity swap, option, future, or forward agreement; a debt index or a debt swap, option, future, or forward agreement; a credit spread or a credit swap, option, future, or forward agreement; or a commodity index or a commodity swap, option, future, or forward agreement;

''(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—

''(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on 1 or more rates, currencies commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or on an economic index or measure of economic risk or value;

''(iii) any combination of agreements or transactions referred to in this paragraph;

''(iv) any option to enter into an agreement or transaction referred to in this paragraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(B) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (A); and

''(C) is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) by amending section 741(7) to read as follows:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(vi) any combination of the agreements or transactions referred to in this paragraph;

''(vii) any option to enter into any agreement or transaction referred to in this paragraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this paragraph, except that such master agreement shall be considered to be a securities contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement, or other credit enhancement, related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master netting agreement, without regard to whether the master netting agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer; or

''(B) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreement or transaction with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

(3) by amending paragraph (26) to read as follows:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement' means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, 142, 203 and 818, is amended—

(A) in paragraph (6), by inserting '', pledged to, and under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, and under the control of,'' after ''held by'';

(C) by amending paragraph (17) to read as follows:

''(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with 1 or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of, or due from such swap participant to margin guarantee, secure, or settle a swap agreement;'';

(D) in paragraph (30) by striking ''or'' at the end;

(E) in paragraph (31) by striking the period at the end and inserting ''; or''; and

(F) by inserting after paragraph (31) the following new paragraph:

''(32) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged or and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 120, 302, and 412, is amended by adding at the end the following:

''(l) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), or (17), or (31) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by sections 207 and 302, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(2) by adding at the end the following:

''(j) Notwithstanding sections 544, 545, 547, 548(a)(2)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) of this title, and except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'';

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except, with respect to a transfer under any individual contract covered thereby, to the extent such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement''; and

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of 1 or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of 1 or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—(1) Title 11, United States Code, is amended by inserting after section 560 the following:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent the party has positive net equity in the commodity accounts at the debtor, as calculated under subchapter IV; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

(2) CONFORMING AMENDMENT.—The table of sections of chapter 9 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.

(l) ANCILLARY PROCEEDINGS.—Section 304 of title 11, United States Code, as amended by section 215, is amended by adding at the end the following:

''(c) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(m) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

"§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(o) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559, 560 or 561 of this title)'' before the period; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(19), 555, 556, 559, 560, 561''.

(p) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant'';

(2) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by inserting before the period at the end '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant'' after ''commodity broker''.

(q) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in the table of sections of chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.''; and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.''; and

(2) in the table of sections of chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''; and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 1008. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.''.

SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION —REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) 1 or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

SEC. 1010. DAMAGE MEASURE.

(a) Title 11, United States Code, as amended by section 1007, is amended—

(1) by inserting after section 561 the following:

"§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

''If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, commodity contract (as defined in section 761 of this title) repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date of such liquidation, termination, or acceleration.''; and

(2) in the table of sections of chapter 5 by inserting after the item relating to section 561 the following:

''562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 561 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

SEC. 1011. 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 after subparagraph (B) 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 Securities Investor Protection Corporation from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, each as defined in title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with 1 or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor whether or not with respect to 1 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 securities collateral pledged by the debtor, whether or not with respect to 1 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 section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

SEC. 1012. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, as amended by section 150, is amended—

(1) by redesignating paragraph (5) of subsection (b) as paragraph (6);

(2) by inserting after paragraph (4) of subsection (b) the following new paragraph:

''(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);''; and

(3) by adding at the end the following new subsection:

''(e) For purposes of this section, the following definitions shall apply:

''(1) the term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

''(2) the term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or revolving, including residential and commercial

mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

''(C) securities.

''(3) the term 'eligible entity' means—

''(A) an issuer; or

''(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

''(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

''(5) the term 'transferred' means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

''(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

''(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

''(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.''.

SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIREMENTS.

The 3d sentence of the 3d undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended by striking ''acceptances acquired under the provisions of section 13 of this Act'' and inserting ''acceptances acquired under section 10A, 10B, 13, or 13A of this Act''.

SEC. 1014. EFFECTIVE DATE; APPLICATION OF — AMENDMENTS.

(a) EFFECTIVE DATE.—This title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

TITLE XI—TECHNICAL CORRECTIONS

SEC. 1101. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by sections 102, 105, 132, 138, 301, 302, 402, 902, and 1007, is amended—

(1) by striking ''In this title—'' and inserting ''In this title:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A) and (38), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55) (including paragraph (54), as amended by paragraph (6) of this section), by striking the semicolon at the end and inserting a period; and

(8) by redesignating paragraphs (4) through (55), including paragraph (54), as amended by paragraph (6) of this section, in entirely numerical sequence.

SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3), 707(b)(5),'' after ''522(d),'' each place it appears.

SEC. 1103. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 1104. TECHNICAL AMENDMENTS.

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking ''subsection (c) or (d) of''; and

(2) in section 552(b)(1) by striking ''product'' each place it appears and inserting ''products''.

SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(3) of title 11, United States Code, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 1106. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1107. SPECIAL TAX PROVISIONS.

Section 346(g)(1)(C) of title 11, United States Code, is amended by striking '', except'' and all that follows through ''1986''.

SEC. 1108. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 1109. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 1110. PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 323, is amended in paragraph (4), as so redesignated by section 142, by striking the semicolon at the end and inserting a period.

SEC. 1111. EXEMPTIONS.

Section 522(g)(2) of title 11, United States Code, is amended by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 1112. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by section 146, is amended—

(1) in subsection (a)(3), by striking ''or (6)'' each place it appears and inserting ''(6), or (15)'';

(2) as amended by section 304(e) of Public Law 103–394 (108 Stat. 4133), in paragraph (15), by transferring such paragraph so as to insert it after paragraph (14A) of subsection (a);

(3) in subsection (a)(9), by inserting '', watercraft, or aircraft'' after ''motor vehicle'';

(4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, by inserting ''to a spouse, former spouse, or child of the debtor and'' after ''(15)''; and

(5) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 1113. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1) of this title, or that''.

SEC. 1114. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 1115. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 1116. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer may 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. 1117. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'';

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 1118. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 1119. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 1120. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election. Upon the filing of a report under the preceding sentence—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

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

''(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.''.

SEC. 1121. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1122. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1123. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

SEC. 1124. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 1125. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before '''bankruptcy''; and

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

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before '''document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 1126. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended—

(1) by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362 of this title.''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by section 140, is amended by adding at the end the following:

''(15) 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 1102, is amended by adding at the end the following:

''(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be deemed to require the court in which a case under chapter 11 is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1127. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(i) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

SEC. 1128. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1129. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11 of the United States Code may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided otherwise in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

The CHAIRMAN pro tempore. No amendment shall be in order except those printed in House Report 106–126. Each amendment may be. Each amendment may be offered only in the order specified, may be offered only by a Member designated in the report, shall be considered as read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question.

The Chairman of the Committee of the Whole may postpone a request for a recorded vote on any amendment and may reduce to a minimum of 5 minutes the time for voting on any postponed question that immediately follows another vote, provided that the time for voting on the first question shall be a minimum of 15 minutes.

It is now in order to consider Amendment No. 1 printed in House Report 106–126.

AMENDMENT NO. 1 OFFERED BY MR. GEKAS

Mr. GEKAS. Mr. Chairman, I offer amendment No. 1.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. GEKAS:

In the table of contents of the bill—

(1) in the item relating to section 107, strike ''congress'' and insert ''Congress'', and

(2) in the item relating to section 134, strike ''Giving debtors the ability to keep'' and insert ''Allowing a debtor to retain''.

Page 9, line 1, strike ''applicable'' and insert ''actual''.

Page 9, beginning on line 1, strike ''specifically listed'' and insert ''specified''.

Page 10, line 3, strike ''proceeding brought'' and insert ''motion filed''.

Beginning on page 10, strike line 22 and all that follows through line 5 on page 11.

Page 11, line 6, strike ''(D)'' and insert ''(C)''.

Page 12, beginning on line 11, strike ''in prosecuting the motion''.

Page 16, line 13, insert ''or not'' after ''whether''.

Page 17, after line 16, insert the following (and make such technical and conforming changes as may be appropriate):

(d) DEBTOR'S DUTIES.—Section 521(a)(1)(B) of title 11, United States Code, as amended by section 603, is amended—

(1) in clause (v) by striking ''and'' at the end;

(2) in clause (vi) by adding ''and'' at the end;

(3) by inserting the following after clause (vi):

''(vii) a statement of the debtor's current monthly income, and the calculations which determine whether a presumption arises under section 707(b)(2)(A)(i), showing how each amount is calculated.''.

(e) BANKRUPTCY FORMS.—Section 2075 of title 28, United States Code, is amended by adding the following at the end of the 1st paragraph:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement referred to in section 521(a)(1)(B)(vii) of title 11, United States Code, and may provide general rules on the content of such statement.''.

(f) CHAPTER 13.—Section 1325(a) of title 11, United States Code, is amended—

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

(2) in paragraph (6) by striking the period and inserting ''; and'';

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

''(7) the action of the debtor in filing the petition under this chapter was in good faith.''.

Page 19, line 15, strike ''this title'' and insert ''title 11, United States Code''.

Page 22, lines 17 and 20, insert ''case or'' after ''a''.

Page 23, lines 9 and 12, strike ''proceeding'' and insert ''case''.

Page 77, strike line 1, and insert the following:

SEC. 134. ALLOWING THE DEBTOR TO RETAIN LEASED

Beginning on page 114, strike line 1 and all that follows through line 5 on page 115 (and make such technical and conforming changes as may be appropriate).

Page 91, line 15, insert ''(a) AMENDMENT.—'' before ''Section''.

Page 92, beginning on line 13, strike ''expressly'' and all that follows through ''this paragraph'', and insert ''provides by statute''.

Page 92, after line 15, insert the following:

(b) APPLICATION OF AMENDMENT TO INDIVIDUAL STATES.—(1) Section 522(p) of title 11, United States Code, as added by subsection (a), shall not apply with respect to a State before the end of the first regular session of the State legislature following the date of the enactment of this Act.

(2) For purposes of paragraph (1), the term ''State'' has the meaning given such term in section 101 of title 11, United States Code.

Page 115, beginning on line 20, strike ''(excluding'' and all that follows through ''secret)''.

Page 116, line 7, insert ''(excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret)'' after ''contract''.

Page 117, line 15, strike ''365(b)(1)(A)'' and insert ''365(b)(2)''.

Page 174, line 2, insert ''(a) APPEALS.—'' before ''Title''.

Page 175, line 9, strike ''(b)'' and insert ''(5)''.

Page 175, indent lines 9 through 11 2 ems to the right.

Page 175, line 12, strike ''(c)(1)'' and insert ''(b)(1)''.

Page 175, line 17, strike ''(1)-(4)'' and insert ''(1) through (5)''.

Page 175, line 24, strike ''subsection (b)'' and insert ''paragraph (1)''

Page 176, after line 6, insert the following:

(b) PROCEDURAL RULES.—Until rules of practice and procedure are promulgated or amended pursuant to the Rules Enabling Act (28 U.S.C. sections 2071–77) to govern appeals to a bankruptcy appellate panel or to a court of appeals exercising jurisdiction pursuant to section 1293 of title 28, as added by this Act, the following shall apply:

(1) A notice of appeal with respect to an appeal from an order or judgment of a bankruptcy court to a court of appeals or a bankruptcy appellate panel must be filed within the time provided in Rule 8002 of the Federal Rules of Bankruptcy Procedure.

(2) An appeal to a bankruptcy appellate panel shall be taken in the manner provided in Part VIII of the Federal Rules of Bankruptcy Procedure and local court rules.

(3) An appeal from an order or judgment of a bankruptcy court directly to a court of appeals shall be governed by the rules of practice and procedure that apply to a civil appeal from a judgment of a district court exercising original jurisdiction, as if the bankruptcy court were a district court, except as provided in paragraph (1) regarding the time to appeal or by local court rules.

(4) An appeal to a court of appeals from a decision, judgment, order, or decree entered by a bankruptcy appellate panel exercising appellate jurisdiction shall be taken in the manner provided by Rule 6(b) of the Federal Rules of Appellate Procedure.

(c) REPEALER.—(1) Section 158 of title 28, United States Code, is repealed.

(2) The table of sections of chapter 6 of title 28, United States Code, is amended by striking the item relating to section 158.

Page 208, line 9, insert '', other than a foreign insurance company,'' after ''entity''.

Page 208, after line 20, insert the following:

''(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

Page 231, strike line 13, and insert the following:

''SEC. 902. OTHER AMENDMENTS TO TITLES 11 AND 28 OF THE UNITED STATES CODE.

Page 233, after line 11, insert the following (and make such technical and conforming changes as may be appropriate):

(d) OTHER SECTIONS OF TITLE 11.—(1) Section 109(b)(3) of title 11, United States Code, is amended to read as follows:

''(3)(A) a foreign insurance company, engaged in such business in the United States; or

''(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, which has a branch or agency (as defined in section 3101 of title 12, United States Code) in the United States.''.

(2) Section 303(k) of title 11, United States Code, is repealed.

(3)(A) Section 304 of title 11, United States Code, is repealed.

(B) The table of sections of chapter 3 of title 11, United States Code, is amended by striking the item relating to section 304.

(C) Section 306 of title 11, United States Code, is amended by striking '', 304,'' each place it appears.

Page 279, beginning on line 1, strike ''that is described in section 561(a)(2)'' and insert ''described in paragraph (1), (2), (3), (4), or (5) of section 561(a)''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 158, the gentleman from Pennsylvania (Mr. GEKAS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

□ 1345

In this amendment, which is the manager's amendment, of course, the bulk of it is with technical corrections that have to be made, that almost always appear in a bill that is so mammoth as is ours. But besides that, there are some other revisions in it of which the minority is well aware.

For instance, in the homestead exemption portion, we allow the States who want to opt out to do so, even in advance of the adoption of the bill, because of the legislative schedules in some of those States.

So the technical corrections bill corrects some of the technical misgivings that we have had about the original text.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise in support of the amendment. This is a technical amendment, the manager's amendment. It contains 11 changes. We have examined them carefully and have absolutely no objection to them.

Mr. BENTSEN. Mr. Chairman, I rise today in strong support of the manager's amendment to H.R. 833, bankruptcy reform legislation.

I believe that adoption of this amendment is necessary to preserve state homestead laws. I am pleased that the manager's amendment includes two critically important amendments that I offered yesterday in the House Rules Committee. The adoption of the manager's amendment would ensure that states can decide how much property should be exempted when a consumer files for bankruptcy. This will grant the states latitude to opt out of this intrusive law protecting their prerogative in determining what homestead exemptions are allowed. State's citizens will not be forced to live under this new federal mandate until such time as a state legislature reconvened.

The first Bentsen amendment would change the effective date of the new federal homestead cap of $250,000 until the last day of the next legislative session of any state. The second Bentsen amendment would preserve the right of states to opt out of the cap and allow states to prospectively opt out of the new homestead cap prior to this bill being enacted into law. This would allow the legislatures ample time to pass legislation opting out of this new federal standard.

The bill as reported by the House Judiciary Committee, includes many provisions related to the homestead exemption. First, it would place a monetary cap of $250,000 on the amount of homestead equity individuals can protect from bankruptcy foreclosure proceedings. If a consumer holds more than $250,000 in equity, the consumer would be required to foreclose on the property to repay their non-mortgage debts. Second, it includes a two-year residency requirement before one can qualify. Third, this legislation includes a provision that would prohibit them from transferring assets in their home during this two-year period. This provision could penalize any homeowner or farmer who tried to pay more than what's required on their mortgage payments. Finally, this legislation also would permit states to ''opt out'' of this new federal standard.

My amendment would address the ''opt out'' provision by ensuring that states are not required to choose between convening a special legislative session or forcing their citizens to live under this intrusive federal mandate.

There is no substantive reason to address state homestead laws in this or any other legislation. No evidence of abusive practices has been provided during the debate. When the 105th Congress considered this legislation we successfully prevailed against such a cap. And, while I support much of the underlying bill, I will be unable to support any conference report which includes any restriction on the states' ability to determine exempt property with respect to one's homestead including eliminating and limiting the states' ability to opt out of the new federal standard.

While this legislation is not perfect, I believe that the manager's amendment makes important improvements to this legislation. With these additions, I believe we should support the manager's amendment and would urge colleagues to also support this amendment.

The CHAIRMAN pro tempore (Mr. LAHOOD). The question is on the amendment offered by the gentleman from Pennsylvania (Mr. GEKAS).

The amendment was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment number 2 printed in House Report 106–126.

AMENDMENT NO. 2 OFFERED BY MR. MORAN OF VIRGINIA

Mr. MORAN of Virginia. Mr. Chairman, I offer an amendment made in order by the rule.

The CHAIRMAN pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. MORAN of Virginia:

Page 34, strike lines 7 through 25 and insert the following:

''(C) the following examples:

''(i) if the average account balance under a creditor's open-end consumer credit plan, taken as an average of the account balances for all consumer accounts under that open-end consumer credit plan, is $1,000 or less, two examples, based on an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and based on outstanding balances of $250 and $500, showing the estimated minimum periodic payments, and the estimated period of time it would take to repay those outstanding balances of $250 and $500, if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit; or

''(ii) if the average account balance under a creditor's open-end consumer credit plan, taken as an average of the account balances for all consumer accounts under that open-end consumer credit plan, is more than $1,000, three examples, based on an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and outstanding balances of $1,000, $1,500 and $2,000, showing the estimated minimum periodic payments, and the estimated period of time it would take to repay those outstanding balances of $1,000, $1,500 and $2,000 if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit.

''(10) With respect to one billing cycle per calendar year, the creditor shall transmit to each consumer to whom the creditor is required to transmit a statement pursuant to subsection (b) for such billing cycle the following information:

''(A) the following statement: 'The minimum payment amount shown on your billing statement is the smallest payment which you can make in order to keep the account in good standing. This payment option is offered as a convenience and you may make larger payments at any time. Making only the minimum payment each month will increase the amount of interest you pay and the length of time it takes to repay your outstanding balance.';

''(B) if the plan provides that the consumer will be permitted to forgo making a minimum payment during a specified billing cycle, a statement, if applicable, that if the consumer chooses to forgo making the minimum payment, finance charges will continue to accrue;

''(C) an example, based on an annual percentage rate and method for determining minimum periodic payments recently in effect for that creditor, and a $500 outstanding balance, showing the estimated minimum periodic payment, and the estimated period of time it would take to repay the $500 outstanding balance if the consumer paid only the minimum periodic payment on each monthly or periodic statement and obtained no additional extensions of credit; and

''(D) a worksheet prescribed by the Board to assist the consumer in determining the consumer's household income and debt obligations.''.

Page 35, line 12, strike the close quotation marks and the period at the end.

Page 35, after line 12 insert the following:

''(12) the required minimum payment amount represented as a dollar figure.

''(13) the date by which or the period within which the required minimum payment must be made.''.

(c) DISCLOSURES RELATED TO INTRODUCTORY RATES.—Section 127(c)(1)(A)(i) of the Truth in Lending Act (15 U.S.C. 1637(c)(1)(A)(i)) is amended by inserting the following at the end of subclause (III):

''(IV) Where the initial rate is temporary and will expire within a period of less than 1 year, and is lower than the rate that will apply after the temporary rate expires—

''(A) the time period during which the initial rate will remain in effect; and

''(B) the annual percentage rate that will apply to the account after the temporary rate expires, or if that rate is a variable rate, the fact that the rate is variable, the rate at the time of mailing, and how the rate is determined.

''(V)(A) Subject to subclauses (C) and (D), where the initial rate may increase upon the occurrence of one or more specific events, the following information:

''(i) the initial rate and the increased rate that may apply;

''(ii) if the increased rate is a variable rate, the fact that the increased rate is variable, the rate at the time of mailing, and how the rate is determined; and

''(iii) the specific event or events that may result in imposing the increased rate.

''(B) At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect.

''(C) If the increased rate cannot be determined at the time disclosures are given, an explanation of the specific event or events that may result in an increased rate must be disclosed.

''(D) A creditor is not required to disclose an increased rate that is imposed when credit privileges are permanently terminated.''.

(d) INTERNET-BASED CREDIT CARD SOLICITATIONS.—(1)—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by inserting after paragraph (5) the following:

''(6)(A) Any application to open a credit card account for any person under an open-end consumer credit plan, and any solicitation to open such an account without requiring an application, that is made available through the Internet or an interactive computer service, shall disclose the following:

''(i) the information.—

''(I) described in paragraph (1)(A) in the form required under section 122(c) of this chapter, subject to subsection (e), and

''(II) described in paragraph (1)(B) in a clear and conspicuous form, subject to subsections (e) and (f);

''(ii) a statement, in a conspicuous and prominent location on or with the application or solicitation, that—

''(I) the information is accurate as of the date the application or solicitation was posted;

''(II) the information contained in the application or solicitation is subject to change after such date;

''(III) the applicant should contact the creditor for information on any change in the information presented on or with the application or solicitation since it was posted;

''(iii) a clear and conspicuous disclosure of the date the application or solicitation was posted and how frequently the information described in subclause (i) is updated; and

''(iv) a disclosure, in a conspicuous and prominent location on or with the application or solicitation, of a toll-free telephone number or e-mail address at which the applicant may contact the creditor to obtain any change in the information provided on or with the application or solicitation since it was posted.

''(B) The disclosures required under subparagraph (A) may be contained either:

''(i) on the webpage which contains the application or solicitation; or

''(ii) on a separate webpage which can be directly accessed using a hypertext link which is contained on the webpage which contains the application or solicitation.

''(C) Upon receipt of a request for any of the information referred to in subparagraph (A), the creditor or its agent shall promptly disclose any change in the information required to be disclosed under subparagraph (A).

''(D) For purposes of this paragraph (6)—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packets switched data networks; and

''(ii) the term 'interactive computer service' means any information service system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(2) Section 122(c)(1) of the Truth in Lending Act (15 U.S.C. 1632(c)(1)) is amended by striking ''and (4)(C)(i)(I)'' and inserting '', (4)(C)(i)(I) and (6)(A)(i)(I)''.

The CHAIRMAN pro tempore. Pursuant to House Resolution 158, the gentleman from Virginia (Mr. MORAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this bill, as reported by the Committee on the Judiciary, already does require credit card issuers to tell consumers on every monthly billing statement that making only the minimum payment each month will increase the amount of interest paid and the length of time it takes to repay the balance on the account.

Our amendment, which is cosponsored by the gentleman from California (Mr. DOOLEY) and the gentleman from New York (Mr. ACKERMAN), adds four components to the existing consumer protection provisions of H.R. 833. These components have been crafted to respond to specific concerns that have been expressed about whether consumers have adequate information about certain features of their credit card accounts.

First of all, in terms of minimum payments, it enhances the minimum payment disclosure requirements already contained in this bill. Under our amendment credit card issuers would be required to disclose, when the consumer first opens an account, several examples of how long it would take to repay a balance if the consumer makes only minimum payments. The number and type of examples would be tailored to the size of the card issuer's typical account balance.

Secondly, disclosure of late payment penalties and deadlines: Our amendment responds to concerns that have

been raised about whether consumers have the information they need in order to avoid the imposition of late fees and penalties. Credit card issuers would have to disclose on each monthly statement the amount of the minimum payment expressed as a dollar amount and the date by which it must be paid. Believe it or not, these requirements are not currently in the Federal code.

The amendment would require applications or solicitations for a credit card to include a clear and conspicuous disclosure of any so-called penalty rate that may apply if the consumer does not pay as agreed. Such penalty rates are higher than the regular interest rate, and this amendment would ensure that consumers were adequately informed in advance about the circumstances under which they would apply.

Thirdly, worldwide web-based credit card solicitations: We modify the Truth in Lending Act to establish for the first time disclosure requirements that specifically apply to credit card applications or solicitations that are posted on the worldwide web. The amendment would require these solicitations to post the same disclosures, usually presented in a table, that currently apply to every other credit card offer made through the traditional mail system.

The amendment would require that the web site include the date the disclosures were posted and a statement that they were accurate as of that date. It would also require a statement that the information disclosed on the web site may change, and a toll free telephone number or e-mail address would have to be provided so the consumer could obtain the most current information.

Lastly, related to teaser rates, our amendment would ensure that consumers receive the information they need in order to make informed decisions regarding credit card introductory rates, sometimes called teaser rates. Specifically, the amendment would amend the Truth in Lending Act to require that an application or solicitation for a credit card that has an introductory rate must include a clear and conspicuous disclosure of when the introductory rate will expire, as well as the rate that will apply after the introductory rate will expire, after the introductory period.

This is the kind of information that consumers desperately need. The fact that those disclosures are not required by statute points up a glaring error, and we think that this significantly improves the bill. It gives balance to this bill by adding these consumer protections, but does not inappropriately load up the lending industry with onerous and expensive new requirements that have nothing to do with the underlying purpose of the bill, which is to provide long overdue reform to the bankruptcy bill.

So I think these are appropriate, if I do say so myself, Mr. Chairman, and we would hope that this body would approve them unanimously.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I want to commend the gentleman for offering the amendment, and to indicate to all parties that we on this side agree to the amendment.

Mr. MORAN of Virginia. Mr. Chairman, I yield back the balance of my time, and thank the gentleman for his comments.

The CHAIRMAN pro tempore. Is there any Member in opposition to the amendment?

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN pro tempore. The gentleman from Michigan (Mr. CONYERS) is recognized for 10 minutes.

Mr. CONYERS. Mr. Chairman, I yield 2½ minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I am not rising in opposition to the amendment, I am rising to express my disappointment that the Committee on Rules failed to make an even better amendment in order.

This amendment certainly improves the bill from its current position, and I intend to vote for it, but it still is nowhere as good as the amendment should have been. Because instead of providing borrowers the kind of information they need to really evaluate how much money they will make in payments on their credit cards, we continue to provide hypothetical information to them under this amendment.

It would not have been any more costly or any more burdensome to lenders to provide actual information about the amount of time it takes to pay off a loan if one pays the minimum amount. And, unfortunately, we had an amendment that would have done that, but the Committee on Rules did not see fit to make it in order.

So I will support this amendment because it is better than what is in the bill, but it is still not anywhere close to being as good as it could be and should be for the consumers of America.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from Texas (Mr. BENTSEN).

(Mr. BENTSEN asked and was given permission to revise and extend his remarks.)

Mr. BENTSEN. Mr. Chairman, I thank the gentleman for yielding me this time, and I just wanted to spend a second to speak on the amendment that was just adopted, the manager's amendment, to say that I strongly support it; that it includes two important provisions which would correct the opt-out language related to the equity cap for State homestead laws.

Without these opt-outs, I think citizens in my State of Texas and several other States would be unfairly affected by the homestead provisions in this bill, which I believe are unfair and unnecessary.

Mr. CONYERS. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. ACKERMAN).

(Mr. ACKERMAN asked and was given permission to revise and extend his remarks.)

Mr. ACKERMAN. Mr. Chairman, I rise in support of this amendment, of which I am a cosponsor, and ask for its approval.

Mr. CONYERS. Mr. Chairman, I yield the balance of my time to the gentleman from New York (Mr. NADLER), the ranking member of the subcommittee.

Mr. NADLER. Mr. Chairman, this amendment is harmless enough, and may do a little bit of good. I really do not think it is very important one way or the other.

It is somewhat deceptive, however. It is somewhat deceptive. I am not going to urge a vote against it, but I do think we should have a word of caution here. It will lead to some misleading information because it demands that the credit card information tell us, the credit card information, not about our credit card, not about what we are doing, but about what some typical borrower might do if he were borrowing $500 or $300 or $1,000.

Unfortunately, this amendment was made in order by the Committee on Rules in order to avoid making in order the amendment of the gentleman from Massachusetts (Mr. DELAHUNT) which had real consumer protections in it. The amendment of the gentleman from Massachusetts, which was voted down on a party line vote in the committee, requires actual disclosure of minimum payments and interest based on the actual debt on our own credit card, rather than have the information just give samples which may bear no relationship to our own situation.

The amendment of the gentleman from Massachusetts (Mr. DELAHUNT) has disclosure on teaser rates and penalties. They have to tell us that, the disclosure on penalties for having no interest, for paying in full, disclosures regarding prohibiting soliciting kids, and makes other real consumer protections and disclosures.

Unfortunately, the Committee on Rules chose to make this basically irrelevant amendment and somewhat misleading amendment in order, and did not put in order the real amendment by the gentleman from Massachusetts (Mr. DELAHUNT), which parallels the provisions the Senate put in, sponsored by Senator DURBIN in last year's bill, but which the conference committee took out.

Now, I understand the authors of this bill do not want real consumer protections in this bill. It is supposed to be a one-sided bill. But it is too bad we have these illusory protections and somewhat misleading instead of real protections. Just another ground for voting against the bill.

Mr. MORAN of Virginia. Mr. Chairman, I ask unanimous consent to reclaim the time I yielded back. I did not expect there would be these comments that I understand, while they are supportive, are not necessarily wholehearted endorsements.

I do have speakers that would use what time is remaining, if the Speaker would tell me how much time is remaining, and I would ask unanimous consent if I could reclaim it and use it for speakers on behalf of the amendment.

The CHAIRMAN pro tempore. The gentleman from Virginia (Mr. MORAN) has 6 minutes remaining.

Is there objection to the request of the gentleman from Virginia?

There was no objection.

Mr. MORAN of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from California (Mr. DOOLEY).

(Mr. DOOLEY of California asked and was given permission to revise and extend his remarks.)

Mr. DOOLEY of California. Mr. Chairman, I am proud to be a cosponsor of the amendment offered by the gentleman from Virginia (Mr. MORAN).

I would say that we are dedicated to providing for true consumer protection. This amendment does, I think, take a balanced and responsible approach to ensuring that consumers and those who are incurring debt will have the information they need in order to make informed decisions about their purchases and about the debt that they incur.

The amendment goes a long ways to ensuring that consumers who are faced with credit card applications coming to them in their homes are fully aware of the real rates that they will be facing and ensuring that the teaser rates will be clearly distinguished.

It also ensures that our consumers that unfortunately use credit cards in a manner which is not consistent with their ability to repay will have the information that will be disclosed to them, if they did make that payment of the monthly minimum payment, how long, in fact, it would take them to repay the obligation that they have incurred.

I would say this: That all consumers are going to have to accept the personal responsibility to show their due diligence; to understand when they get a credit card application that nothing comes for nothing; that they have to read the print, they have to understand the obligations that they are incurring when they do make a purchase and they do use this tool, which ensures that many Americans have more affordable and accessible credit.

I think this is a great amendment and I think it will go a long ways towards ensuring consumers have the information to make responsible purchasing decisions.

Mr. MORAN of Virginia. Mr. Chairman, I yield 2 minutes to the gentleman from New York (Mr. ACKERMAN), also a cosponsor of this amendment.

□ 1400

Mr. ACKERMAN. Mr. Chairman, we all have been told in so many words that bankruptcies are on the rise, and indeed they are, and that because of that everybody suffers because of increased interest rates and other charges. And we are also told, and rightfully so, that consumers need to take personal responsibility for their obligations. That is true, as well.

As we address bankruptcy reform today, we have a unique opportunity to at least modestly combat part of this rising trend in bankruptcies, and one of the best ways that we can begin to tackle that is to have more information for consumers so that they are better informed and can make smarter decisions about their credit needs.

How do we do this? First, with better and clearer disclosure rules for solicitations and credit applications. Every one of my colleagues here are familiar were the deluge of solicitations that we get in the mail almost on a daily basis advertising a particularly low introductory rate, and the rate is on the envelope and it does not tell us how long that rate is for and the consumer cannot make an objective kind of a decision; and then he borrows at a rate that he thinks he is going to have for a longer period of time and that ends and the interest rates goes up and he is paying more than he did under a previous credit card that he might have had that he switched over from.

This is an opportunity for us to fix part of that problem, and that is why the gentleman from Virginia (Mr. MORAN) and the gentleman from California (Mr. DOOLEY) and myself have introduced this amendment. The amendment requires lenders to provide consumers with the information they need to make informed decisions.

Specifically, they would have to do several things. They would have to indicate the minimum payment and day that the payment is due on every periodic statement that they send. They would have to indicate what the late penalty deadlines are so that consumers have all the information they need in order to make that appropriate decision and meet their responsibilities and in order to avoid the imposition of late fees. And whenever a solicitation includes an introductory rate, it must be clear when that rate expires.

I think these and some of the other small steps make it much better to avoid bankruptcy on the part of many consumers and users of credit.

Mr. MORAN of Virginia. Mr. Chairman, I yield the remaining 2 minutes to the distinguished gentleman from Indiana (Mr. ROEMER), co-chairman of the new Democrat Coalition.

(Mr. ROEMER asked and was given permission to revise and extend his remarks.)

Mr. ROEMER. Mr. Chairman, I thank my good friend from Virginia (Mr. MORAN) and my good friend from California (Mr. DOOLEY), co-chairs of the new Democrat Coalition, for sponsoring the amendment, along with the gentleman from New York (Mr. ACKERMAN).

I am a proud cosponsor of this legislation and a strong supporter of this amendment offered by my friends. I think there are two key issues as we debate this bankruptcy reform bill. One is personal responsibilities.

We have seen a 94-percent increase in the filings of bankruptcy since 1990. We need to address this, and I believe this bill does it in a coherent and fair fashion.

The second issue that this amendment gets to is not so much credit card availability but consumer protections. There are two provisions in this amendment that I encourage my colleagues to take a look at and support. One is the minimum payment that we have, that we have better disclosures on how long it would simply take to repay a balance if they pay the minimum amount each month. That is the minimum payments requirement.

Secondly, the so-called teaser rates is that companies need to disclose what that introductory rate is, if it is 9 or 10 percent, and then what it is going to go up to after it teases them with that first 9 or 10 percent, if it is then going to be 11 or 12 or 18 or 19 percent later on. We need consumer disclosure and consumer protections.

So this is a good amendment offered by the gentleman from Virginia (Mr. MORAN) and the gentleman from California (Mr. DOOLEY) and the gentleman from New York (Mr. ACKERMAN). I strongly encourage my colleagues to support it. And, hopefully, that will continue to improve this bill and we will have a sound bill both on personal responsibility and the consumer protections aspects.

The CHAIRMAN (Mr. NETHERCUTT). The question is on the amendment offered by the gentleman from Virginia (Mr. MORAN).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 106–126.

AMENDMENT NO. 3 OFFERED BY MR. MORAN OF VIRGINIA

Mr. MORAN of Virginia. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mr. MORAN of Virginia:

Page 101, after line 9, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 154. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

"§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide the following notices to the assisted person:

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

''(2) to the extent not covered in the written notice described in paragraph (1) of this section and no later than three business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons of the following—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 526 the following:

''527. Disclosures.''.

SEC. 155. DEBTOR'S BILL OF RIGHTS.

Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 106 and 154, is amended by adding at the end the following:

''§ 528. Debtor's bill of rights

''(a) A debt relief agency shall—

''(1) no later than five business days after the first date on which a debt relief agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with the assisted person specifying clearly and conspicuously the services the agency will provide the assisted person and the basis on which fees or charges will be made for such services and the terms of payment, and give the assisted person a copy of the fully executed and completed contract in a form the person can keep;

''(2) 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 proceedings under this title, clearly and conspicuously using the following statement: 'We are a debt relief agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.' or a substantially similar statement. An advertisement shall be of bankruptcy assistance services if it describes or offers bankruptcy assistance with a chapter 13 plan, regardless of whether chapter 13 is specifically mentioned, including such statements as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements which would lead a reasonable consumer to believe that help with debts was being offered when in fact in most cases the help available is bankruptcy assistance with a chapter 13 plan; and

''(3) if an advertisement directed to the general public indicates that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, lease eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt, disclose conspicuously in that advertisement that the assistance is with respect to or may involve proceedings under this title, using the following statement: 'We are a debt relief agency. We help people file Bankruptcy petitions to obtain relief under the Bankruptcy Code.' or a substantially similar statement.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by sections 106 and 154, is amended by inserting after the item relating to section 527, the following:

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

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from Virginia (Mr. MORAN) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise today to offer this amendment for the purpose of adding to the consumer protections that are already contained in H.R. 833. We have all seen the advertisements. ''Consolidate your bills into one monthly payment without borrowing'' goes one. ''Stop credit harassment, foreclosures, repossessions, tax levies and garnishments'' is another advertisement. ''Wipe out your debts. Consolidate your bills. How? By using the protection that the Federal Government offers provided by Federal law.''

We have seen these advertisements. They are all opportunities to exploit the consumer, exploit the consumer's ignorance. And they would be addressed by this bill. Because only later does the consumer find out that very often these phrases involve bankruptcy proceedings which can hurt their credit and cost them substantial attorney's fees. They often do not realize that very often these are bankruptcy mills that do not advise consumers on other options that they have, including consumer credit counseling, working out a repayment plan with their creditors, or getting a second mortgage.

This amendment adds to the bill provisions requiring so-called ''debt relief organizations,'' but more appropriately sometimes ''bankruptcy mills,'' to make certain minimal disclosures to

consumer debtors and to prevent deceptive and fraudulent advertising practices that were identified by the Federal Trade Commission in their Consumer Alert.

The disclosures are designed to ensure that debtors who retain the services of these organizations understand the nature of the services that are being provided, the cost of the services and, if the service includes placing the debtor into bankruptcy, the consequences of that action.

This requirement was included in the conference report of last year's bankruptcy reform bill, which was overwhelmingly approved by the House of Representatives. The requirement is modeled on legislation enacted by Congress several years ago to address abuses by so-called credit repair organizations.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I rise to support the amendment of the gentleman. I must tell my colleagues, I was set back a bit when in the full committee this group of debtors' rights, ''debtors' rights'' I repeat, were removed from the bill. Just as the gentleman says, last year's effort resulted in a conference report that had this debtors' bill of rights as part and parcel.

Now we are faced with the prospect of attempting to do, and I will help the gentleman do so, restore this same set of debtors' rights, and I will do everything I can to help the gentleman succeed.

Mr. MORAN of Virginia. Mr. Chairman, I greatly appreciate the comments of the chair of the subcommittee.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, I am saddened to have to rise in opposition to this amendment. This exact language that is proposed in this amendment was in the bill originally and was considered by the Committee on the Judiciary, and an amendment passed in the Committee on the Judiciary to remove this language from the bill.

Now, the chairman of the subcommittee, who has risen to express his support for this amendment to put it back in, voted against that amendment in the committee. So it is not surprising that he would be here saying he likes the Moran amendment. But the majority of the Committee on the Judiciary, including a bipartisan group of individuals, not just Democrats or Republicans, both Democrats and Republicans, voted to remove this language from the bill.

Now, why did they vote to do it? First of all, understand that there continues to be language in the bill which prohibits misrepresentation and misleading of the public by these persons who are assisting folks with bankruptcies. But remember that every attorney who does bankruptcy practice would be covered by this provision; every credit counseling service, consumer credit organization, many of which are governed by or under the city and county governments in our local communities, would be governed by these provisions; and these agencies would be put to the task of giving page after page after page of disclosures in an effort to get at a few bad people who are in this business.

Now, I am not saying that there are not people who are providing credit counseling advice who are bad. There are people in the business who are bad. But 99 percent of the people who are providing advice to bankruptcy applicants or potential bankruptcy applicants are reputable people, attorneys who provide information and services, credit counseling services and the like, that we are simply imposing substantial burdens on if we put this language back in the bill, which the Committee on the Judiciary, I remind my colleagues, has taken out of the bill.

If we start on page 3 of this proposed amendment and we go all the way over to page 5 of this proposed amendment, there are disclosures that would have to be made by anybody who even sat down and talked to somebody about the possibility of filing a bankruptcy. This is not for people who file bankruptcies, because these disclosures have to be given at the first encounter before there is even a decision to file bankruptcy.

Most of the disclosures are, essentially, worthless because what most people will do is print up these disclosures verbatim from the bill and hand them to people when they come into their offices and nobody is going to read this stuff. And Republicans and Democrats alike acknowledge that these kinds of disclosures are simply worthless.

Additionally, for those of us, including the gentleman from Virginia (Mr. MORAN), who is the sponsor of this bill who say that they want to stop attorneys from soliciting folks to file bankruptcy, there are additional advertisements that must be given which require folks who advertise to say to the public, look, I am in the business of providing bankruptcy advice.

That is exactly the kind of advertising we have been trying to discourage. That is not something that is furthering the public policy that underlies this bill.

So, for those reasons, I want to state strongly that we do not want to impose additional burdens on good reliable business people. We want to, as the bill still does, prohibit false information from being given to potential filers of bankruptcy. But we do not need to burden the people who are the attorneys and credit counseling people who are reputable by forcing them to give page after page after page of useless disclosures.

Mr. Chairman, I reserve the balance of my time.

□ 1415

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume. I refer for the record to the Consumer Alert issued by the Federal Trade Commission warning consumers of exactly the situation that this amendment addresses, the fraudulent advertising, the kind of advertising that sucks consumers into a situation where they wind up declaring bankruptcy, which was not their original intent, because they were misled by the people that would be covered by this amendment.

This amendment addresses abuses by ''bankruptcy mills'' which advertise themselves as debt counseling organizations or government sanctioned sources of assistance for consumers having difficulty meeting debt repayments. According to the Federal Trade Commission, consumers are frequently using these organizations without understanding that the only relief that these groups offer is to put the debtor into bankruptcy, sometimes when the debtor could have avoided such a drastic step through voluntary repayment arrangements.

The amendment requires debt relief organizations to disclose the nature of the services they offer, explain to consumers the alternatives to filing bankruptcy, disclose the rights and obligations of a debtor who files for bankruptcy and the consequences of a bankruptcy filing. The purpose of the amendment is to educate the consumer about bankruptcy and bankruptcy mills before it is too late; in other words, before the debtor has made an uninformed decision.

Those who feel that the answer to the growth in bankruptcies is increased disclosure about the consequences of incurring credit card or other debt should support the up-front disclosure approach of this amendment and not try to protect these lawyers who are exploiting the ignorance of their clients.

This is an amendment that is entirely appropriate. It is appropriate that it be called the Debtor's Bill of Rights. It is directly addressing a warning that the Federal Trade Commission has made available to consumers. I would hope that the House would pass this unanimously.

FEDERAL TRADE COMMISSION, FOR YOUR INFORMATION, MARCH 26, 1997

Debt-burdened consumers who answer ads that offer to ''consolidate bills'' or ''stop credit harassment'' may be the targets of bankruptcy mills, according to a new publication from the Federal Trade Commission. ''Advertisements Promising Debt Relief May Be Offering Bankruptcy,'' the FTC Consumer Alert warns.

A record one million consumers file for bankruptcy in 1996, according to the Alert. But bankruptcy can have a long-term negative impact on creditworthiness; stays on

you credit report for 10 years, and can hinder a consumer's ability to get credit, a job, insurance or even a place to live. ''Although bankruptcy is one option to deal with financial problems, it's generally considered the option of last resort,'' the publication says.

The Alert says that some newspaper, magazine and telephone directory ads give tip-offs that their ''debt consolidation'' ads are really toting bankruptcy mills. Ads that make claims such as:

''Consolidate your bills into one monthly payment without borrowing;''

''Wipe out your debts! Consolidate your bills! How? By using the protection and assistance provided by federal law;'' and

''Stop credit harassment, foreclosures, repossessions'' . . . ''Keep your Property,'' may be touting bankruptcy services which can hurt consumers' credit and cost attorneys; fees, the Alert says.

The FTC advises that before considering bankruptcy, consumers having trouble paying their bills should:

Talk with their creditors who may be willing to work out a modified payment plan;

Contact a credit counseling service. Some nonprofit organizations charge little or nothing for these services;

Consider a second mortgage or home equity line of credit.

ADVERTISEMENTS PROMISING DEBT RELIEF MAY BE OFFERING BANKRUPTCY

WASHINGTON, DC—Debt got you down? You're not alone. Consumer debt is at an all-time high. What's more, record numbers of consumers—more than 1 million in 1996—are filing for bankruptcy. Whether your debt dilemma is the result of an illness, unemployment, or simply overspending, it can seem overwhelming. In your effort to get solvent, be on the alert for advertisements that offer seemingly quick fixes. While the ads pitch the promise of debt relief, they rarely say relief may be spelled b-a-n-k-r-u-p-t-c-y. And although bankruptcy is one option to deal with financial problems, it's generally considered the option of last resort. The reason: its long-term negative impact on your creditworthiness. A bankruptcy stays on your credit report for 10 years, and can hinder your ability to get credit, a job, insurance, or even a place to live.

The Federal Trade Commission cautions consumers to read between the lines when faced with ads in newspapers, magazines or even telephone directories that say: ''Consolidate your bills into one monthly payment without borrowing.'' ''STOP credit harassment, foreclosures, repossessions, tax levies and garnishments,'' ''Keep Your Property.'' ''Wipe out your debts! Consolidate your bills! How? By using the protection and assistance provided by Federal law. For once, let the law work for you!''

You'll find out later that such phrases often involve bankruptcy proceedings, which can hurt your credit and cost you attorneys' fees.

If you're having trouble paying your bills, consider these possibilities before considering filing for bankruptcy:

Talk with your creditors. They may be willing to work out a modified payment plan.

Contact a credit counseling service. These organizations work with you and your creditors to develop debt repayment plans. Such plans require you to deposit money each month with the counseling service. The service then pays your creditors. Some nonprofit organizations charge little or nothing for their services.

Carefully consider a second mortgage or home equity line of credit. While these loans may allow you to consolidate your debt, they also require your home as collateral.

If none of these options is possible, bankruptcy may be the likely alternative. There are two kinds of personal bankruptcy: Chapter 13 and Chapter 7. Each must be filed in federal court. The current filing fee is $160. Attorney fees are additional and can vary widely. The consequences of bankruptcy are significant and require careful consideration.

Chapter 13, also known as a reorganization, allows you to keep property, such as a mortgaged home or car, that you otherwise might lose. Reorganization may allow you to pay off a default during a period of three to five years, rather than surrender any property.

Chapter 7, known as a straight bankruptcy, involves liquidating all assets that are not exempt in your state. Exempt property may include work-related tools and basic household furnishings. Some property may be sold by a court-appointed official or turned over to creditors. You can file for Chapter 7 only once every six years. Both types of bankruptcy may get rid of unsecured debts and stop foreclosures, repossessions, garnishments, utility shut-offs, and debt collection activities. Both also provide exemptions that allow you to keep certain assets, although exemption amounts vary among states. Personal bankruptcy usually does not erase child support, alimony, fines, taxes, and some student loan obligations. Also, unless you have an acceptable plan to catch up on your debt under Chapter 13, bankruptcy usually does not allow you to keep property when your creditor has an unpaid mortgage or lien on it.

Visit the FTC web site at www.ftc.gov, or contact the AFSA's Education Foundation at 1-888-400-2233 for more credit/money management information.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I reserve the balance of my time. I believe it is my right to close as a member of the committee and in defense of the bill.

The CHAIRMAN. The gentleman from North Carolina is correct.

Mr. MORAN of Virginia. Mr. Chairman, I guess I must not fully understand parliamentary procedure. I thought that the person introducing the amendment has the right to close on the amendment.

How much time do I have remaining, Mr. Chairman?

The CHAIRMAN. The gentleman from Virginia (Mr. MORAN) has 4 minutes remaining, and the gentleman from North Carolina (Mr. WATT) has 4 minutes remaining.

Mr. MORAN of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Since this is going to be challenged, let me again say for the Members who may be listening that this is a Debtor's Bill of Rights. It strengthens this bill. It responds to a very serious concern that the Federal Trade Commission has stipulated in its Consumer Alert. It informs debtors who retain the services of bankruptcy mills to disclose the services, the costs and the consequences, and particularly the consequences of filing for bankruptcy. We do not want people to have to file for bankruptcy, particularly people who never intended to file for bankruptcy.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. MORAN of Virginia. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. I wanted to add to the gentleman's sentiments, that who can be opposed to the idea that an individual who is contemplating bankruptcy should be given full disclosure on what entities or others out there who are ready to assist him or prod him into bankruptcy? What we are talking about is if we could do it, to prevent people from jumping headlong into bankruptcy, we ought to take every step in order to do that.

The gentleman from North Carolina (Mr. WATT) is correct that I voted against his amendment in committee. I will remind him at the proper time of how many other votes then were taken on a bipartisan basis that he opposes still. So that is not a criterion, that when a bill is passed on a bipartisan basis, he believes it is worthy of something. So do I. But I will remind him when the time comes of bipartisan support for X or Y and see if he has the same rationale applicable to that amendment.

But in the meantime, it is not a bad thing to let a prospective bankrupt individual look at all the possible traps into which he can fall. I commend the gentleman's return to sanity through the debtor's rights amendment.

Mr. MORAN of Virginia. I thank the gentleman for his comments.

Mr. Chairman, if I may briefly sum up my argument, which is simply that so-called debt relief agencies that are coming out with this kind of deliberately misleading advertising suggesting even that they are government sanctioned organizations, which they are not, they should be required to give written notice within 3 business days after the first date of services to advise the people they are allegedly assisting of their rights and responsibilities of disclosure.

It would require attorneys or bankruptcy petition preparers to give the person they are assisting a written contract specifying what the attorney or bankruptcy petition preparer will do, what it will cost and the terms of payment. That is what we would want for our mother or our spouse or our children or our neighbor or any other consumer in the United States, to be able to have the value of that kind of information.

This is a consumer amendment, to educate consumers so they do not get taken in by people who are designing to exploit them and exploit the bankruptcy system. Mr. Chairman, I strongly urge an ''aye'' vote on this amendment.

Mr. Chairman, I yield back the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, let me just advise my colleagues that these bankruptcy mills that the gentleman from Virginia (Mr. MORAN) is talking about are attorneys who provide bankruptcy services, consumer credit counseling services, many

of whom are sanctioned by local governments because they provide a very valuable service in local communities. I have one in my own community of Charlotte. I was on the board of directors of this nonprofit agency which receives substantial government funds and provides a major service when people get into debt.

We can characterize every single one of these people as bankruptcy mills if we want, but they are not. To try to inflame the opinions of the colleagues in this body by referring to every lawyer who practices bankruptcy law or every consumer credit counselor as a bankruptcy mill is just inaccurate and unfair and it should not be done. There are some bad apples in the barrel.

For those we need to understand, Mr. Chairman, that there is a specific provision which remains in this bill, this section 526, which says that a debt relief agency shall not do a whole list of things that are listed in this bill. One of those things it shall not do is misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief agency can reasonably expect to provide that person or the benefits, and it goes on and on and on.

There is a prohibition in this bill against the kind of activity that the gentleman from Virginia (Mr. MORAN) is trying to outlaw. I think it ought to be outlawed, but we ought not impose the burdens of all of these disclosures on the reputable people who are in the business.

He says that we have got to stop this faulty advertising, but what does his amendment do? I am reading directly from page 8 of his amendment. If you do an advertisement, under the Moran amendment, this is what you have got to say, in quotes:

''We are a debt relief agency. We help people file bankruptcy petitions to obtain relief under the Bankruptcy Code.''

I do not want people to be disclosing that or saying that to the public. I want to stop people from advertising. And yet the same people he is saying we want to stop from faulty advertising, he is telling them how to go out and advertise in a misleading way. That is not what we need to be doing, is undermining the policy of the bill.

Mr. Chairman, I understand his motivations for this amendment. I understand that there may be some lawyers he does not like, there may be some consumer credit counselors that he does not like. There are some that I do not like. That is why we have prohibited them in the bill from engaging in any kind of sinister activities. But that is different than requiring every reputable lawyer and every reputable consumer credit counseling service to give page after page after page of worthless disclosures. I encourage my colleagues to vote against this amendment. It just adds paperwork and adds burdens to small businesses. That is what it does.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Virginia (Mr. MORAN).

The question was taken; and the Chairman announced that the ayes appeared to have it.

Mr. WATT. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 158, further proceedings on the amendment offered by the gentleman from Virginia (Mr. MORAN) will be postponed.

It is now in order to consider amendment No. 4 printed in House Report 106–126.

AMENDMENT NO. 4 OFFERED BY MS. VELÁZQUEZ

Ms. VELÁZQUEZ. Mr. Chairman, I offer an amendment made in order by the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Ms. VELÁZQUEZ:

Page 109, line 23, insert ''(a) APPOINTMENT.—''.

Page 110, line 4, insert the following before the close quotation marks:

The court may expand the membership of a committee to include a creditor that is small business if the court determines that such creditor holds claims of the kind represented by such committee that are, in the aggregate, disproportionately large when compared to the annual gross revenue of such creditor.

Page 110, after line 4, insert the following:

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

''(3) A committee appointed under subsection (a) shall provide access to information for creditors who hold claims of the kind represented by such committee and who are not appointed such committee, shall to be open for comment from such creditors, and shall be subject to a court order compelling additional reports or disclosure to be made to such creditors.''.

The CHAIRMAN. Pursuant to House Resolution 158, the gentlewoman from New York (Ms. VELÁZQUEZ) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentlewoman from New York (Ms. VELÁZQUEZ).

Ms. VELÁZQUEZ. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, while H.R. 833 provides a plan for overhauling our Nation's bankruptcy law, there is one issue that, while seemingly small, will have a great impact on this Nation's small businesses. That is the way that the bankruptcy process leaves small businesses who are creditors on the outside looking in.

To solve this problem, I am offering an amendment that will quickly and fairly address the issue by ensuring more small business involvement and greater communication in the bankruptcy process. My amendment will make two simple changes.

First, it would allow a small business involved as a creditor in a Chapter 11 bankruptcy case to be added to the creditor committee by the court. The court could make such an appointment by comparing the amount of the claim as a proportion of the business' gross annual revenue, thus showing that a business is disproportionately affected.

Second, my amendment will ensure that those small businesses not included on the creditor committee will have access to critical information regarding the credit committee's actions. This could be achieved by simply making the committee open to comments from and required to provide additional information to those small businesses not included on the committee but who will nonetheless be affected by the outcome.

I urge the adoption of these measures which will help small businesses. The need to take them can be underscored by looking at just one example of a company that was nearly devastated when one of its customers filed for bankruptcy.

Unicare Corporation, a small business located in Ohio, was caught off guard when one of its largest customers filed for bankruptcy. The debt to Unicare represented almost 10 percent of the company's annual revenue. The bankruptcy court created an unsecured creditors committee based on total outstanding debts owed.

□ 1430

Not only did Unicare not qualify as a member of the credit committee, but it was left on the outside looking in with no involvement in the process. This made Unicare's future uncertain, forcing it to reduce staff and revise plans for expansion. Fortunately, because of hard work and strong strategic planning, Unicare was able to recover, and today it continues as a very strong business.

But, Mr. Chairman, if each of us were to look around our districts, we will find that we will have many small businesses that could face the same unfair challenge, which is why we need to adopt this uniform and practical solution. Because, unlike Unicare, many businesses in our communities might not be so fortunate. If small businesses had the ability to appeal to the court based on their claim compared to the overall effect on the company, devastating problems might be averted.

Finally, Mr. Chairman, when we reconvene in the full House, I will submit for the record a letter of support from Small Business United, this Nation's oldest small business trade association. Their support reflects the same concern that I have heard from small business owners. They need access to the bankruptcy process.

We must insure that small businesses are not financially crippled through no fault of their own and that their hard work is not undone by the failures of others. I urge the adoption of this amendment.

Mr. TALENT. Mr. Chairman, will the gentlewoman yield?

Ms. VELÁZQUEZ. I yield to the gentleman from Missouri.

Mr. TALENT. Mr. Chairman, I rise in support of the gentlewoman from New York's very timely and important amendment and congratulate her on this important amendment for small business; and, Mr. Chairman, all of us who have dealt with small businesses in this kind of a context understand the problem the gentlewoman's amendment is intended to adopt.

I mean, let us suppose that a firm goes bankrupt and that it owes Microsoft $100,000 for software and it owes a small consulting firm, computer consulting firm, 30 or $35,000 for the work that has been done and that both of them are unsecured creditors. Well, Microsoft is going to get on the creditors committee because it has the larger debt, but $100,000 to Microsoft may be nothing, in terms of that firm is nothing in terms of that firm's total revenue. But that 30 or $35,000 could be a crucial account for that small business consulting firm, and they need to be represented on the creditors committee. That is really the only way that their interests can be protected.

The gentlewoman's amendment allows the court to appoint that small business to the creditors committee. It does not require it, but it at least allows that small business to make its case to the court. I think it is a timely and important amendment, Mr. Chairman.

There is nothing worse really than a small business caught up in this, an unforeseen bankruptcy on the part of one of its important clients. It cannot protect its interests, it does not know what is going on, does not have the money to hire legions of lawyers the way the bigger, unsecured creditors do.

Again, I congratulate the gentlewoman for fixing what I think is, if not a problem in the bill, at least an absence in the bill of an important protection for small business. I am pleased to support the amendment, and I thank the gentlewoman from New York for having yielded.

Mr. CONYERS. Mr. Chairman I yield myself such time as I may consume.

Mr. Chairman, I want to thank the gentlewoman from New York (Ms. VELÁZQUEZ) for bringing forward the provision before us now that would allow the expansion of the credit committee membership and also ensure better access to information for the small businesses not included on the committee by allowing them to be open for comment and subject to additional reports or disclosures. And so we have no problem with this amendment.

I would also point out to the gentlewoman from New York that there is another amendment of mine coming up shortly dealing with small business, she serves with great distinction on the Committee on Small Business, in which we would allow small business debtors in cases where application of these provisions could result in the loss of five or more jobs to waive the provisions of chapter 11 that relate to other business debtors, and I hope that that will gain her attention and other members that serve on that committee.

So we have no objection to this amendment whatsoever, Mr. Chairman.

Ms. VELÁZQUEZ. Mr. Chairman, I yield myself such time as I may consume, and I would like to close.

Mr. Chairman, for too long small businesses who are creditors have been hurt when customers and clients have been unable to pay their bills. For small businesses, the bankruptcy of other companies can mean an uncertain future. The adoption of my amendment provides small businesses with some peace of mind.

I urge my colleagues to support this amendment and to support small businesses.

Mr. Chairman, I include the following letter for the RECORD:

NATIONAL SMALL BUSINESS UNITED,
Washington, DC, May 3, 1999.

Hon. NYDIA VALÁZQUEZ,
House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE VELÁZQUEZ: As the House Rules Committee, and subsequently the entire House of Representatives, considers H.R. 833—the Bankruptcy Reform Act of 1999—NSBU fully supports your amendment protecting small businesses. National Small Business United, the nation's oldest small business advocacy organization, is a member of the Coalition for Financial Responsibility and has been a leading participant in this important debate for many years. We see your amendment as an important addition to the bill that has already cleared the Judiciary Committee.

Your amendment provides vital language that would allow for greater small business representation on the unsecured creditors committees, the key working group that structures and partitions the payments a bankrupt company owes its creditors. Traditionally, those companies that are owed the greatest lump sum of money have been placed on these committees, with little to no requirement to keep other interested companies informed of the situation. Your amendment would allow for greater communication and a more vital small business involvement in this process.

For too long, small businesses have been hurt when customers and clients have been unable to pay their bills without representation. This practice would be limited by this important legislation and has the full support of our 65,000 members nationwide. If there is anything else we can do to assist you in your efforts on before of the nation's 23.3 million small businesses, please let us know.

Sincerely,

TODD MCCRACKEN,
President.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentlewoman from New York (Ms. VELÁZQUEZ).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 5 printed in House Report 106–126.

AMENDMENT NO. 5 OFFERED BY MR. GRAHAM

Mr. GRAHAM. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. GRAHAM:

Page 119, after line 9, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 219. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a)(8) of title 11, United States Code, is amended to read as follows:

''(8) for—

''(A) an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend; or

''(B) any other education loan incurred by an individual debtor that meets the definition of 'Qualified Education Loan' under section 221(e)(1) of the Internal Revenue Code; unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and a debtor's dependents;''.

MODIFICATION TO AMENDMENT NO. 5 OFFERED BY MR. GRAHAM

Mr. GRAHAM. Mr. Chairman, I ask unanimous consent to modify my amendment, that modification is at the desk.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification offered by Mr. GRAHAM to Amendment No. 5:

Page 119, after line 9, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 219. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a)(8) of title 11, United States Code, is amended to read as follows:

''(8) for—

''(A) an educational benefit overpayment or loan made, insured or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution, or for an obligation to repay funds received as an educational benefit, scholarship or stipend; or

''(B) any other education loan incurred by an individual debtor that meets the definition of 'Qualified Education Loan' under section 221(e)(1) of the Internal Revenue Code; unless excepting such debt from discharge under this paragraph will impose an undue hardship on the debtor and a debtor's dependents;''.

Mr. GRAHAM (during the reading). Mr. Chairman, I ask unanimous consent that the modification to Amendment No. 5 be considered read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from South Carolina?

There was no objection.

The CHAIRMAN. Is there objection to the request of the gentleman from South Carolina that Amendment No. 5 be modified?

There was no objection.

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from South Carolina (Mr. GRAHAM) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from South Carolina (Mr. GRAHAM).

(Mr. GRAHAM asked and was given permission to revise and extend his remarks.).

Mr. GRAHAM. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, very briefly, this amendment is designed to correct a, I think, flaw in the Bankruptcy Code regarding student loans.

Under our current Bankruptcy Code, a Federal- guaranteed student loan is a nondischargeable loan. As many students graduate from college with a student debt, they are starting their lives, and we have protected the Federal-guaranteed student loans from discharge from bankruptcy because I think that is just a common-sense approach to a problem that existed in the past.

In addition, nonprofit lending organizations are also protected under the Bankruptcy Code, that their student loans are nondischargeable.

There is a growing industry in the private sector. There is a $1.25 billion loan volume for where private lenders who will loan money to students for their college expenses as the federally guaranteed program does not in every occasion meet the needs of the student, and we are trying to give the private lender the same protection under bankruptcy that the federally guaranteed loan program has and nonprofit organizations have. We are trying to make sure they are available loans, loans are available to students to meet their financial needs, and this would have a beneficial effect, make sure that the loan volume necessary to take care of college expenses are available for students, and I would appreciate the cooperation from the gentleman from New York (Mr. NADLER) and the gentleman from Pennsylvania (Mr. GEKAS) on this amendment.

Mr. GEKAS. Mr. Chairman, will the gentleman yield?

Mr. GRAHAM. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Chairman, I want to indicate to the gentleman that the amendment is well thought out and is a necessary change to our original bill. It draws attention to our intent to treat everybody fairly, and the student loan quotient is one of the most important features in all of bankruptcy.

We thank the gentleman for that, and I will agree to the amendment.

Mr. GRAHAM. Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

The CHAIRMAN. Does the gentleman from Michigan claim the time in opposition to the amendment offered by the gentleman from South Carolina?

Mr. CONYERS. Absolutely. Mr. Chairman, I claim time in opposition to the amendment.

The CHAIRMAN. The gentleman from Michigan (Mr. CONYERS) is recognized for 10 minutes.

Mr. CONYERS. Mr. Chairman, I will not oppose the amendment. As a matter of fact, I think particularly with an inclusion for exceptions for undue hardships this amendment is an important one.

The Bankruptcy Code prohibits the discharge of federally made guaranteed or insured education loans or education loans made by nonprofit institutions. What the gentleman from South Carolina would do now is extend the prohibition from discharge to all qualified education loans and include exceptions for undue hardships.

That is the thrust of the amendment, and we have no objection to that whatsoever.

Mr. Chairman, I yield back the balance of my time.

Mr. GRAHAM. Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS), and I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment, as modified, offered by the gentleman from South Carolina (Mr. GRAHAM).

The amendment, as modified, was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 6 printed in House Report 106–126.

AMENDMENT NO. 6 OFFERED BY MR. DOOLEY OF CALIFORNIA

Mr. DOOLEY of California. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 6 offered by Mr. DOOLEY of California:

Page 124, strike lines 13 through 20, and insert the following:

''(a) The clerk of each district shall maintain a publicly available list of credit counseling agencies and of programs described in section 109(h) and instructional courses offered by such agencies currently approved by—

''(1) the United States Trustee; or

''(2) the bankruptcy administrator for the district.

''(b) The United States Trustee or bankruptcy administrator shall only approve credit counseling agencies which satisfy standards set in regulations promulgated by the Federal Trade Commission and which are accredited by the Council on Accreditation or an equivalent third party nonprofit accrediting organization.

''(c) The United States Trustee or bankruptcy administrator shall only approve programs or courses under subsection (a) if they satisfy standards set in regulations promulgated by the Executive Office of the United States Trustees. The Executive Office of the United States Trustee is authorized to promulgate regulations setting such standards.

''(d) The Federal Trade Commission shall have authority to promulgate regulations setting standards for credit counseling agencies for the purposes of subsection (b). Such standards shall establish minimum requirements for such agencies with respect to providing qualified counselors, safekeeping and payment of client funds, disclosure to clients, adequate counseling with respect to client credit problems, and such other matters as relate to the quality and financial security of such programs. Nothing in this provision shall limit the authority of the Federal Trade Commission pursuant to the Federal Trade Commission Act (15 U.S.C. 45 et seq.).

''(e) The United States Trustee or bankruptcy administrator may notify the clerk that a credit counseling agency, or a program or course, is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

''(2) REGULATIONS.—The Federal Trade Commission and the Executive Office of United States Trustees shall promulgate regulations pursuant to the power delegated in this section within 180 days of the date of the enactment of this Act.''.

Page 124, line 21, strike ''(2)'' and insert ''(3)''.

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from California (Mr. DOOLEY) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from California (Mr. DOOLEY).

Mr. DOOLEY of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment is very simple and straightforward. Simply put, it would require consumer credit counselors to meet basic professional standards established by the Federal Trade Commission.

One of the most progressive and debtor-friendly reforms made in H.R. 833 is the requirement that debtors seek credit counseling prior to filing bankruptcy. Many consumers want assistance in dealing with their bills, not bankruptcy. Legitimate consumer credit counseling helped approximately 1 million debtors this past year. This bill provides the opportunity for many more to receive help.

Done properly by a qualified professional, consumer credit counseling has proven highly successful in helping debtors regain control over their financial lives, a goal we all share. Many of my colleagues are familiar with the Federal Trade Commission's struggle to clean up abusive and fraudulent credit repair clinics that dupe debtors facing financial problems with promises to clean up their credit records.

The FTC has worked to protect consumers through the provisions approved by Congress several years ago as a part of the Fair Credit Reporting Act. However, as the opportunities for credit counseling would be significantly increased under this bill, we need to ensure from the outset that fraudulent and abusive credit counseling operations do not spring up and meet this new demand for services.

My amendment is designed to ensure that consumers have access to qualified, professional consumer credit counselors and to prevent the proliferation of substandard counseling practices. The amendment will provide that the U.S. trustee or bankruptcy administrator can only approve credit counseling agencies which satisfy standards set in regulations promulgated by the FTC and are credited by the Council of Accreditation or equivalent third-party nonprofit accrediting organization. The FTC is able and experienced in addressing issues of this nature.

With this amendment we have an opportunity to ensure that the credit

counseling provisions of this legislation will function as intended from the outset and that consumers will have access to qualified credit counseling.

I urge my colleagues to support this common-sense amendment.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN. Does any Member claim time in opposition to the amendment offered by the gentleman from California (Mr. DOOLEY)?

Mr. CONYERS. For purposes of getting the floor I oppose the amendment, and I ask to be recognized.

The CHAIRMAN. Without objection, the gentleman from Michigan may have the time otherwise reserved for those in opposition.

There was no objection.

The CHAIRMAN. The Chair recognizes the gentleman from Michigan (Mr. CONYERS) for 10 minutes.

Mr. CONYERS. Mr. Chairman, this is an amendment that we find absolutely acceptable, and I plan to support it, and we urge the Members to join in support of it.

Mr. Chairman, I yield back the balance of my time.

Mr. DOOLEY of California. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I urge the passage of this amendment.

Mr. Chairman, I yield back the balance of my time.

□ 1445

The CHAIRMAN. The question is on the amendment offered by the gentleman from California (Mr. DOOLEY).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 7 printed in House Report 106–126.

AMENDMENT NO. 7 OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Mr. CONYERS:

Page 151, after line 24, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 416. APPLICABILITY OF CERTAIN PROVISIONS.

The provisions of title 11 of the United States Code relating to small business debtors or to single asset real estate shall not apply in a case under such title if the application of any of such provisions in such case could result in the loss of 5 or more jobs.

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from Michigan (Mr. CONYERS), and the gentleman from Pennsylvania (Mr. GEKAS) each will control 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, as usual, there is a good deal of talk about preserving jobs and creating jobs in the House of Representatives. Accordingly, if we really want to protect jobs, there should be little problem in supporting my amendment which waives the harsh new small business and single asset real estate provisions of the bill where they could result in the loss of five jobs or more. We are now talking about small business and protecting the jobs therein under the bankruptcy bill.

Now, the measure before us would completely alter the manner in which small business and real estate concerns may reorganize under the bankruptcy laws. For small businesses, H.R. 833 would mandate the operation of a whole host of burdensome new requirements, requiring them to provide balance sheets, for example, statements of operation, cash flow statements, income tax returns, within 3 days after filing a bankruptcy petition.

The bill also shortens the time period the debtor has to file a plan of reorganization to a mere 90 days, making liquidations far more likely than they might have otherwise been.

Now I have no problem with these new requirements, as long as the principal parties involved are the business owner and his creditor, but where the new deadlines will result in a loss of jobs, there I have a major concern.

These provisions have drawn the strong opposition of organized labor and the Small Business Administration's Office of Advocacy. I think my amendment is a way out of this dilemma.

The American Federation of Labor has warned that the small business provisions will threaten jobs by placing substantial procedural and substantive barriers in the way of small businesses and their ability to access the provisions of Chapter 11, threatening their overall ability to successfully reorganize and go on to succeed.

Similarly, the Small Business Administration has written that under the bill H.R. 833, small business owners who are legitimately using Chapter 11 proceedings to reorganize their businesses may be forced into a premature dismissal or conversion or may have to expend vital resources to fend off challenges by any creditor for relatively minor procedural infractions.

So we urge that this amendment be accepted and crafted into this bill. It would help at least in a small way those small businesses who might be in a position to lose five or more jobs as a result of bankruptcy proceedings.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the record should indicate right at the outset that the provisions that we have built into the current legislation having to do with small business have reached the highest possible approval by the advocate of the Small Business Administration, the Justice Department itself, and most importantly for this debate, of the Bankruptcy Commission on whom we relied for this extensive comprehensive review that they finished a few years back.

So we start off with a creditable small business set of provisions which now the gentleman, if this amendment should be adopted, would absolutely wreck. Beyond that, one can imagine that every case that came under Title 11, as the gentleman proposes in his amendment, would first have to be scrutinized to see if five or more jobs would or could be lost, and we would never get to the first event in a bankruptcy situation before we had had time to litigate the number of jobs.

What if someone contends there are only four affected or others say none would be affected? That entire set of circumstances would have to be litigated. It is a monstrous scenario of additional litigation proposed in a situation where we have already structured the provisions in such a way to have met the approval of everybody who looks at the small business provisions of our bill.

Beyond that, the wording of the bill seems to indicate that not just the small business provisions of Chapter 11 would be affected but any and all provisions of the title known as 11 would be affected, and we would have to take this test of five jobs, which in itself is very murky, very cloudy. How many jobs would be included, part-time, full-time? How many individuals? If somebody is carrying on two occupations in the same firm, would that apply? It is so nondescriptive of any real problem that we must reject it out of hand.

I ask all the Members to vote ''no'' on this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I would like to remind the esteemed chairman of the subcommittee that the Bankruptcy Commission was the one that turned down means testing, which has now been put into the bill. So I am glad that he picks and chooses those that he likes.

There are some people involved in labor that have a strong opposition to the bill without this amendment. They are called the AFL-CIO. That is the largest collective bargaining organization in the United States of America. They have examined it pretty carefully.

Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. Nadler), the ranking member of the subcommittee.

Mr. NADLER. Mr. Chairman, this amendment is really in the nature of the truth. We say that this bill imposes very onerous restrictions on small businesses. It imposes very sharp and restrictive time deadlines and terrible restrictions only on small businesses.

We think this is going to result in a lot of businesses that otherwise would have the opportunity to reorganize in Chapter 11 to get protection from their debtors, reorganize, get back on their feet and survive and not lay off all their employees, it will require instead that a lot of these companies liquidate

and go out of business and lay off their employees because they will not be able to meet these new restrictions.

Now, the gentleman from Pennsylvania (Mr. GEKAS) and the people on the other side say, no, that will not happen. Well, all this amendment says is, well, maybe they are right, maybe they are wrong.

In a given case, the judge is looking over the situation in this case, and if the judge finds that there is a likelihood that this company, which is now seeking Chapter 11 protection from its creditors, could reorganize, could get back on its feet, could avoid liquidating, could avoid laying off its employees, but he further finds that if these new onerous restrictions are imposed and timetables that that would probably force the company out of business and would cost at least five jobs, it lets the judge say, ''It really looks like this is going to cost five jobs, so I will not impose these new restrictions on this small business.'' If the judge makes the finding that these new restrictions will kill this business, force this job loss and force this business out of business, the judge would be given the discretion to say, use the old law, not these new restrictions.

What could be fairer than to look at the individual case?

Now, the gentleman from Pennsylvania (Mr. GEKAS) will say this is extensive litigation. No, it is not. It is simply a company asking for Chapter 11 protection and saying, ''Judge, we think we need X time but this gives us less time, and here is why we think we need so much additional time as we could have gotten under the old law,'' and the judge says either yes or no. Why not let the judge have that discretion?

I know that the gentleman from Pennsylvania (Mr. GEKAS) and other proponents of this bill do not trust human beings; they do not trust judges at all. They say throughout this bill judges have no discretion; they are always wrong. Maybe they are always wrong, but give them a chance to save some jobs and save some small businesses. That is all this amendment does.

I do not see how anybody who cares about small businesses or jobs could oppose this amendment. It just boggles the mind.

Mr. GEKAS. Mr. Chairman, I yield 4 minutes to the gentleman from Michigan (Mr. KNOLLENBERG).

Mr. KNOLLENBERG. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding me this time.

Mr. Chairman, I rise in opposition to this amendment, in opposition to my good friend the gentleman from Michigan (Mr. CONYERS).

This bill, the Bankruptcy Reform Act of 1999, includes a provision that addresses an injustice that exists within Title 11 of the United States Code regarding single asset bankruptcies. That is a big long statement.

This provision mirrors legislation that I introduced in H.R. 624, and I want to thank the gentleman from Pennsylvania (Chairman GEKAS) for his instructive help on that matter. This was done in the previous Congress and I thank him for including this in H.R. 833.

Let me say what, in addition to what we have heard, is wrong with this amendment. The injustice within Title 11 stems from a last-minute decision that was made in the 103rd Congress, which placed an arbitrary $4 million ceiling on the single asset provisions of the bankruptcy reform bill. The effect has been to render investors helpless in foreclosure on single assets valued at over $4 million.

H.R. 833 provides relief to victims by eliminating this arbitrary ceiling. Under this law, Chapter 11 of the Bankruptcy Code serves as a legal shield for the debtor. Upon the investors filing to foreclose, the debtor preemptively files for Chapter 11 protection, which postpones indefinitely foreclosure, while in Chapter 11 the debtor will continue to collect the rents on the commercial asset.

Now listen to this. However, the commercial property will typically be left to deteriorate and the property taxes go unpaid. When the investor finally recovers the property through the delayed foreclosure, they owe an enormous amount in back taxes; they receive a commercial property left in deterioration which has a lower rent value and resale value, and meanwhile the rent for all the months or years they were trying to retain the property went to an uncollectable debtor.

H.R. 833 does not leave the debtor without protection, however. First, the investor brings a foreclosure against a debtor only as a last result. This usually comes after all other efforts to reconcile delinquent mortgage payments have failed.

Second, the debtor has up to 90 days to reorganize under a Chapter 11. It should be noted, however, that single asset reorganizations are typically a false hope, since the owner of a single asset does not normally have other properties from which he can recapitalize his business.

Mr. Chairman, I urge my colleagues to defeat the amendment offered by the gentleman from Michigan (Mr. CONYERS), which could prohibit the single asset real estate definition from being applied in such case, which could result in the loss of five or more jobs. This amendment, if adopted, would effectively nullify the single asset protection currently in the code and allow Chapter 11 debtors to continue gaming the system by hiring new employees just before the filing.

Make no mistake about it, this amendment, if approved, would allow unscrupulous debtors to drag out single asset cases for years to avoid meeting their financial obligations.

Mr. Chairman, H.R. 833 restores personal responsibility to our bankruptcy laws; closes the loopholes, in addition, that allow individuals to game the system. I urge my colleagues on both sides of the aisle to oppose the Conyers amendment and vote ''yes'' on final passage.

□ 1500

Mr. GEKAS. Mr. Chairman, I yield such time as she may consume to the gentlewoman from Ohio (Ms. PRYCE).

Ms. PRYCE of Ohio. Mr. Chairman, I thank the gentleman for yielding me the time.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Michigan (Mr. CONYERS). By way of background, the great majority of commercial properties within the United States are owned by corporations, partnerships, and limited liability companies that only own one property. These are known as single-asset real estate entities.

The typical single-asset real estate entity has only one major creditor, the mortgage lender that provided the financing for the acquisition of the property. In most cases, the mortgage lender's only remedy in the case of default is to take possession of the property through foreclosure.

The recession of the late eighties and early 1990s caused a flood of Chapter 11 filings by single-asset real estate entities. In the typical case, the single-asset entity merely sought to stave off foreclosure and to use the bankruptcy process to force concessions from its mortgage lender. As a result, properties deteriorated and lenders suffered large losses as cases dragged on and on, sometimes for months and years.

In the Bankruptcy Reform Act of 1994, Congress recognized that single-asset entities should receive expedited treatment in bankruptcy proceedings in order to protect properties from otherwise deteriorating during these lengthy bankruptcy proceedings.

At that time, Congress amended the automatic stay provision of the Bankruptcy Code to provide that mortgage lenders may have the stay lifted and proceed with foreclosure, unless the single-asset debtor files a feasible reorganization plan within 90 days, or commences monthly interest payments to the lender. However, these provisions currently apply only to single-asset debtors whose property are valued at $4 million or less.

Typically, when the owner of a building is bankrupt and the lender is allowed to foreclose, there is usually a net economic benefit to the property, because it is the goal of the lender to maximize the value of the property. A weak owner is replaced by a strong owner who has resources to make the repairs, attract new tenants, and effect capital improvements. This benefits our communities as well, including the generation of tax revenues.

Moreover, by helping to keep the property commercially viable, we help ensure that the workers who maintain the building, from the janitors to the

engineers, will remain employed. Clearly, everybody benefits from keeping the property from deteriorating.

Significantly, H.R. 833 would eliminate the arbitrary $4 million cap with respect to expedited foreclosures on these entities, so that all commercial properties, regardless of value, can be protected from deterioration during bankruptcy proceedings.

However, the Conyers amendment would prohibit expedited foreclosure in any case where five employees of the property could be lost. As such, the Conyers amendment would not only gut the provision in H.R. 833 which lifts the $4 million cap, but it would also, in effect, nullify existing expedited foreclosure provisions in the Bankruptcy Code.

The Conyers amendment would recreate the uncertainty that the current law seeks to remedy. Bankruptcy courts could hold endless hearings on the application of this amendment and whether certain employees may or may not lose their jobs. Chapter 11 debtors could continue to game the system, as they have sometimes in the past, by hiring employees before filing, or delaying the bankruptcy action unfairly.

Moreover, the very employees that the gentleman from Michigan (Mr. CONYERS) seeks to protect would be worse off because new entities would be hampered in their efforts to take over the troubled property and return it to a going concern, and keep them employed.

Mr. Chairman, I urge my colleagues to defeat the Conyers amendment, in the very interest of those he purports to protect.

Mr. CONYERS. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, this is puzzling. It is one thing to tighten the bankruptcy rules on only the parties that are involved that are borrowing from the lender, but where the changes will harm innocent third parties, the employees and their families, I believe we have an obligation to give the business a reasonable chance to reorganize.

The single-asset real estate provision, connected with the five-job requirement that the judge would look at, suppose it was the gentleman's job, I say to the gentleman from Pennsylvania (Mr. GEKAS), one of the five. It would not be hard for a referee in bankruptcy or a judge in bankruptcy to make the decision.

But what we are doing is saying that every single real estate concern, no matter how large its operation or how many jobs are at stake, be subject to expedited liquidation and bankruptcy. That is, within 90 days after filing, they can be subject to foreclosure by their creditors. Give us a break. All we are doing is giving additional discretion to the judge.

I urge the Members on both sides of the aisle to support this modest amendment.

Mr. Chairman I yield the balance of my time to the gentleman from New York (Mr. NADLER).

The CHAIRMAN. The gentleman from New York (Mr. NADLER) is recognized for 1 minute.

Mr. NADLER. Mr. Chairman, this amendment does two things. The gentleman from Michigan (Mr. CONYERS) described the impact on the single-asset realty. But it does something else, and we did not hear from the other side why it is so terrible, what it does, or why they rejected it in committee and reject it now, having nothing to do with single-asset real estate.

What this does is say to the judge, is to give the judge discretion. When looking at a small business bankruptcy, the judge would have discretion to say, if he finds that imposition of these new onerous filing requirements and deadlines was likely to push that business into liquidation and cost more than five jobs, instead of enabling the business to reorganize, he is given the discretion to say, never mind these new restrictions, these new onerous requirements, better the business shall survive and not lay off the workers.

Why not let judges have that discretion? Why insist that small businesses have to go out of existence and lay off these people? Let the judge have discretion, if he makes a finding that imposition of these new restrictions would likely cause the business to go out of existence instead of reorganizing, getting on its feet and saving the jobs.

This is an anti-jobs bill. This is a pro-jobs amendment. I do not understand the opposition to it.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I ask the Members to vote no on this amendment. I repeat, we have taken great pains to solidify in our bill, the bill that is before us, those provisions having to do with small business that have found broad favor across the commercial world, to include the Justice Department, to include the advocate for the SBA and other organizations. I ask for a no vote.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Michigan (Mr. CONYERS).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. CONYERS. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 158, further proceedings on the amendment offered by the gentleman from Michigan (Mr. CONYERS) will be postponed.

It is now in order to consider amendment No. 8 printed in House report 106–126.

AMENDMENT NO. 8 OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer amendment No. 8, which is made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. WATT of North Carolina:

Beginning on page 160, strike line 23 and all that follows through line 2 on page 161.

Page 162, strike lines 1 through 15, and insert the following (and make such technical and conforming changes as may be appropriate):

''(f) An individual debtor in a case under chapter 7 or 13 of this title shall file with the court at the request of any party in interest—

''(1) all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order of relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from North Carolina (Mr. WATT) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from North Carolina (Mr. WATT).

Mr. WATT of North Carolina. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, this is a simple amendment, and hopefully it will not take the entire allotted time. This is an amendment that was offered in the Committee on the Judiciary, and the Committee on the Judiciary split evenly, so I am sure the chairman of the subcommittee has a position on it, but the Committee on the Judiciary itself has failed to express an opinion one way or another because it failed on a split vote. I believe the vote was 13 to 13.

Mr. Chairman, this bill currently requires that every bankruptcy filer, no matter whether his filing is or is not contested, file at least 3 years' worth of tax returns with the court. In our subcommittee we had hearings, and the bankruptcy judges, bankruptcy trustees, every single witness who came agreed that requiring all of these tax returns to be filed simply creates a massive paperwork burden and expense to the bankruptcy system, and that this was not a good idea. These burdens are unnecessary.

Credit industry finance studies, consumer advocacy group finance studies, all indicate that the number of abusive Chapter 7 bankruptcy filings are approximately 10 percent, at most, of the bankruptcy filings. They also indicate that the vast majority of bankruptcy filings are what they categorize as uncontested filings.

So why are we requiring tax returns for 3 years to be filed with the bankruptcy court, when in the great majority of these cases there will not be any contest about it, there will not be any need for the tax returns? They will

simply sit there in a corner in the bankruptcy court, clutter up space, take up needed time and energy to move around from place to place. They are simply unneeded.

So my amendment simply says, look, you do not have to file these returns unless some party in interest says, I want you to file the returns. If some party in interest, any party in interest in the bankruptcy wants the tax returns, all they have to do is file one sentence which says, I want the tax returns filed. They do not have to give a reason, there has to be no hearing, there does not have to be anything but one sentence saying, I want the tax returns of this filer filed, and that person would have to file them. And for some reason the author of this bill thinks that is terrible.

Mr. Chairman, I think he is overreacting. What he has decided is that every person who files a bankruptcy petition is a bad person, and we are going to impose all these burdens on him.

But Mr. Chairman, listen to what the Congressional Budget Office says about this provision. I quote: ''This section would require the Administrative Office of the U.S. courts to receive and retain the tax returns for the three most recent years preceding the commencement of the bankruptcy case for all Chapter 7 and Chapter 13 debtors, about 8 million debtors over the 2000 to 2004 period. CBO estimates that appropriations of $34 million over the next 5 years would be required to store and provide access to over 20 million tax returns.''

That is the Congressional Budget Office, who is telling the sponsor of this bill that because he thinks every filer in America of a bankruptcy petition is a bad person and ought to be subjected to this, even though nobody is ever going to look at most of these tax returns, he is willing to cost the taxpayers of America $34 million because he has this personal agenda that, I do not know, even Republican Members on the committee said, this is a bad idea. Even members of the Committee on Rules said, this is a bad idea. We support your amendment. That is how this amendment got made in order.

Yet, we are taking up valuable legislative time arguing about something that is completely inconsistent with what the professed philosophy is, to save taxpayers' money and to do something that is valuable to the system of bankruptcy. This is a provision in the bill which is not needed.

Mr. Chairman, I reserve the balance of my time.

□ 1515

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

It is amazing to me that we can be criticized for trying to bring into the bankruptcy world a sense of accountability, of discipline. What is wrong with asking an individual who approaches the bankruptcy court and says, I am in terrible shape; I need to have bankruptcy relief, what is wrong with asking that individual to prove at the outset or to demonstrate at least prima facie what those financial circumstances are? That is a common sense requirement in most of the proceedings and most of the cases that we have of every conceivable kind in the court system of our country.

So here we have an individual who says, my income cannot match, cannot meet the debts that have fallen upon me. So we tell that individual to come to the bankruptcy court, to file for discharge of their obligations, to bring their income tax returns so they can show right away, to the lawyer who is helping them or to the bankruptcy court which will ultimately receive them, what their stream of income has been and what can be perceived as forecasting what income they will have in the next year or so beyond the aegis of the bankruptcy court.

That allows a couple of things to happen. Number one, it will allow many times, in our judgment, right at the outset, that the debtor and his counselor or bankruptcy adviser will come to the conclusion that he may not fare well in the bankruptcy court. The income stream that the individual has, together with the expenses that are matched against it, they might find that they would be rejected in bankruptcy. So maybe it would be better to wait a while, try to work out some of these debts and then decide later whether or not bankruptcy should be approached. That is a commonsense, valuable, preliminary finding for the debtor to make with his counselor.

We believe that that is helpful. That brings accountability, personal responsibility, and a sense of stability to the system, and may prevent countless individuals from filing bankruptcy where before all they had to say was, as is the system now, I am bankrupt, I do not have any income, and so forth. And when asked how much they make; well, they do not want to be asked those questions. They may say, I think I am making $85 a week, or whatever calculation that the debtor asserts then becomes the basis of his asking for bankruptcy relief. Well, that is wrong.

And furthermore, if we should rely on what the gentleman from North Carolina says, to ask someone or embed in the law the requirement that a tax return be requested and that that should be granted automatically, first of all, it would allow that system itself to be gamed by some.

For instance, if I am a debtor, ready to approach the filing of bankruptcy, and my counselor tells me that I may or may not be asked for an income tax return once I file, if the amendment were carried, the debtor might say, well, I will take that chance. And if the request is not made for the tax return, he glides on his merry way towards a discharge in bankruptcy. If the trustee or the bankruptcy court asks for the tax return, he still has the option to drop out of the bankruptcy filing. So, in a way, we have an uncertain system at hand under the Watt amendment.

I am not ready to vouch for the inevitability that mountains of paper will be piled on top of the paper that has already been filed. I believe that with the electronic systems that are at hand, that it may be after the first filing of the 3 years of income tax returns, that almost forthwith they would be returned to the bankrupt filer while the system goes on with an electronic recordation of the data in that income tax return. So I see some relief even in the paperwork that might not otherwise be seen. We all agree that the increased technology is helping these kinds of systems all along.

The other important feature here is that I take it from the offering by the gentleman from North Carolina that the gentleman intends to vote against the Nadler substitute which is coming, because as one of the debtor's duties that even the gentleman from New York recognizes and applauds and includes in his version of bankruptcy reform is the filing of tax returns from the previous 3 years for anyone who dares to enter the bankruptcy courts asking for relief.

The commonsense requirement that a person seeking the help of the court provide all the information necessary for the court to determine the real status of that individual is a commonsense precept of our law, and we should not have any court rely only on the word or the assertions of the person who wants relief without the evidence that will make it a more stable set of provisions.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, how much time remains?

The CHAIRMAN. Both Members have 3½ minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. CONYERS).

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding me this time.

I wish to say to the gentleman from Pennsylvania, Mr. Chairman, that apparently the Congressional Budget Office did not see the savings that the gentleman envisions in this, and the gentleman has been here long enough to remember the Paperwork Reduction Act. Whatever happened to that?

Here, if the gentleman were to examine the proceedings in any bankruptcy court, he would quickly know that the court can demand an income tax return, and certainly any party in interest is not about to forget to bring that in to the proceeding if there is any slight notice that he needs it. So what the gentleman from North Carolina is doing is merely making this optional to anybody that wants it, and here the gentleman from Pennsylvania is resisting it.

If a Federal agency tried to promulgate this rule, the gentleman from

Pennsylvania would be leading the Congress in demanding to know why they want such unnecessary authority. So, please, let us improve the bill to at least this minor amount.

Mr. GEKAS. Mr. Chairman, I yield the balance of my time to the gentleman from Florida (Mr. FOLEY).

Mr. FOLEY. Mr. Chairman, I want to thank the gentleman from Pennsylvania (Mr. GEKAS) for his hard work on this vitally important bill and on the series of amendments we have been debating today. Clearly, we want to make certain that people pay their debts. Having been a commercial realtor and involved in the business of real estate and restaurants and different things, certainly I understand when people have trouble in society.

The one provision sponsored by the gentleman from North Carolina that would make a tax return subject to the presentation of one of the parties interested in asking for it I think strikes at what we should be trying to accomplish in the bill. Having a tax form as a requirement of a bankruptcy petition will, in fact, give the courts and all interested parties a chance to review the assets of the individual, at least the income of the individual, and whether in fact they can make due their debts to society. I think it is an important and fundamental thing that occur at the very, very beginning of a bankruptcy hearing. I think the court should be able to review in fact that they have income to satisfy their debts.

It seems time and time again I am reading about somebody who struck it rich and won the lottery, but somehow, because of the foolish management of their own money, they leave a lot of creditors out in the lurch. I would like to see some of those tax returns, and I would like to see the income from those lottery proceeds, and I think the court is entitled to them.

I think then to go and require one of the aggrieved parties to step forward and say, judge, I would like to petition to have a tax return submitted for the record so we can at least look to see if the income is there to satisfy the debts, is only going to encumber the process. It will drag it out. The debtor may say, well, I do not know where my copies are; well, let me see if I can get them; well, I may have to acquire them through the IRS to get copies back to make a presentation to the court, simply looking to delay and obfuscate the problem.

I want to speak for a moment on the amendment offered by the gentleman from Michigan (Mr. CONYERS) on the job requirements.

Mr. WATT of North Carolina. Mr. Chairman, will the gentleman yield?

Mr. FOLEY. I yield to the gentleman from North Carolina.

Mr. WATT of North Carolina. Mr. Chairman, the gentleman is aware, of course, that that possibility that he just mentioned exists under the underlying bill. If somebody does not have the tax returns, they can still come in, in an emergency situation, and have the same kind of argument.

And there is no hearing required under my amendment. I do not know which amendment the gentleman is debating. All someone has to do is file one sentence saying, I would like to have the tax returns. This is not about not filing the tax returns.

I agree with the gentleman. There are a lot of cases where the tax returns are needed, and I am not trying to impede that. I am just trying to keep mountains and mountains of paper from stacking up in the bankruptcy court.

Mr. FOLEY. Reclaiming my time, Mr. Chairman, I think that is a mountain of paperwork we desperately need to see. We need to see the facts. We need to see the proof in the pudding of what the income of the gentleman or gentlewoman was as they are making their claims to the courts. I think absent that information the courts have very little to base whether in fact this is a viable bankruptcy petition filed.

These are the types of things that will strengthen the law; so that all things that are material are filed accurately in the court and we are not waiting until we have delay after delay after delay.

So I again strongly urge the Congress to reject the amendment and proceed to support the underlying bill to bring some semblance of reasonableness to the Bankruptcy Reform Act of 1999.

Mr. GEKAS. Mr. Chairman, I yield back the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, this is a simply silly provision and does not, frankly, deserve the attention it is being paid on the floor today.

Why should we not waste $34 million of the taxpayers' money for no purpose at all, the gentleman from Pennsylvania asks? My answer is because it is $34 million of the taxpayers' money.

There are no hearings here. Anyone who practices bankruptcy knows that in a vast number of cases it is open and shut. Everybody knows what is going on. There are no assets, very little income, no one has any desire to see the tax forms. Anyone, any creditor, the judge, anybody who wants to see the tax form, a one-sentence request suffices.

All that not passing the amendment of the gentleman from North Carolina will do will be to waste $34 million of the taxpayers' money in order to pile up tax forms in court that no one will read.

Sure, there are many cases where we may want to see what the assets are, what the income is, whether the bankruptcy makes sense or not, whether it meets the requirements of the law. All anyone has to do is ask, and someone will ask, and those are the complicated ones. But for those where there is no question, why require the court, as is not now required, to bury itself under a mountain of paper for no other purpose than to waste the taxpayers' money?

Mr. WATT of North Carolina. Mr. Chairman, how much time remains?

The CHAIRMAN. The gentleman from North Carolina (Mr. WATT) has 1½ minutes remaining.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, let me just very quietly and calmly explain to the gentleman from Pennsylvania (Mr. GEKAS) and the gentleman from Florida (Mr. FOLEY) that I agree with them. There are a number of cases where tax returns are necessary in the bankruptcy court. But there are just as many cases where tax returns are unnecessary in the bankruptcy court; where no issue exists in the case, no argument about whether the person is bankrupt, nothing to be gained by having somebody bring in a stack of papers of 3 years' worth of tax returns other than that they will stack up in the corner and sit there and the taxpayers of America will have to pay the storage cost on that.

This whole notion that the gentleman has put together, that every single person ought to come in with a tax return, is just the gentleman boxing with a shadow. This is not evidence unless somebody wants it to be evidence; unless it is relevant to a determination of the outcome of the case. And all that is required under my amendment to get that tax return is a one-sentence statement saying I need the tax return. No reasons, nothing.

□ 1530

Please save the taxpayers $34 million and vote for this amendment.

The CHAIRMAN (Mr. NETHERCUTT). All time has expired.

The question is on the amendment offered by the gentleman from North Carolina (Mr. WATT).

The question was taken; and the Chairman announced that the noes appeared to have it.

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

The CHAIRMAN. Pursuant to House Resolution 158, further proceedings on the amendment offered by the gentleman from North Carolina (Mr. WATT) will be postponed.

It is now in order to consider amendment No. 9 printed in House Report 106–126.

AMENDMENT NO. 9 OFFERED BY MR. WHITFIELD

Mr. WHITFIELD. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. WHITFIELD:

Page 176, after line 24, insert the following:

SEC. 614. COMPENSATING TRUSTEES.

Title 11, United States Code, is amended—

(1) in section 104(b)(1) in the material preceding subparagraph (A)—

(A) by striking ''and''; and

(B) by inserting '', 1326(b)(3)'' before ''immediately'';

(2) in section 326, by inserting at the end the following:

''(e) Notwithstanding any other provision of this section, the court shall allow reasonable compensation under section 330(a) of this title for the services and expenses of the trustee in taking the actions described in paragraphs (1) and (2) if—

''(1) a trustee in a chapter 7 case commences a motion to dismiss or convert under section 707(b) and such motion is granted; or

''(2) the trustee demonstrates by a preponderance of the evidence that the case was converted or dismissed because of the trustee's actions.''; and

(3) in section 1326(b)—

(A) in paragraph (1), by striking ''and'';

(B) in paragraph (2), by striking the period at the end thereof and inserting ''; and''; and

(C) by adding at the end the following:

''(3)(A) the amount of the compensation described in subclauses (I) and (II) which is unpaid at the time of each such payment, prorated over the remaining duration of the plan—

''(i) and which has been allowed in a case—

''(I) converted to this chapter; or

''(II) dismissed from chapter 7 in which the debtor in this case was a debtor, whether dismissed voluntarily by the debtor or on motion of the trustee under section 707(b);

''(ii) but only to the extent such compensation has been allowed to a chapter 7 trustee under section 326(e);

''(B) the compensation payable to the chapter 7 trustee in the case under this chapter shall not exceed the greater of the trustee fee allowed pursuant to section 330 of this title plus—

''(i) $25 per month; or

''(ii) the amount payable to unsecured nonpriority creditors as provided by the plan multiplied by 5 percent, and the result divided by the number of months in the plan; and

''(C) notwithstanding any other provision of this title, any such compensation awarded to a chapter 7 trustee in a converted or dismissed case shall be payable and may be collected in a case under this chapter—

''(i) even if such amount has been discharged in a prior proceeding under this title; and

''(ii) only to the extent permitted by this section.''.

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from Kentucky (Mr. WHITFIELD) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. WHITFIELD).

Mr. WHITFIELD. Mr. Chairman, I yield myself such time as I may consume.

First of all, I would like to certainly thank and congratulate the leadership of the gentleman from Pennsylvania (Mr. GEKAS) on this important legislation, as well as that of the gentlemen from Michigan and New York, for the hard work that they have put in on this legislation, as well as that of their staffs. It is very important legislation to reform the bankruptcy laws and to bring it up to date.

This amendment that I have, Mr. Chairman, is an amendment really about basic fairness; and that is, this legislation requires trustees to do some additional tasks, some additional work, and to simply provide them an opportunity to be compensated for that work.

Specifically, it provides the opportunity for the trustees to be compensated for the additional responsibilities they must perform pursuant to the terms of H.R. 833.

Under this bill, trustees must comply with new duties, clarifying which debtors truly need the relief provided by Chapter 7 and whether those debtors should be converted to the Chapter 13 payment plan. However, despite those additional duties, there are no provisions compensating the trustees or even giving them the opportunity to be compensated for the additional functions.

This amendment will allow the court or the bankruptcy judge to award a reasonable fee for trustees' actions resulting in a case being converted from Chapter 7 to Chapter 13.

In addition, in order to avoid overburdening debtors and reducing the effect this fee would have on the distribution to any creditors, this fee will be paid monthly over the life of the Chapter 13 plan.

It is only fair that individuals have the opportunity to be compensated for additional work performed. Therefore, Mr. Chairman, I would request that this amendment be accepted.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, I think that we can accept this amendment. This is a provision that we think will be helpful. We want to make sure that, whatever fees, that that would come out of the debtor's assets so that that would not be something else he would have to confront.

Mr. Chairman, I yield to the gentleman from Kentucky (Mr. WHITFIELD).

Mr. WHITFIELD. Mr. Chairman, that is my understanding; that is the intent.

Mr. CONYERS. Mr. Chairman, under those circumstances, we approve of the amendment; and I yield back the balance of my time.

Mr. WHITFIELD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thank the gentleman from Michigan (Mr. CONYERS) for his support on this amendment.

Mr. Chairman, I yield the balance of my time to the gentleman from Pennsylvania (Mr. GEKAS).

Mr. GEKAS. Mr. Chairman, I thank the gentleman for yielding me the time.

I want to indicate, for the record, and to urge the Members that we support this amendment and that it goes to some of the dependability and predictability that we are trying to build into the revised Bankruptcy Code. So the gentleman comes to the Chamber with an amendment that is worthy of the support of all the Members.

Mr. WHITFIELD. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Kentucky (Mr. WHITFIELD).

The amendment was agreed to.

Mr. MANZULLO. Mr. Chairman, I ask unanimous consent to speak for 1 minute on the Watt amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. MANZULLO. Mr. Chairman, I was listening to the debate in my office on the Watt amendment, which would simply say that whenever the trustee or any party or any attorney requests a copy of the tax returns that that would be turned over, as opposed to having a mandatory provision requiring the filing of tax returns with a bankruptcy petition.

When I practiced law, I probably had somewhere between 300 and 500 bankruptcy petitions representing petitioners, debtors and also creditors. And if we are going to require, under the present main text of this bill, the filing of tax returns, we are going to have to pass an appropriation to increase the size of the Federal courthouses in order to hold all the paperwork.

So I speak in favor of the Watt amendment, if the tax return is requested by any party, that it could be turned over, as opposed to putting additional paperwork into every single bankruptcy petition that is filed.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 106–126.

AMENDMENT NO. 10 OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Mr. Hyde:

Page 8, beginning on line 14, strike ''(which'' and all that follows through ''104(b))'' on line 19.

Beginning on page 8, strike line 23, and all that follows through line 13 on page 9, and insert the following (and make such technical and conforming changes as may be appropriate):

''(ii) The debtor's monthly expenses shall be the debtor's monthly expenses reasonably necessary to be expended—

''(I) for the maintenance or support of the debtor, the dependents of the debtor, and, in a joint case, the spouse of the debtor if the spouse is not otherwise a dependent; and

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

Notwithstanding any other provision of this clause, the debtor's monthly expenses shall not include any payments for debts described in clauses (iii) and (iv).

Page 14, line 15, add close quotation marks and a period at the end.

Beginning on page 14, strike line 16 and all that follows through line 3 on page 15.

Page 101, after line 9, insert the following (and make such technical and conforming changes as may be appropriate):

SEC. 154. GUIDELINES FOR ASSESSING INCOME.

Section 586 of title 28, United States Code, is amended by adding at the end the following:

''(f) Not later than 1 year after the effective date of this subsection, the Director of the Executive Office for United States Trustees shall issue guidelines to assist in making assessments of whether income is not reasonably necessary to be expended by a debtor for the maintenance or support of the debtor, the dependents of the debtor, and, in a joint case, the spouse of the debtor if the spouse is not otherwise a dependent.''.

Page 153, line 23, insert ''as amended by section 154,'' after ''Code,''.

Page 154, line 3, strike ''(f)'' and insert ''(g)''.

Page 154, line 5, strike ''(f)(1)(A)'' and insert ''(g)(1)(A)''.

Page 156, line 22, strike ''586(f)'' and insert ''586(g)''.

Page 157, line 4, strike ''586(f)'' and insert ''586(g)''.

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from Illinois (Mr. HYDE) and the gentleman from Pennsylvania (Mr. GEKAS) each will control 20 minutes.

The Chair recognizes the gentleman from Illinois (Mr. HYDE).

Mr. HYDE. Mr. Chairman, I yield half my time to the gentleman from Michigan (Mr. CONYERS), and I ask unanimous consent that he may control that time.

The CHAIRMAN. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I am pleased to speak in support of an amendment that I am offering, together with the gentleman from Michigan (Mr. CONYERS), that relates to permissible living expenses of debtors and their families. It replaces the bill's reliance on Internal Revenue Service expense allowances and instead incorporates a test based on the disposable income standard of current law, namely, whether income is reasonably necessary for maintenance or support.

To enhance predictability, the amendment requires the Director of the Executive Office for United States Trustees to issue guidelines that will be considered in the application of the ''reasonably necessary'' standard.

Before discussing our proposed amendment relating to living expenses, I want to emphasize, and I mean ''emphasize,'' that various pro-creditor enhancements in Section 102, the relevant section of the bill, are unaffected by this amendment. These enhancements greatly expand the potential for utilizing Bankruptcy Code Section 707(b) to remove cases from Chapter 7 of the Bankruptcy Code, where a debtor can receive a limited discharge of obligations in return for giving up nonexempt assets.

By recent count, there are a dozen pro-creditor enhancements in Section 102 that my amendment leaves in place and 63 creditor-friendly reforms in other sections of the bill. Believe me, we can enact legislation that is highly favorable to creditors without depriving debtors and their families of ''reasonably necessary'' living expenses.

This bill effectuates a major shift in bankruptcy policy, a change in direction that necessitates focusing on what portion of a debtor's future income will be available to meet the requirements of daily living. For the last century, individual debtors generally have been able to receive an immediate financial fresh start without having to encumber their future incomes. By greatly increasing the potential for dismissing Chapter 7 liquidation cases, this bill channels many debtors into 5-year Chapter 13 repayment plans.

What will debtors, their spouses, and children be able to live on during long repayment periods? This bill says, in effect, that debtors and their families must adhere to a somewhat modified version of expense allowances formulated within the Internal Revenue Service to facilitate compromises with delinquent taxpayers. This model is inappropriate for imposition in bankruptcy because, firstly, the successful collection of taxes is a matter of national self-preservation; and, secondly, the creditors can minimize the risk of losses by adhering to prudent creditor practices.

I do not think it is a particularly Republican idea to advance the IRS living standards. Recently, Congress gave legislative expression to the need for flexibility in the application of IRS expense allowances with the IRS to determine the appropriateness of applying the schedules to individual taxpayers. It would be particularly anomalous for this body to disregard the IRS Restructuring Act of 1998 and mandate an application of IRS expense allowances in bankruptcy cases that is more rigid and inflexible than what IRS itself does in the context of accepting compromises of tax obligations.

Professor Jack Williams of Georgia State University School of Law, who chaired the National Bankruptcy Review Commission's Tax Advisory Committee, pointed out to us that tying debtor eligibility to a formula that the IRS deviates from on a regular basis makes no sense. He described the IRS collections standards as too parsimonious and said the standards are unrealistic.

The limited effort to modify the IRS expense allowances during our markup by including a potential add-on for food and clothing only of up to 5 percent and providing for continuation of private school expenses failed to solve major problems with the incorporation of IRS schedules into our bankruptcy law.

Allowances for food are included in the IRS National Standards which apply throughout the contiguous 48 States and do not reflect differing costs from one region to another. In addition, allowable expenses for food under IRS schedules increase dramatically with increases in income.

The broader problem, of course, is the bill does not even make an attempt to address problems with IRS allowances unrelated to food, clothing, and education.

Leading national organizations with bankruptcy related expertise and credibility recognize the need to replace the IRS expense allowances in this bill. I am speaking of the Commercial Law League of America. They have written us favorably.

Judge Randal Newsome, President of the National Conference of Bankruptcy Judges, has said that, ''On behalf of the 319 members of the National Conference of Bankruptcy Judges, I firmly believe your amendment would lead to a far less complex and far more workable needs-based bankruptcy system than one which attempts to incorporate IRS expense standards.''

An unfortunate consequence of applying IRS living allowances in bankruptcy cases is to penalize some family members because they live with the debtor and cannot benefit from a support order.

The bill includes protections for the beneficiaries of support orders issued by family courts, courts that are not constrained by the living allowances the IRS seeks to impose on delinquent taxpayers.

Mr. Chairman, this is simple. What are they going to live on while they are playing out the 5 years that they have to play out paying their bills, paying their debts under Chapter 13?

The bill wants to use the IRS living standards. I want to replace them with the reasonably necessary standard, which is the current law. This bill has over 75 creditor enhancements. And to say if my amendment passes this is a deal breaker, that kills the bill, is ludicrous. There is so much in here for the creditors they ought to grab it and run.

□ 1545

It just seems to me a little humanity, a little flexibility, a little reasonableness in working out the living standards, the rules by which you are going to live on while you are working out your Chapter 13 obligations, is appropriate.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield such time as he may consume to the gentleman from Texas (Mr. ARMEY), the majority leader.

Mr. ARMEY. I thank the gentleman for yielding me this time. I will be brief.

Mr. Chairman, let me say, first of all, I do not think it is any secret around here the high esteem with which I hold the gentleman from Illinois (Mr. HYDE). The gentleman from Illinois is one of my heroes and a close personal friend. It pains me to find myself ever in disagreement with a gentleman I admire so much, but I could not be more in disagreement with the gentleman from Illinois on this point than I am.

Mr. Chairman, for years we have labored here, watching bills come and bills go, markups come and markups

go, legislation pass through the floor. For all those years what I have looked to is for the Congress to act in such a way as to exercise the legislative discipline in the way the law is written, to write in an acceptable objective standard so that anybody that comes under the jurisdiction of the law will know in fact the rules of the game when they enter the courtroom.

For too many years, what we have done is we have written law in this body to leave things at a subjective level and to the discretion of the court, that for too many times and too many pieces of legislation have resulted in excessively drawn out cases under the law where in fact the law was written on an ad hoc basis, in the courtroom, by the court. Many of us who believe so much in judicial constructionism have bemoaned that liberalism in the courts.

This legislation as it comes to the floor has a good, acceptable, reasonable and I believe necessary objective standard. The Hyde-Conyers amendment would remove that and would leave us again to the vagaries of judgments in the courts and all that go with it.

No, I think at this point we must practice legislative discipline. We must write the law as Congress intends the law. And we must give everybody who would enter the courtroom under the jurisdiction of the law a clear understanding of what the law is and what are the rules of the game and what are the compliances required going into it.

I implore all of us to vote against this amendment, uphold clear, defined standards under the law. Let this legislation go forward as it does, as it is brought to the floor, as legislation that once again will connect freedom and responsibility in financial dealings as a message before all our families.

We all teach these lessons to our children about accepting your responsibilities and fulfilling your responsibilities. Let the bankruptcy laws of this great land be a complement to the teachings we give our children and an encouragement to that, and let our children know the standards of compliance that are expected of them under the law. Let us not leave that to the whim of a judicial proceeding.

Mr. CONYERS. Mr. Chairman, I yield myself 5 minutes.

May I make it clear to my colleagues that there is no other amendment that I support stronger than this one with the gentleman from Illinois (Mr. HYDE), deleting provisions in the bill that would impose the sort of one-size-fits-all standard for the income and expense test based on IRS standards to determine who is eligible for bankruptcy relief and how much they are required to pay their creditors. I am appalled with the thought of using IRS expense standards.

First, the IRS standards do not protect a debtor's ability to pay for health care, for elderly, care for the elderly, taxes, accounting or legal fees. Now, an IRS standard like this has the effect of requiring the payment of unsecured credit card debt before allowing for payment of these important family-friendly items.

In the second place, where the IRS does allow specific expense items, the permitted amounts are often inhumanely inadequate. For example, the permitted automobile expense in the San Francisco Bay area for two cars is $373 per month, even though most families could barely cover the cost of automobile insurance, let alone car payments, gasoline, tolls and other items of expense.

Question: How can we expect people to keep their jobs if we do not provide them with enough money for transportation to get to work?

Number three, the IRS standards have a severe bias against renters and other debtors without secured debts. This is because the bill allows all secured debt payments to be deducted from monthly income but limits rental and lease payments to the amount permitted by the IRS standards. This means that the person renting apartments or leasing cars may not be able to deduct the full amount of their housing and transportation cost in bankruptcy, while persons with mortgages and automobile debt would be able to do so. There is no legitimate policy rationale for this discrepancy which punishes persons who try to live within their means.

I have just a few letters that I will shortly put in the RECORD. From the American Federation of State, County and Municipal Employees we have a strong letter arguing against the means test. From the American Federation of Labor, we have a legislative alert that says imposing an unworkable and unfair means test on families seeking to obtain a fresh start under Chapter 7 is to be avoided. We also have a letter from the United Automobile Workers of America, who are particularly disturbed by the up-front arbitrary means test that would unfairly bar many working families from being able to obtain a fresh start under Chapter 7.

Mr. Chairman, this is probably the touchstone of this whole bill. If we could move to this agreement to accept this joint amendment, we may be able to save this bill from being turned down in the administration. I am urging the Members to give this their consideration and ultimately their support.

Mr. Chairman, I include the following material for the RECORD:

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL–CIO,

Washington, DC, April 19, 1999.

DEAR REPRESENTATIVE: On behalf of 1.3 million members of the American Federation of State, County and Municipal Employees (AFSCME), I am writing concerning the scheduled mark up of the Bankruptcy Reform Act of 1999 (H.R. 833). We urge you to oppose H.R. 833 because it represents one-sided legislation that elevates the interests of banks and credit card companies above the interests of working men and women.

Many hard-working American families find themselves in unfortunate financial positions due to circumstances beyond their control. These families typically struggle with their debts for substantial periods of time. They work extra hours at multiple jobs, or borrow money from their relatives and friends. They try to avoid bankruptcy to protect their homes and save their credit ratings. But these efforts often fail, especially when the creditors refuse to give them a second chance that they desperately need.

H.R. 833 contains numerous provisions that will allow creditors, particularly the credit card industry, to unfairly burden or harass working families. Of particular concern is the ''means test'' that would unfairly bar many working families from being able to obtain a fresh start under Chapter 7.

There is no economic evidence to suggest that the profiles of families in Chapter 7 have improved since last year's Conference Report was published. During the debate over the bankruptcy legislation last year, much evidence was presented to the contrary; families in Chapter 7, on average, are worse off today than in the past. There is also no evidence that these families are abusing the system.

AFSCME supports balanced bankruptcy reform, but this bill departs from the bipartisan version of reform which cleared the Senate floor last fall. We again urge you to vote against H.R. 833.

Sincerely,

CHARLES M. LOVELESS,
Director of Legislation.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,

Washington, DC, April 20, 1999.

Hon. HENRY J. HYDE,
Chairman, House Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: This week the House is scheduled to take up H.R. 833, the Bankruptcy Reform Act of 1999. The AFL–CIO is opposed to this radical legislation. It will harm working families and weaken a vital safety net protecting small businesses and jobs in times of economic downturn.

Specifically, the AFL–CIO opposes provisions in the bill that:

Threaten jobs by placing substantial procedural and substantive barriers in the way of small businesses' access to the protections of Chapter 11;

Threaten jobs by broadening the scope of signal asset real estate debtors subject to rules which increase the threat of disruptive summary foreclosures of commercial property;

Threaten jobs by requiring commercial debtors to assume or reject commercial leases within a rigid timetable, which would force debtors to favor one class of creditors over others, and threaten their overall ability to successfully reorganize.

Impose an unworkable and unfair ''means'' test on families seeking to obtain a fresh start under Chapter 7;

Impose burdensome, bureaucratic requirements on consumer debtors that could result in the arbitrary dismissal of many bankruptcy petitions, even when there is no abuse and working families genuinely need relief; and

Place severe, punitive restrictions on repeat consumer filings.

The current bankruptcy system is the result of decades of thoughtful, careful bi-partisan legislative efforts, designed to balance the interests of creditors, debots and the nation as a whole. Working families and their unions participate in this system as debtors, creditors and employees of both debtors and creditors. We have much to lose if this system becomes unbalanced or damaged by hasty and poorly thought-out changes.

But the real danger posed by H.R. 833 is the threat it poses to our economy's ability to weather downturns. The bill aims to make access to the bankruptcy process more difficult for our economy's most vulnerable links—small businesses and consumers. This will likely result in increased business closures, job loss and home foreclosure, increasing the severity and length of any future economic downturn. It does so in the face of academic data showing that consumers filing bankruptcy are overwhelmingly working families who have experienced a catastrophic event—families whose median income is less than $18,000.

H.R. 833 threatens jobs and tilts the playing field against working families and small businesses. We urge the Senate to reject the harsh and ill-considered proposals embodied in the current text of H.R. 833.

Sincerely,

PEGGY TAYLOR,
Director, Department of Legislation.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA—UAW

Washington, DC, April 28, 1999.

DEAR REPRESENTATIVE: This week the House is scheduled to vote on H.R. 833, the Bankruptcy Reform Act of 1999. This bill incorporates the Conference Report on the bankruptcy legislation in the last Congress. The UAW opposed that Conference Report, and we urge you to oppose H.R. 833, because they represent one sided legislation that elevates the interests of banks and credit card companies above the interests of working men and women.

Many hard-working American families find themselves in unfortunate financial positions due to circumstances beyond their control. Layoffs, divorce and medical crisis can quickly introduce financial instability into the lives of workers and their families. These families typically struggle with their debts for substantial periods of time. They work extra hours and multiple jobs, or borrow money from their relatives and friends. They try to avoid bankruptcy to protect their homes and save their credit rating. But these efforts often fail, especially when creditors refuse to give them a second chance that they desperately need.

Like last year's Conference Report, H.R. 833 contains numerous provisions that will allow creditors, particularly the credit card industry, to unfairly burden or harass working families. We are particularly disturbed with its up-front, arbitrary ''means test'' that would unfairly bar many working families from being able to obtain a fresh start under Chapter 7. This concern is shared by Judiciary Chairman Hyde, as demonstrated by the series of amendments he offered to overcome the arbitrary and unfair effects of using IRS standards in the means test and to allow bankruptcy judges more discretion over the outcome. Unfortunately, these amendments were rejected by the Committee.

There is no economic evidence to suggest that the profiles of families in Chapter 7 have improved since the Conference Report was published. Indeed, during the course of the debate over the bankruptcy legislation last year, much evidence was presented to the contrary; families in Chapter 7, on average, are worse off today than the past. There is also no objective evidence that these families are abusing the system. Despite credit industry claims to the contrary, a recent study commissioned by the American Bankruptcy Institute found that only 3 percent of Chapter 7 filers could afford to repay some portion of their debt—a finding that was also confirmed by the U.S. Trustee's office.

The UAW is also deeply concerned that H.R. 833 contains only watered-down consumer ''protections''. For example, it would not provide for meaningful disclosure about the consequences of making low credit card payments. It also fails to adequately protect debtors against strong-arm tactics used by creditors to re-affirm debt, abuses that have been recently well-documented in the Sears case and others.

The UAW also is troubled that H.R. 833 places substantial procedural and substantive barriers in the way of small business seeking to re-organize under Chapter 11. This could result in the loss of thousands of jobs for American workers.

The UAW supports balanced bankruptcy reform. But that is not what H.R. 833 is about. Instead, it would favor the interests of credit card companies and banks over the interests of hard working families that are experiencing financial difficulties. We therefore urge you to oppose H.R. 833.

Sincerely,

ALAN REUTHER,
Legislative Director.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we share, all of us, the reverence for the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS), two of the statesmen of our organization and to whom we look for decision-making on a broad spate of subject matters. But here I think they themselves may not realize what they are espousing.

I say that with all kindness, because there are many times when I do not realize what I am doing, but this may be an example of good intentions that result in unintended consequences. We have heard that phraseology many times.

What the gentlemen do, these two stalwarts of our Chamber, is shower additional benefits upon the higher income people in our society. How do they do that? All of us will agree that this whole process begins with the median income. Those people at the median income or less are protected by legislation that the gentleman from Illinois himself has put into this bill, the safe harbor. Those people are beyond the accountability that we seek from others because they are in such bad shape that they must be given almost automatically a fresh start.

But now we are going to the higher income, over $50,000, 60, 70, 80, 90. Now, those people under our bill, we have a set of standards to make sure that when we scrutinize their financial circumstances, we can find, if at all, the possibility that they could repay some of the debt. By putting these objective standards in it that we have, the IRS standards, we are putting a standard into play which allows a reasonable, objective scrutiny of these financial circumstances.

Look what the gentleman from Illinois and what the gentleman from Michigan do. They say that for the $90,000 or $100,000 earner, we do not have to use these objective standards, let us use subjective standards, reasonable and necessary expenses. That means that before some fact finder a debtor can plead a Rolls Royce and really make a case or try to make a case that that is reasonable and necessary—I am exaggerating, of course, to make a point—for the conduct of that person's enterprise.

For a variety of things from Oregon to Georgia, there would be 20 different types of decisions made by 25 different courts on 25 different items in a bankruptcy proceeding. Disparity will return. We are trying to get rid of disparity. Flexibility of outcome will return where we are trying to contract that, to bring predictability and stability into the system.

I do not believe that, in looking at it very closely, that the gentleman from Michigan and the gentleman from Illinois would want to shower additional benefits on the higher income people, because that is what the result is. They are loosening those standards, returning them to the status quo now where so many of the high earners are escaping scrutiny in the bankruptcy system. That is what their unintended consequences might be.

Furthermore, all the worry that the gentleman from Illinois articulates about the lack of discretion and flexibility is taken care of by one flat phraseology that we employ in our bill, and that is extraordinary circumstances. When we have a situation, even when we apply the objective standards which we think are absolutely necessary for stability of the system, but we also allow a variance from that when extraordinary circumstances can be demonstrated, then we have covered all the concerns that the gentleman from Illinois and the gentleman from Michigan express and still retain that stalwart set of objective standards that brings predictability and stability to the system.

We must reject it, while applauding the gentlemen for their intentions, but the intentions of the proponents and sponsors of this bill is to make sanity out of a system that has gone awry. What they do is retain the status quo. We resist that temptation by saying to the Members, vote ''no'' on the Hyde-Conyers amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 4 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, the picture painted by the gentleman from Pennsylvania (Mr. GEKAS) would be funny if it were not serious. The gentleman from Illinois (Mr. HYDE), that paragon, supporter and champion of the raging liberal judiciary. Who believes that?

The fact of the matter is that I must commend the gentleman from Illinois and the gentleman from Michigan for this amendment, for trying to retain some humanity in the bankruptcy courts.

□ 1600

The objective standards of which the gentleman from Pennsylvania (Mr.

GEKAS) speaks are rigid and inhumane standards, inhumane standards that this Congress told the IRS to junk last year because we found they were inhumane. They are also standards that ignore the facts.

In addition to what the gentleman from Michigan said before about the things they ignore, the fact is these standards are rigid and are averages. If you are a bankrupt and you are going to bankruptcy and they want to figure out how much you can afford to pay, the proper question is, what is your rent? What is your mortgage? Not what is the average mortgage payment in the northeast United States. If the IRS says the average mortgage payment in the United States is $400 a month, but your mortgage payment is $500, try to tell the bank that you can only pay $400. See how far you get.

The fact is, a means test ought to be based on the reality, on the facts. What is your real income? That is a problem with this test that this amendment does not deal with, but what is your real income? What are your real expenses? Not what the IRS thinks the expenses of the average person in New York or California might be.

The gentleman from Pennsylvania (Mr. GEKAS) says that you have the safe harbor, that people under the median income are excluded from this means test. He forgets his own bill, because this means test is used in Chapter 13 without the safe harbor. In Chapter 13 this means test says how much you can afford to repay in a repayment plan, even if you are making $10,000 or $20,000 and you are under the median. But, again, how much can you afford to repay? Who cares what your real expenses are? All we care about is what the IRS says. That is simply unjust. It simply will produce injustice.

This amendment would have the executive office of the United States trustee set up standards and the judge could look at the real facts. That is what a just system is. The gentleman from Pennsylvania (Mr. GEKAS) says, well, you can go in and plead extraordinary circumstances. Sure you can, if you can spend $7,000 or $8,000 to do that with a lawyer. And you are bankrupt. Good luck.

The gentleman from Pennsylvania (Mr. GEKAS) says the gentleman from Illinois (Mr. HYDE) and the gentleman from Michigan (Mr. CONYERS) do not understand what they are doing. They certainly do understand what they are doing, and because they understand what they are doing, that is why the National Bankruptcy Conference approves of this amendment, and why the Commercial Law League and the National Association of Consumer Bankruptcy Attorneys, the National Association of Bankruptcy Trustees, the National Association of Chapter 13 Trustees, the Consumer Federation of America, the Consumers Union, Public Citizen, and everybody who knows anything about bankruptcy, except the creditors who are buying and paying for this bill, support this amendment.

Mr. GEKAS. Mr. Chairman, I yield 2 minutes to the gentleman from Tennessee (Mr. BRYANT), a member of the committee.

(Mr. BRYANT asked and was given permission to revise and extend his remarks.)

Mr. BRYANT. Mr. Chairman, I thank the gentleman for yielding me time.

Mr. Chairman, I too stand in opposition to this amendment. In order to have effective bankruptcy reform, we need to have in this bill a set of uniform standards as to whether or not someone should be allowed to file in Chapter 7 or in Chapter 13 bankruptcy. The reason I oppose this amendment is that it would effectively damage the means test, using an open-ended subjective standards test. We have talked about that a little bit. You have heard about that already.

In effect what that does in the real courtroom, it allows the debtor's expenses, rather than being determined in a uniform fashion, to be determined on a case-by-case, jurisdiction-by-jurisdiction, court-by-court basis, bound only by the limits of the debtor's imagination or the discretion of the judge.

The debtor may deduct any expense, if they can show that it is reasonably necessary. If there is ever a word that is litigated to the ''Nth'' degree, it is the word ''reasonable.'' That is what you are inviting in this situation. It invites an open door for litigation every time there is a dispute over what is meant by ''reasonably necessary.'' By having more litigation, you increase the administrative burdens on the bankruptcy system and already add to a costly situation.

The ability to consider in this case that our chairman has spoken about the extraordinary circumstances I think does give the requisite flexibility that is needed, while at the same time maintaining some uniformity to this situation. Allowing bankruptcy judges to create their own test is an invitation, as has been said before, to disparate treatment of claims and confusion among creditors and all those who work within the bankruptcy system.

Mr. Chairman, in conclusion, I would say that my understanding of H.R. 833 is that it does not actually incorporate the repayment test by the IRS. Instead, it merely incorporates the categories identified by the IRS as necessary expenses. So I urge my colleagues to oppose this amendment and vote no.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, I rise in strong opposition to the Hyde-Conyers amendment.

Mr. Chairman, this legislation, H.R. 833, is about personal responsibility. It is about clear standards. It is about correcting a system that was designed to help those who have fallen on hard times, but which is now used to protect those who can afford to pay to repay some of their debt, but they choose not to.

H.R. 833 imposes clear objective standards to give debtors, creditors, judges and trustees guidance in applying a means test used to determine who has the ability to repay some of their debt. How is this test based? On the median expenditure levels as determined by the Bureau of Labor Standards and Statistics. This represents what the average American family spends each month and what someone in bankruptcy can afford to repay.

This amendment that we are discussing removes this standard and replaces it with an entirely undefined standard of reasonably necessary expenses. Essentially this amendment would put us right back where we started.

Yesterday's Washington Post included an article which, in my view, exemplifies what is wrong with the current bankruptcy code. This article reports on a family with an annual income of $180,000. The family apparently fell on hard times and filed for bankruptcy seeking to discharge $140,000 in unsecured debt, but, upon filing, they listed as among their monthly expenses projected $600 for entertainment, $270 for cell phone expenses and so forth.

Under H.R. 833, this family would receive the same allowances for mortgage, food, clothing and utilities as they do under current law. However, they would be denied the cell phone and the entertainment allowances that most Americans who pay their bills on time do not enjoy.

Under the Conyers-Hyde amendment there would be no clear standard giving the judges the same discretion they have now, and this family and thousands in a similar situation could very well continue with the $600 entertainment and the $270 cell phone calls per month, all at the expense of the consumers who will ultimately pick up the tab.

Again, H.R. 833 imposes the clear, consistent national standards that will ensure that those that have the ability to repay their debts are in fact required to do so. This amendment eviscerates those standards, and I urge my colleagues to oppose it.

Mr. CONYERS. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, first I would point out to the gentleman that the court would merely disallow those claims that the gentleman rattled off from the newspaper. Just because someone files them does not mean they are going to get them. I cannot think of a Federal bankruptcy court that would allow that sort of thing.

Mr. Chairman, it is no answer to assert that ''glitches'', so-called, can be resolved through the bill's allowance for extraordinary circumstances, that has been raised more than once here, because establishing that a particular expense is extraordinary is neither simple nor cost free. These circumstances can only be established on

a motion to the court prepared by legal counsel.

We are talking about bankrupts. The motion must be detailed, documented and subject to creditor challenge. Moreover, the burden of proof lies with the debtor in establishing extraordinary circumstances. So if the debtor's motion fails, he is then subject to paying the creditor's fees and costs. Collectively, these risks provide a tremendous disincentive for debtors to claim extraordinary circumstances. To add insult to injury, the bill does not even provide for the deduction of the legal expenses needed to establish extraordinary circumstances.

The IRS standards should offend us all, every Member of this body. They have been rejected by us, abandoned by the IRS, and, yet, the credit card companies would have us apply them in bankruptcy. We, who are so strongly opposed to abusive IRS collection tactics in the income tax context, cannot be supportive of incorporating these same standards into bankruptcy law.

Mr. Chairman, this amendment goes to the heart of my concerns about the bill. If it is adopted, we may have a chance. I urge Members to give it their unfettered support.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. BOUCHER).

Mr. BOUCHER. Mr. Chairman, I thank the gentleman from Pennsylvania for yielding me time.

Mr. Chairman, I rise in opposition to the amendment offered by the gentleman from Illinois and the gentleman from Michigan. If adopted, the amendment would seriously undermine the needs-based test for the entry into Chapter 7 that is at the very core of this bankruptcy reform.

Our major goal in proposing bankruptcy reform is to assure that people who need bankruptcy protection, but who can afford to repay a substantial part of what they owe, receive their protection in Chapter 13 plans in which the court will supervise the repayment.

In the process of determining who can afford to repay a substantial part of their debt, the bill subtracts from the debtor's monthly income a number of items: All secured debt is subtracted; all priority debts, including child support and back taxes are subtracted; certain school tuition costs are subtracted; and living expenses based upon standards determined by the Internal Revenue Service are also subtracted.

The amendment that is now being considered would replace the certainty of the IRS standard with a discretionary standard for bankruptcy judges to determine what expenses are reasonably necessary. The certainty of the IRS standard should be retained, and, in support of that position, I would cite these arguments.

First, the Internal Revenue Service standards are generous. In a review of 2,100 bankruptcy filings in 1997 conducted by a major accounting firm, it was found that the living expenses under the IRS standard are, on average, 8 percent higher than the actual expenses reported by Chapter 7 filers. The expenses allowed under the standard are clearly more than adequate.

Secondly, discretion already exists for bankruptcy judges and trustees to move filers from Chapter 7 to Chapter 13 by the filing of a motion alleging that petitioners are substantially abusing Chapter 7 because they can repay a large part of the debt and really belong in Chapter 13. But, as a practical matter, these motions are rarely filed today by trustees or by bankruptcy judges.

□ 1615

The amendment now under consideration would simply move this complete discretion over whether to bring a substantial abuse motion to the living expense portion of the process.

Since judges and trustees have been reluctant to use their existing discretion to require a greater use of Chapter 13 and the lesser use of Chapter 7, there is little reason to have confidence that essentially the same discretion will be any better used under the Hyde-Conyers amendment than it is under the current process. If it is not, the core reform that we are seeking to achieve will not be achieved.

The better course is to reject this amendment and to retain the certainty of the IRS standard in determining reasonable living expenses.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, the reason I am supporting this bill is because it has the tendency of making loans more available and it has the tendency of bringing interest rates down.

This amendment throws open the door for litigation every time there is a dispute as to whether a debtor's particular expenses are reasonably necessary. This will dramatically increase administrative burdens on the bankruptcy system.

It also leaves the door open to indecision based on individual judge interpretation. Passing this amendment and doing away with the bill's more definite guidelines means those interest rates will not come down; it means that the increased availability of those loans will not be forthcoming until the lenders have decided what judges are going to do with the discretion that is added by the Hyde amendment.

H.R. 833 does not incorporate the actual repayment test used by the IRS. Instead, it incorporates the categories identified by the IRS as necessary expenses. This is an important distinction because the means test of H.R. 833 is more flexible than anything used by the IRS.

The ability to consider "extraordinary circumstances" provided for under the bill is a better mechanism to establish fair and equitable reform than the amendment giving bankruptcy judges discretion to create their own tests of "reasonableness".

Allowing bankruptcy judges to create their own test is an invitation not only to the different treatment of debtors but also to confusion among creditors and those who work within the bankruptcy system.

I urge defeat of the Hyde amendment.

Mr. GEKAS. Mr. Chairman, I yield 1 minute to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Chairman, I rise in opposition to this amendment. The Bankruptcy Reform Act would ensure that Americans who can reasonably repay some of their debt will do so. It is based on the principle of personal responsibility and intended to stem the tide of American bankruptcy filings.

The Hyde-Conyers amendment flies in the face of that fundamental principle. Instead of establishing a reasonable standard of living expenses, as the bill does, this amendment would give judges broad authority to determine, quote/unquote, reasonably necessary expenses.

This definition is ambiguous. It provides a loophole for bankruptcy filers to avoid repayment and maintains one of the deficiencies of the current system.

This legislation recognizes not everyone who files for bankruptcy is able to repay their debts but it employs a reasonable standard to make that determination. The Hyde-Conyers amendment would remove that reasonableness from the bill. I urge my colleagues to oppose the Hyde-Conyers amendment and support the Bankruptcy Reform Act.

Mr. HYDE. Mr. Chairman, I yield myself the balance of my time.

Mr. CONYERS. Mr. Chairman, I yield 30 seconds to the gentleman from Illinois.

The CHAIRMAN. The gentleman from Illinois (Mr. HYDE) is recognized for 3 minutes.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, my colleagues are making a virtue out of what is a vice, and that is the inflexibility of the IRS standards. The cost of food in Omaha, Nebraska or Boise, Idaho, is different than in downtown Manhattan. So what is realistic about an inflexible standard? Why not give some wiggle room so that humanity can play out?

This could be a good bill. It is a great bill for the creditors, I can say. I have 75 enhancements here for the creditors. Why not throw a little small bone to the debtor?

Do not talk about "reasonably necessary" as too vague. Are my colleagues aware, those who have said that, that there is 15 years of litigation and decisional authority interpreting that? Of course. "Reasonable" is a word used in negligence law, in the exercise of reasonable care and caution. To hear some of my colleagues talk, I would think this was from outer space. That is nonsense.

We have to allow for regional differences, for family differences. A reasonably necessary standard is ascertainable.

I am as capitalist as anybody, I am as conservative as anybody, but it does not seem to me when there is a bill that is truly tilted towards the creditors, that giving a little flexibility for living standards for people who are bankrupt is a violation of one's credentials as a conservative.

The median income that the gentleman from Pennsylvania (Mr. GEKAS) mentioned of $51,000 sounds like a lot of money, but that is for a family of four, a family of four. That may be a lot of money in Boise, Idaho. It may be very little in New York.

Give some flexibility. The current law is what ought to obtain. My colleagues are trying to change it by putting the IRS standards in. It is the first time, and I dare say the last time, so much kind approbation will be showered on the IRS by this side of the aisle. I certainly do not join in that showering.

So this litigation, there will be litigation on the IRS standards, there will be as much litigation as anyone wants.

This could be a good bill. I support this bill, but for goodness sake give some humanity in the establishment of living standards while paying out Chapter 13.

Lastly, let me pay my respects to the creditor lobby. They are awesome.

Mr. GEKAS. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, we return to the recurring issue. The current state of bankruptcy is in a chaotic mess. One of the reasons is that an individual who wishes to file bankruptcy finds it very easy to do so. Very few standards are applied.

The system needed tightening up. Everybody in the world knows that. Creditors, and the credit lobby, really understand that; there is no question about it. We understand how they understand it. On the other hand, an objective onlooker, the lawmakers that we are, who are eager to tighten up the bankruptcy laws because it is good for our society, it is good for our economy, it saves money for consumers to prevent bankruptcies, it saves money for taxpayers to prevent bankruptcies, it helps the tax collecting authorities like State governments, school boards, municipal governments to be able to regain some of their lost taxes by reason of unwarranted bankruptcies, all of these societal needs are met in our bill.

What really is something that must be made clear to first the Members of Congress and then to the public is that the current system, that chaotic system, has too much flexibility. What the Hyde-Conyers amendment does is return too much flexibility to a system where we are trying to create standards and to tighten up on every corner of the bankruptcy field.

How ironic it is that on the one hand they remove the IRS standards because they are odious to many and then they reinsert standards to be set by a trustee panel. So all of a sudden we are back to establishing standards anyway.

What we have found throughout the test of the time that has been engulfed in bankruptcy reform, that the IRS standards provide the starting point and from there we have a better system at hand.

Mr. DELAY. Mr. Chairman, I rise today to urge my colleagues to vote no on this amendment. Bankruptcy reform must be allowed a chance to work.

The bankruptcy reform bill that is before us today is simply trying to jump-start a sense of personal responsibility in the area of consumer financial transactions.

Today's bankruptcy system has made it too easy for irresponsible people to pass on the burden of their financial debt to responsible people.

The greatness of this country is based on freedom. But with this freedom comes responsibility for your actions.

Because the stigma that was once associated with bankruptcy has disappeared, we see too many people using bankruptcy as a financial planning tool.

And, too many lawyers are getting rich selling that tool.

Gone is the notion that bankruptcy is to be a last-resort solution to a personal financial crisis.

Gone is the chance of receiving a fresh start only after agreeing to a repayment plan.

Instead, we see debtors routinely expecting others to pick up their tab.

That in fact is what happens when the creditor passes on his or her losses to other borrowers—everyone pays a portion of that debtor's bill.

Mr. Chairman, the bankruptcy bill under consideration today is based on the premise that those debtors who can afford to repay their debt should do so, rather that have it forgiven.

To accomplish this seemingly simple goal, an income-based means test is employed to determine if a debtor could do one of three things: have debt forgiven; reorganize and enter into a repayment plan; or refrain from filing for bankruptcy at all.

In order to differentiate amongst debtors and to end the abuses of the bankruptcy system, objective standards are needed to replace today's vague and ambiguous subjective guidelines in use by the bankruptcy courts.

Mr. Chairman, the amendment before us will undercut the basic objective of reforming the bankruptcy system by allowing judges to continue to make the same subjective decisions about repayment—the very same decisions that have not prevented recent abuse of the system.

The decision before us is clear: Vote ''yes'' only if you feel that the majority of your constituents should continue to pay the costs of these abuses.

But better yet, vote ''no'' to give bankruptcy reform a chance to instill a sense of personal responsibility in consumer financial transactions.

I urge my colleagues to vote ''no'' on this amendment.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Illinois (Mr. HYDE).

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. GEKAS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. Pursuant to House Resolution 158, after this 15-minute vote on the Hyde amendment the Chair will resume proceedings on the three questions postponed earlier on which demands for recorded votes are pending. Any electronic vote after the first vote in this series will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 184, noes 238, not voting 11, as follows:

[Roll No. 110]

AYES—184

Abercrombie
Ackerman
Allen
Bachus
Baird
Baldacci
Baldwin
Barrett (NE)
Barrett (WI)
Bentsen
Berkley
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Camp
Capps
Capuano
Cardin
Carson
Chambliss
Clay
Clayton
Clement
Clyburn
Conyers
Costello
Coyne
Cummings
Danner
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Filner
Forbes
Ford
Fossella
Frank (MA)
Ganske
Gejdenson
Gilchrest
Gilman
Gonzalez
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Houghton
Hoyer
Hyde
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kind (WI)
King (NY)
Kleczka
Klink
Kucinich
LaFalce
LaHood
Lampson
Lantos
Larson
LaTourette
Leach
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McHugh
McIntosh
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Miller, George
Minge
Mink
Moakley
Morella
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Ros-Lehtinen
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Scott
Serrano
Sherman
Shows
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Udall (CO)
Udall (NM)
Vento
Visclosky
Wamp
Waters
Watt (NC)
Waxman
Weiner
Weldon (PA)
Wexler
Wilson
Wise
Woolsey
Wu

NOES—238

Aderholt
Andrews
Archer
Armey
Baker
Ballenger
Barcia
Barr
Bartlett
Barton
Bass
Bateman
Bereuter
Berry
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehner
Bonilla

Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Campbell
Canady
Cannon
Castle
Chabot
Chenoweth
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Crowley
Cubin
Cunningham
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ewing
Fletcher
Foley
Fowler
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Gekas
Gibbons
Gillmor
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Hulshof
Hunter
Hutchinson
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kennedy
Kingston
Knollenberg
Kolbe
Kuykendall
Largent
Latham
Lazio
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
McCollum
McCrery
McInnis
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pascrell
Pastor
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Turner
Upton
Velazquez
Walden
Walsh
Watkins
Weldon (FL)
Weller
Weygand
Whitfield
Wicker
Wolf
Young (AK)

NOT VOTING—11

Becerra
Berman
Brown (CA)
Gephardt
Luther
Millender-McDonald
Simpson
Slaughter
Watts (OK)
Wynn
Young (FL)

□ 1645

Messrs. PAUL, QUINN, LEWIS of California, BASS, PETERSON of Pennsylvania, and MOLLOHAN changed their vote from ''aye'' to ''no.''

Ms. McCARTHY of Missouri and Mr. EVANS changed their vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on the Hyde-Conyers amendment due to a family emergency. However, had I been present, I would have voted ''aye.''

Stated against:

Mr. DICKEY. Mr. Chairman, I inadvertently voted incorrectly on the Hyde-Conyers amendment. I would like the RECORD to reflect that my vote of ''yes'' should have been a vote of ''no.'' That was my intention.

SEQUENTIAL VOTES POSTPONED IN COMMITTEE OF THE WHOLE

The CHAIRMAN. Pursuant to House Resolution 158, proceedings will now resume on those amendments on which further proceedings were postponed in the following order: Amendment No. 3 offered by the gentleman from Virginia (Mr. MORAN); amendment No. 7 offered by the gentleman from Michigan (Mr. CONYERS); and amendment No. 8 offered by the gentleman from North Carolina (Mr. WATT).

The Chair will reduce to 5 minutes the time for any electronic vote in this series.

AMENDMENT NO. 3 OFFERED BY MR. MORAN OF VIRGINIA

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Virginia (Mr. MORAN) on which further proceedings were postponed and on which the ayes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 373, noes 47, not voting 13, as follows:

[Roll No. 111]

AYES—373

Abercrombie
Ackerman
Aderholt
Allen
Andrews
Archer
Armey
Bachus
Baird
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Boswell
Boucher
Boyd
Brady (TX)
Brown (FL)
Brown (OH)
Bryant
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Capps
Capuano
Cardin
Carson
Castle
Chabot
Chambliss
Clay
Clayton
Clement
Clyburn
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Coyne
Cramer
Crane
Crowley
Cubin
Cummings
Cunningham
Danner
Davis (FL)
Davis (IL)
Davis (VA)
Deal
DeGette
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehrlich
Emerson
Engel
English
Eshoo
Etheridge
Ewing
Farr
Filner
Fletcher
Foley
Forbes
Ford
Fossella
Fowler
Frank (MA)
Frelinghuysen
Frost
Gallegly
Ganske
Gejdenson
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Gordon
Goss
Graham
Granger
Green (TX)
Green (WI)
Greenwood
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Herger
Hill (IN)
Hill (MT)
Hilleary
Hilliard
Hinojosa
Hobson
Hoeffel
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jackson (IL)
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kasich
Kelly
Kennedy
Kildee
Kind (WI)
King (NY)
Kingston
Kleczka
Klink
Knollenberg
Kolbe
Kucinich
Kuykendall
LaFalce
LaHood
Lampson
Lantos
Largent
Larson
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
Maloney (NY)
Manzullo
Markey
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McGovern
McHugh
McIntosh
McIntyre
McKeon
McKinney
McNulty
Meek (FL)
Menendez
Metcalf
Mica
Millender-McDonald
Miller (FL)
Miller, Gary
Miller, George
Minge
Mink
Moakley
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Oberstar
Obey
Olver
Ortiz
Ose
Oxley
Packard
Pallone
Pascrell
Pastor
Pease
Pelosi
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Rahall
Ramstad
Rangel
Regula
Reyes
Reynolds
Riley
Rivers
Rodriguez
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Roybal-Allard
Royce
Rush
Ryun (KS)
Sabo
Salmon
Sanchez
Sanders
Sanford
Sawyer
Scarborough
Schakowsky
Scott
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Spence
Stabenow
Stark
Stearns
Stenholm
Strickland
Stump
Stupak
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Toomey
Towns
Traficant
Turner
Udall (CO)
Udall (NM)
Upton
Velazquez
Vento
Walden
Walsh
Wamp
Watkins
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Wexler
Weygand
Whitfield
Wicker
Wise
Wolf
Woolsey
Wu
Young (AK)

NOES—47

Baldwin
Bonior
Bono
Borski
Brady (PA)
Burr
Canady
Cannon
Chenoweth
Conyers
DeFazio
Delahunt
DeLauro
Ehlers
Evans
Everett
Fattah
Goodling
Hefley
Hinchey
Jackson-Lee (TX)
Kilpatrick
Lee
Lipinski
Lofgren
Lowey
Martinez
McDermott
McInnis
Meehan
Meeks (NY)
Nadler
Owens
Paul
Payne

Peterson (MN)
Pombo
Ryan (WI)
Sandlin
Schaffer
Souder
Spratt
Taylor (NC)
Visclosky
Waters
Watt (NC)
Wilson

NOT VOTING—13

Becerra
Berman
Brown (CA)
Cox
Franks (NJ)
Gephardt
Luther
Saxton
Simpson
Slaughter
Watts (OK)
Wynn
Young (FL)

□ 1654

Ms. JACKSON-LEE of Texas, Mr. MEEKS of New York, and Mr. PAYNE changed their vote from ''aye'' to ''no.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

AMENDMENT NO. 7 OFFERED BY MR. CONYERS

The CHAIRMAN. The pending business is the demand for a recorded vote on the amendment offered by the gentleman from Michigan (Mr. CONYERS) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 143, noes 278, not voting 12, as follows:

[Roll No. 112]

AYES—143

Abercrombie
Ackerman
Allen
Baird
Baldacci
Baldwin
Barcia
Barrett (WI)
Berkley
Bishop
Blagojevich
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Capuano
Carson
Clay
Clayton
Clyburn
Conyers
Coyne
Crowley
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Frost
Gejdenson
Gonzalez
Green (TX)
Gutierrez
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Houghton
Jackson (IL)
Jackson-Lee (TX)
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Lewis (GA)
Linder
Lowey
Maloney (NY)
Markey
Martinez
Mascara
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald
Miller, George
Minge
Moakley
Murtha
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Payne
Pelosi
Phelps
Price (NC)
Rahall
Rangel
Reyes
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Saxton
Schakowsky
Scott
Serrano
Shows
Stark
Strickland
Stupak
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Udall (CO)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Woolsey
Wu

NOES—278

Aderholt
Andrews
Archer
Armey
Bachus
Baker
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Biggert
Bilbray
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dixon
Doggett
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Franks (NJ)
Frelinghuysen
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (OH)
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hobson
Hoekstra
Hooley
Horn
Hostettler
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Inslee
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kennedy
Kind (WI)
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Levin
Lewis (CA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
Matsui
McCollum
McCrery
McHugh
McInnis
McIntosh
McKeon
Metcalf
Mica
Miller (FL)
Miller, Gary
Mink
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pastor
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanchez
Sandlin
Sanford
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Turner
Udall (NM)
Upton
Walden
Walsh
Wamp
Watkins
Weldon (FL)
Weldon (PA)
Weller
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Young (AK)

NOT VOTING—12

Becerra
Berman
Bilirakis
Brown (CA)
Gephardt
Luther
Simpson
Slaughter
Smith (MI)
Watts (OK)
Wynn
Young (FL)

□ 1704

Mr. DIXON changed his vote from ''aye'' to ''no.''

Mr. MINGE changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on the Conyers amendment due to a family emergency. However, had I been present, I would have voted "aye."

Stated against

Mr. BILIRAKIS. Mr. Chairman, I missed rollcall Vote 112 because I was unfortunately detained and unable to make it to the floor. Had I been present, I would have voted ''no.''

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

The CHAIRMAN (Mr. NETHERCUTT). The pending business is the demand for a recorded vote on the amendment offered by the gentleman from North Carolina (Mr. WATT) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The CHAIRMAN. A recorded vote has been demanded.

A recorded vote was ordered.

The CHAIRMAN. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 192, noes 230, not voting 11, as follows:

[Roll No. 113]

AYES—192

Abercrombie
Ackerman
Allen
Bachus
Baird
Baldwin
Barcia
Barrett (WI)
Bentsen
Bereuter
Berkley
Bishop
Blagojevich
Blumenauer
Boehlert
Bonior
Borski
Boyd
Brady (PA)
Brown (FL)
Brown (OH)
Bryant
Burr
Campbell
Canady
Capps
Capuano
Cardin
Carson
Chenoweth
Clay
Clayton
Clyburn
Coble
Conyers
Costello
Coyne
Crowley
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Diaz-Balart
Dicks
Dingell
Dixon
Doggett
Dooley
Doyle
Edwards
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Fossella
Gejdenson
Gonzalez
Gordon
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hill (IN)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Hooley
Hyde
Inslee
Jackson (IL)
Jefferson
John
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
King (NY)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
LaTourette
Lee
Levin
Lewis (GA)
Linder
Lipinski
Lofgren
Lowey
Maloney (NY)
Manzullo
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McCrery
McDermott
McGovern
McHugh
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Menendez
Millender-McDonald

Miller (FL)
Miller, George
Minge
Mink
Moakley
Mollohan
Moran (VA)
Murtha
Myrick
Nadler
Napolitano
Neal
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pastor
Payne
Pease
Pelosi
Petri
Phelps
Price (NC)
Rahall
Rangel
Reyes
Reynolds
Rivers
Rodriguez
Rothman
Roybal-Allard
Rush
Sabo
Salmon
Sanchez
Sanders
Sandlin
Sanford
Sawyer
Schakowsky
Scott
Serrano
Sherwood
Smith (NJ)
Snyder
Spratt
Stabenow
Stark
Strickland
Stupak
Tancredo
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Turner
Udall (CO)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Whitfield
Wise
Wolf
Woolsey
Wu

NOES—230

Aderholt
Andrews
Archer
Armey
Baker
Baldacci
Ballenger
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Berry
Biggert
Bilbray
Bilirakis
Bliley
Blunt
Boehner
Bonilla
Bono
Boswell
Boucher
Brady (TX)
Burton
Buyer
Callahan
Calvert
Camp
Cannon
Castle
Chabot
Chambliss
Clement
Coburn
Collins
Combest
Condit
Cook
Cooksey
Cox
Cramer
Crane
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Deutsch
Dickey
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
Engel
English
Everett
Ewing
Fletcher
Foley
Forbes
Ford
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Isakson
Istook
Jenkins
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kennedy
Kind (WI)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
Lazio
Leach
Lewis (CA)
Lewis (KY)
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
McCollum
McInnis
McIntosh
McIntyre
McKeon
Metcalf
Mica
Miller, Gary
Moore
Moran (KS)
Morella
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pascrell
Paul
Peterson (MN)
Peterson (PA)
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Riley
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Roukema
Royce
Ryan (WI)
Ryun (KS)
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Shimkus
Shows
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Souder
Spence
Stearns
Stenholm
Stump
Sununu
Sweeney
Talent
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Udall (NM)
Upton
Walden
Walsh
Wamp
Watkins
Weldon (FL)
Weldon (PA)
Weller
Weygand
Wicker
Wilson
Young (AK)

NOT VOTING—11

Becerra
Berman
Brown (CA)
Gephardt
Jackson-Lee (TX)
Luther
Simpson
Slaughter
Watts (OK)
Wynn
Young (FL)

□ 1715

Mr. PALLONE changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on the Watt amendment due to a family emergency. However, had I been present, I would have voted ''aye.''

Ms. JACKSON-LEE of Texas. Madam Speaker, during Rollcall Vote No. 113, the Watt amendment under bill H.R. 833 on May 5, 1999, I was unavoidably detained. Had I been present, I would have voted ''aye.''

The CHAIRMAN. It is now in order to consider amendment No. 11 printed in House Report 106–126.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 11 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute No. 11 offered by Mr. NADLER:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Reform Act of 1999''.

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

Sec. 1. Short title; table of contents.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs based bankruptcy

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Notice of alternatives.
Sec. 104. Debtor financial management training test program.

Subtitle B—Consumer Bankruptcy Protections

Sec. 105. Definitions.
Sec. 106. Enforcement.
Sec. 107. Sense of the congress.
Sec. 108. Discouraging abusive reaffirmation practices.
Sec. 109. Promotion of alternative dispute resolution.
Sec. 110. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 111. Dual use debit card.
Sec. 112. Discouraging reckless lending practices.
Sec. 113. Protection of savings earmarked for the postsecondary education of children.
Sec. 114. Effect of discharge.
Sec. 115. Limiting trustee liability.
Sec. 116. Reinforce the fresh start.
Sec. 117. Discouraging bad faith repeat filings.
Sec. 118. Curbing abusive filings.
Sec. 119. Debtor retention of personal property security.
Sec. 120. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral.
Sec. 121. Giving secured creditors fair treatment in chapter 13.
Sec. 123. Fair valuation of collateral.
Sec. 124. Domiciliary requirements for exemptions.
Sec. 125. Restrictions on certain exempt property obtained through fraud.
Sec. 126. Rolling stock equipment.
Sec. 127. Discharge under chapter 13.
Sec. 128. Bankruptcy judgeships.
Sec. 129. Additional amendments to title 11, United States Code.
Sec. 131. Application of the codebtor stay only when the stay protects the debtor.
Sec. 132. Adequate protection for investors.
Sec. 134. Giving debtors the ability to keep leased personal property by assumption.
Sec. 135. Adequate protection of lessors and purchase money secured creditors.
Sec. 136. Automatic stay.
Sec. 137. Extend period between bankruptcy discharges.
Sec. 139. Priorities for claims for domestic support obligations.
Sec. 142. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 143. Continued liability of property.
Sec. 144. Protection of domestic support claims against preferential transfer motions.
Sec. 145. Clarification of meaning of household goods.
Sec. 147. Monetary limitation on certain exempt property.
Sec. 148. Bankruptcy fees.
Sec. 149. Collection of child support.
Sec. 150. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 151. Clarification of postpetition wages and benefits.
Sec. 152. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 153. Automatic stay inapplicable to certain proceedings against the debtor.
Sec. 154. Definition of domestic support obligation.
Sec. 155. Requirements to obtain confirmation and discharge in cases involving domestic support obligations.
Sec. 156. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 157. Exemption for right to receive certain alimony, maintenance, or support.
Sec. 158. Automatic stay inapplicable to certain proceedings against the debtor.

TITLE II—DISCOURAGING BANKRUPTCY ABUSE

Sec. 201. Reenactment of chapter 12.
Sec. 202. Meetings of creditors and equity security holders.
Sec. 203. Protection of retirement savings in bankruptcy.
Sec. 204. Protection of refinance of security interest.
Sec. 205. Executory contracts and unexpired leases.
Sec. 206. Creditors and equity security holders committees.

Sec. 207. Amendment to section 546 of title 11, United States Code.
Sec. 208. Limitation.
Sec. 209. Amendment to section 330(a) of title 11, United States Code.
Sec. 210. Postpetition disclosure and solicitation.
Sec. 211. Preferences.
Sec. 212. Venue of certain proceedings.
Sec. 213. Period for filing plan under chapter 11.
Sec. 214. Fees arising from certain ownership interests.
Sec. 215. Claims relating to insurance deposits in cases ancillary to foreign proceedings.
Sec. 216. Defaults based on nonmonetary obligations.
Sec. 217. Sharing of compensation.
Sec. 218. Priority for administrative expenses.

TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

Sec. 301. Definition of disinterested person.
Sec. 302. Miscellaneous improvements.
Sec. 303. Extensions.
Sec. 304. Local filing of bankruptcy cases.
Sec. 305. Permitting assumption of contracts.

TITLE IV—SMALL BUSINESS BANKRUPTCY PROVISIONS

Sec. 401. Flexible rules for disclosure Statement and plan.
Sec. 402. Definitions.
Sec. 403. Standard form disclosure Statement and plan.
Sec. 404. Uniform national reporting requirements.
Sec. 405. Uniform reporting rules and forms for small business cases.
Sec. 406. Duties in small business cases.
Sec. 407. Plan filing and confirmation deadlines.
Sec. 408. Plan confirmation deadline.
Sec. 409. Prohibition against extension of time.
Sec. 410. Duties of the United States trustee.
Sec. 411. Scheduling conferences.
Sec. 412. Serial filer provisions.
Sec. 413. Expanded grounds for dismissal or conversion and appointment of trustee or examiner.
Sec. 414. Study of operation of title 11 of the United States Code with respect to small businesses.
Sec. 415. Payment of interest.
Sec. 416. Protection of jobs.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

Sec. 601. Creditor representation at first meeting of creditors.
Sec. 602. Audit procedures.
Sec. 603. Giving creditors fair notice in chapter 7 and 13 cases.
Sec. 604. Dismissal for failure to timely file schedules or provide required information.
Sec. 605. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 606. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 607. Sense of the Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
Sec. 608. Elimination of certain fees payable in chapter 11 bankruptcy cases.
Sec. 609. Study of bankruptcy impact of credit extended to dependent students.
Sec. 610. Prompt relief from stay in individual cases.
Sec. 611. Stopping abusive conversions from chapter 13.
Sec. 612. Bankruptcy appeals.
Sec. 613. GAO study.

TITLE VII—BANKRUPTCY DATA

Sec. 701. Improved bankruptcy statistics.
Sec. 702. Uniform rules for the collection of bankruptcy data.
Sec. 703. Sense of the Congress regarding availability of bankruptcy data.

TITLE VIII—BANKRUPTCY TAX PROVISIONS

Sec. 801. Treatment of certain liens.
Sec. 802. Effective notice to government.
Sec. 803. Notice of request for a determination of taxes.
Sec. 804. Rate of interest on tax claims.
Sec. 805. Tolling of priority of tax claim time periods.
Sec. 806. Priority property taxes incurred.
Sec. 807. Chapter 13 discharge of fraudulent and other taxes.
Sec. 808. Chapter 11 discharge of fraudulent taxes.
Sec. 809. Stay of tax proceedings.
Sec. 810. Periodic payment of taxes in chapter 11 cases.
Sec. 811. Avoidance of statutory tax liens prohibited.
Sec. 812. Payment of taxes in the conduct of business.
Sec. 813. Tardily filed priority tax claims.
Sec. 814. Income tax returns prepared by tax authorities.
Sec. 815. Discharge of the estate's liability for unpaid taxes.
Sec. 816. Requirement to file tax returns to confirm chapter 13 plans.
Sec. 817. Standards for tax disclosure.
Sec. 818. Setoff of tax refunds.

TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES

Sec. 901. Amendment to add chapter 15 to title 11, United States Code.
Sec. 902. Amendments to other chapters in title 11, United States Code.

TITLE X—FINANCIAL CONTRACT PROVISIONS

Sec. 1001. Treatment of certain agreements by conservators or receivers of insured depository institutions.
Sec. 1002. Authority of the corporation with respect to failed and failing institutions.
Sec. 1003. Amendments relating to transfers of qualified financial contracts.
Sec. 1004. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 1005. Clarifying amendment relating to master agreements.
Sec. 1006. Federal Deposit Insurance Corporation Improvement Act of 1991.
Sec. 1007. Bankruptcy Code amendments.
Sec. 1008. Recordkeeping requirements.
Sec. 1009. Exemptions from contemporaneous execution requirement.
Sec. 1010. Damage measure.
Sec. 1011. SIPC stay.
Sec. 1012. Asset-backed securitizations.
Sec. 1013. Federal Reserve collateral requirements.
Sec. 1014. Effective date; application of amendments.

TITLE XI—TECHNICAL CORRECTIONS

Sec. 1101. Definitions.
Sec. 1102. Adjustment of dollar amounts.
Sec. 1103. Extension of time.
Sec. 1104. Technical amendments.
Sec. 1105. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1106. Limitation on compensation of professional persons.
Sec. 1107. Special tax provisions.
Sec. 1108. Effect of conversion.
Sec. 1109. Allowance of administrative expenses.
Sec. 1110. Priorities.
Sec. 1111. Exemptions.
Sec. 1112. Exceptions to discharge.
Sec. 1113. Effect of discharge.
Sec. 1114. Protection against discriminatory treatment.
Sec. 1115. Property of the estate.
Sec. 1116. Preferences.
Sec. 1117. Postpetition transactions.
Sec. 1118. Disposition of property of the estate.
Sec. 1119. General provisions.
Sec. 1120. Appointment of elected trustee.
Sec. 1121. Abandonment of railroad line.
Sec. 1122. Contents of plan.
Sec. 1123. Discharge under chapter 12.
Sec. 1124. Bankruptcy cases and proceedings.
Sec. 1125. Knowing disregard of bankruptcy law or rule.
Sec. 1126. Transfers made by nonprofit charitable corporations.
Sec. 1127. Prohibition on certain actions for failure to incur finance charges.
Sec. 1128. Protection of valid purchase money security interests.
Sec. 1129. Trustees.

TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1201. Effective date; application of amendments.

TITLE I—CONSUMER BANKRUPTCY PROVISIONS

Subtitle A—Needs based bankruptcy

SEC. 101. CONVERSION.

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

SEC. 102. DISMISSAL OR CONVERSION.

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

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

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

(2) by amending subsection (b) to read as follows:

''(b)(1) After notice and a hearing, a court, on its own motion or on a motion by the United States trustee, the trustee, or any part in interest who is eligible to bring a motion, may dismiss a case filed by an individual debtor under this chapter, or with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title if it finds that the granting of relief would be an abuse of the provisions of this chapter, the court shall consider whether—

''(A) the debtor has the ability to repay some portion of the debtor's unsecured nonpriority debt as determined under paragraphs (2) and (3);

''(B) the debtor has filed the petition in bad faith; or

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

''(2) In considering under paragraph (1)(A) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall conclusively presume abuse does not exist if the debtor's current monthly income, when multiplied by 12, is less than or equal to 100 percent of the highest national or applicable State or Statistical Area median family income reported for a family of equal size, whichever is greater, or in the case of a household of 1 person, less than or

equal to 100 percent of the highest national or State or Metropolitan Statistical Area median household income for 1 earner, whichever is greater, as adjusted, if applicable, as provided in paragraph (6).

''(3) In considering under paragraph (1)(A) whether the granting of relief would be an abuse of the provision of this chapter, the court shall presume abuse exists if—

''(A) the debtor's current monthly income, when multiplied by 12, is less than or equal to 100 percent of the highest national or applicable State or Metropolitan Statistical Area median family income reported for a family of equal size, whichever is greater, or in the case of a household of 1 person, less than or equal to 100 percent of the highest national or State or Metropolitan Statistical Area median household income for 1 yearner, whichever is greater, as adjusted, if applicable, as provided in paragraph (6); and

''(B) the product of—

''(i) the debtor's current monthly income, reduced by allowable monthly expenses specified in paragraph (4) (which shall include, if applicable the continuation of actual expenses of a dependent child under the age of 18 for tuition, books, and required fees at a private elementary or secondary school, or comparable expenses stemming from the home education of such child, or the attendance of such child at a public elementary or secondary school, not exceeding $10,000) and monthly debt payments specified in paragraph (5), and

''(ii) multiplied by 36,

less estimated administrative expenses and reasonable attorneys' fees, is not less than $6,000 of the debtor's nonpriority unsecured claims in the case.

''(4) For the purposes of this subsection, the debtor's allowable monthly expenses shall be the expenses reasonably necessary—

''(A) for the maintenance or support of the debtor, the dependents of the debtor, and in a joint case, the spouse of the debtor if the spouse is not otherwise a dependent; and

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

Notwithstanding any other provision of this clause, the debtor's monthly expenses shall not include payments for debts described in paragraph (5).

''(5) For purposes of this subsection, the debtor's monthly debt payments shall include—

''(A) the total amount scheduled as contractually due on all secured debts in each month of the 36 months following the date of the petition and divided by 36; and

''(B) the debtor's expenses for payment of all priority claims, including priority domestic support obligations, calculated as the total amount of debts entitled to priority in each month of the 36 months following the date of the petition and divided by 36.

''(6) For the purposes of this subsection—

''(A) national or applicable State or Metropolitan Statistical Area median family income reported for a household of more than 4 individuals shall be that of a household of 4 individuals plus $583 per month for each additional member of that household;

''(B) a family or household shall consist of the debtor, the debtor's spouse, and the debtor's dependents, but not a legally separated spouse unless the spouse files a joint case with the debtor.

''(7) In any proceeding brought under this subsection, the presumption of abuse may be rebutted by demonstrating special circumstances that justify additional reasonable expenses or adjustments of current monthly total income. In order to establish such circumstances, the debtor shall be required to—

''(A) itemize each additional expense or adjustment of income; and

''(B) provide documentation of such expenses and a detailed explanation of the circumstances that warrant such expenses.

''(8)(A) As part of the schedule of current income and expenditures required under section 521, the debtor shall include—

''(i) a statement of the debtor's current monthly income and calculations that show whether a presumption arises under paragraph (1)(A) of this subsection; or

''(ii) a statement of the debtor's current monthly income showing that the debtor is a debtor described in paragraph (14) of this subsection.

''(B) The Supreme Court shall promulgate rules under section 2075 of title 28, United States Code, that prescribe a form for a statement under subparagraph (A) and may provide general rules on the content of such statement.

''(9) If a trustee brings a motion for dismissal or conversion under this subsection, and the court grants that motion and finds that the action of the counsel for the debtor in filing under this chapter violated Rule 9011, the courts hall assess damages, which may include ordering—

''(A) the counsel for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion brought under section 707(b), including reasonable attorneys' fees;

''(B) the assessment of an appropriate civil penalty against the counsel for the debtor; and

''(C) the payment of the civil penalty to the trustee or the United States trustee.

''(10) The court may award a debtor all reasonable costs and other appropriate damages in contesting a motion brought by a party in interest (other than a trustee, bankruptcy administrator, or United States trustee) under this subsection (including reasonable attorneys' fees) if the court does not grant the motion and the court finds that—

''(A) the position of the party that brought the motion was not substantially justified; or

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

''(11) A party in interest may not bring a motion under this section until the United States trustee has either filed a statement under section 704(b)(2)(A) or filed a motion under section 704(b)(2)(B).

''(12) If an attorney for a party in interest (other than a trustee, bankruptcy administrator, or United States trustee) brings a motion for dismissal or conversion under this subsection, and the court does not grant that motion and finds that the action of the counsel for the moving party in filing such motion under this chapter violated Rule 9011, the court shall assess damages, which may include ordering—

''(A) the counsel for the moving party to reimburse the debtor for all reasonable costs in defending a motion brought under section 707(b), including reasonable attorneys' fees;

''(B) the assessment of an appropriate civil penalty against the counsel for the moving party.

''(13) In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) and as described by section 548(a)(2)of this title to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)) of this title.

''(14) No court, United States trustee, bankruptcy administrator, or other party in interest shall bring a motion under subsection (b)(1)(A) if, as of the date of the order for relief, the debtor's current monthly income, when multiplied by 12, is less than or equal to 100 percent of the highest national or applicable State or Metropolitan Statistical Area median family income reported for a family of equal size, whichever is greater, or in the case of a household of 1 person, less than or equal to 100 percent of the highest national or State or Metropolitan Statistical Area median household income for 1 earner, whichever is greater, as adjusted, if applicable, as provided in paragraph(6);''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended—

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

''(10A) 'current monthly income'—

''(A) means the average monthly income from all sources which the debtor, or in a joint case, the debtor and the debtor's spouse, receive without regard to whether the income is taxable income, derived during the 180-day period preceding the date of determination;

''(B) includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse), on a regular basis to the household expenses of the debtor or the debtor's dependents (and, in a joint case, the debtor's spouse if not otherwise a dependent), but excludes—

''(i) payments to victims of war crimes or crimes against humanity;

''(ii) benefits received from the Department of Veterans Affairs in connection with service in the armed forces of the United States;

''(iii) income received on account of disability;and

''(iv) benefits received under the Social Security Act.'';

(2) by inserting after paragraph (17) the following:

''(17A) 'estimated administrative expenses' means 10 percent of projected payments under a chapter 13 plan;''.

(c) DUTIES OF CHAPTER 7 TRUSTEE.—Section 704 of title 11, United States Code, is amended—

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

(2) by adding at the end the following:

''(b)(1) With respect to an individual debtor under this chapter, the trustee shall review all materials filed by the debtor and, not later than 10 days after the first meeting of creditors, file with the court and the United States trustee a statement as to whether the debtor's case could be presumed to be an abuse under section 707(b).

''(2) Not later than 60 days after receiving a statement filed under paragraph (1), the United States trustee or bankruptcy administrator shall—

''(A) file a statement setting forth the reasons why the bankruptcy administrator does not believe that such a motion would be appropriate or would be prohibited because the debtor is a debtor of the kind described in section 707(b)(14) of this title; or

''(B) file a motion to dismiss or convert under section 707(b) if, based on the filing of such statement with the court, the United States trustee or bankruptcy administrator determines that the case should be presumed to be an abuse under section 707(b) and the debtor's current monthly income, when multiplied by 12, is less than or equal to 100 percent of the highest national or applicable State or State Metropolitan Statistical Area median family income reported for a family of equal size, whichever is greater, or in the case of a household of 1 person, less than or equal to 100 percent of the highest national or State or Metropolitan Statistical Area median household income for 1 earner,

whichever is greater. For the purposes of determining whether a motion would be appropriate to be filed, the United States trustee shall consider adjustments to current monthly income for income items received over the most recent 180 days that are not reasonably expected to be reflected in future income, or expenses likely to be due under a chapter 13 plan which are not included in the required statement of the debtor's expense. The debtor shall, at the request of the United States trustee, provide documentation for any current income items that are not reasonably expected to be reelected in future income, and a detailed explanation of the circumstances that warrant making such adjustments. If the United States trustee determines that, after accounting for these adjustments, the debtor's current monthly income, which multiplied by 12, is less than or equal to 100 percent of the higher of the national, State, or Metropolitan Statistical Area median family income reported for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, then the case shall be presumed not be an abuse of the previous of this chapter.

For the purpose of this subsection, the national or applicable State or Metropolitan Statistical Area median family income reported for a household of more than 4 individuals shall be that of a household of 4 individuals plus $583 per month for each additional member of that household.

''(3) Paragraph (2) shall not be construed to preclude the court or any other party who is eligible to file a motion under section 707(b) from bringing such a motion.''.

(d) MEETING OF CREDITORS AND EQUITY SECURITY HOLDERS.—Section 341 of title 11, United States Code, is amended by adding the following new subsection:

''(e) The initial notice of the meeting of creditors shall indicate whether the debtor's current monthly income is reported to be equal or greater than the applicable median income for purposes of subsection 707(b) of this title.''.

(e) GUIDELINES FOR ASSESSING INCOME.—Section 586 of title 28, United States Code, is amended by adding the following new subsection:

''(f) Not later than 1 year after the effective date of this subsection, the Director of the Executive Office for the United States Trustees shall issue guidelines to assist in making assessment of whether income is not reasonably necessary to be expended by a debtor for the maintenance or support of the debtor, the dependents of the debtor, and in a joint case, the spouse of the debtor if the spouse is not otherwise a dependent. The director shall consult with the Department of the Treasury, and others as needed in developing the guidelines.''.

(f) Section 104, title 11, United States Code, as amended by subsection ___ of this Act, is amended by striking out ''523(a)(2)(C), and 707(b)(3)'' each place it appears and inserting ''523(a)(2)(C), and 707(b)'' in lieu thereof.

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

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

SEC. 103. NOTICE OF ALTERNATIVES.

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

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

''(1) a brief description of—

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

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

''(2) statements specifying that—

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

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

SEC. 104. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

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

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

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

(c) EVALUATION.—(1) During the 1-year period referred to in subsection (b), the Director shall evaluate the effectiveness of—

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

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

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

Subtitle B—Consumer Bankruptcy Protections

SEC. 105. DEFINITIONS.

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

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

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

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

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

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

''(12B) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer pursuant to section 110 of this title, but does not include any person that is any of the following or an officer, director, employee or agent thereof—

''(A) any nonprofit organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(B) any creditor of the person to the extent the creditor is assisting the person to restructure any debt owed by the person to the creditor; or

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

(b) CONFORMING AMENDMENT.—In section 104(b)(1) by inserting ''101(3),'' after ''sections''.

SEC. 106. ENFORCEMENT.

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

''§ 526. Debt relief agency enforcement

''(a) A debt relief agency shall not—

''(1) fail to perform any service which the debt relief agency has told the assisted person or prospective assisted person the agency would provide that person in connection with the preparation for or activities during a proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person to make any statement in any document filed in a proceeding under this title, which is untrue and misleading or which upon the exercise of reasonable care, should be known by the debt relief agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, what services the debt relief agency can reasonably expect to provide that person, or the benefits an assisted person may obtain or the difficulties the person may experience if the person seeks relief in a proceeding pursuant to this title; or

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

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

''(c) NONCOMPLIANCE.—

''(1) Any contract between a debt relief agency and an assisted person for bankruptcy assistance which does not comply with the material requirements of this section shall be treated as void and may not be enforced by any Federal or State court or by any other 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 which the debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if the debt relief agency is found, after notice and hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section with respect to a bankruptcy case or related proceeding of the assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or related proceeding which is dismissed or converted because of the debt relief agency's intentional or negligent failure to file bankruptcy papers, including papers specified in section 521 of this title; or

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

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

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

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

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

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

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

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

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

''(c) RELATION TO STATE LAW.—This section shall not annul, alter, affect or exempt any person subject to those 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.''.

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

''526. Debt relief agency enforcement.''.

SEC. 107. SENSE OF THE CONGRESS.

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

SEC. 108. DISCOURAGING ABUSIVE REAFFIRMATION PRACTICES.

(a) Section 524 of title 11, United States Code, is amended—

(1) in subsection (c)(2)(B) by adding at the end the following:

''(C)(i) such agreement contains a clear and conspicuous statement advising the debtor of the amount of the monthly payments, the total amount payable and number of payments if the payments are made according to schedule, the amount of the total payment attributable to principal, interest, late fees, and creditor's attorneys fees, the interest rate, and the ways in which terms differ from the original agreement; and

''(ii) if the debt is secured, the agreement is accompanied by a copy of the instrument creating the debt and any security interest or lien and the documents necessary to show perfection of the interest, and the agreement contains a clear and conspicuous statement that advises the debtor of the value of the collateral and the date on which the lien will be released if payments are made according to schedule;'';

(2) in subsection (c)(6)(B), by inserting after ''real property'' the following: ''or is a debt described in subsection (c)(7)''; and

(3) by adding at the end of subsection (c) the following:

''(7) in a case concerning an individual, if the consideration for such agreement is based on whole or in part on an unsecured consumer debt, or is based on whole or in part upon a debt for an item of personalty, the value of which at point of purchase was $500 or less, and in which the creditor asserts a security interest, the court approves such agreement as—

''(A) in the best interest of the debtor in light of the debtor's income and expenses;

''(B) not imposing an undue hardship on the debtor's future ability of the debtor to pay for the needs of children and other dependents (including court ordered support);

''(C) not requiring the debtor to pay the creditor's attorney's fees, expenses, or other costs relating to the collection of the debt;

''(D) not agreed upon by the debtor to protect property necessary for the care and maintenance of children or other dependents that would have nominal value on repossession;

''(E) not the product of coercive threats or actions by the creditor in the creditor's course of dealings with the debtor; and

''(F) not unfair because excessive in amount as compared to the value of the collateral;

(4) in subsection (d)(2) by striking ''subsections (c)(6)'' and inserting ''subsections (c)(6) and (c)(7)'', and after ''of this section,'' by striking ''if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor'' and adding at the end ''as applicable''.

(b) Section 104 of title 11, United States Code, as amended by subsection ____ of this Act, is amended by striking out ''523(a)(2)(C), and 707(b)(3)'' each place it appears and inserting ''523(a)(2)(C), 524(c)(7), and 707(b)(3)'' in lieu thereof.

SEC. 109. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

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

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based wholly on unsecured consumer debts by not more than 20 percent, if the debtor can prove by clear and convincing evidence that the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency acting on behalf of the debtor, and if—

''(A) such offer was made within the period beginning 60 days before the filing of the petition;

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

''(C) no part of the debt under the alternative repayment schedule is nondischargeable, is entitled to priority under section 507 of this title, or would be paid a greater percentage in a chapter 13 proceeding than offered by the debtor.

''(2) The debtor shall have the burden of proving that the proposed alternative repayment schedule was made in the 60-day period specified in subparagraph (A) and that the creditor unreasonably refused to consider the debtor's proposal.''.

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

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

SEC. 110. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) STUDY REQUIRED.—During the period beginning 180 days after the date of enactment of this Act and ending 18 months after the date of the enactment, the Board of Governors of the Federal Reserve System (in this section referred to as the ''Board'') shall conduct a study and submit to Congress a report (including recommendations for any appropriate legislation) regarding—

(1) whether a consumer engaging in an open-end credit transaction (as defined pursuant to section 103 of the Truth in lending Act) secured by the consumer's principal dwelling is provided adequate information under Federal law, including under section 127A of the Truth in Lending Act, regarding the tax deductibility of interest paid on such transaction; and

(2) whether a consumer engaging in a closed-end credit transaction (as defined pursuant to section 103 of the Truth in Lending Act) secured by the consumer's principal dwelling is provided adequate information regarding the tax deductibility of interest paid on such transaction.

In conducting such study, the Board shall specifically consider whether additional disclosures are necessary with respect to such open-end or closed-end credit transactions in which the amount of the credit extended exceeds the fair market value of the dwelling.

(b) REGULATIONS.—If the Board determines that additional disclosures are necessary in connection with transactions described in subsection (a), the Board, pursuant to its authority under the Truth in Lending Act, may promulgate regulations that would require such additional disclosures. Any such regulations promulgated by the Board under this section shall not take effect before the end of the 36-month period after the date of the enactment of this Act.

SEC. 111. DUAL USE DEBIT CARD.

(a) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (in this section referred to as the ''Board'') shall conduct a study of existing protections provided to consumers to limit their liability for unauthorized use of a debit card or similar access device.

(b) SPECIFIC CONSIDERATIONS.—In conducting the study required by subsection (a), the Board shall specifically consider the following—

(1) the extent to which existing provisions of section 909 of the Electronic Fund Transfer Act and the Board's implementing regulations provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Funds Transfer Act or the Board's implementing regulations thereto are necessary to

provide adequate protection for consumers in this area.

(c) REPORT AND REGULATIONS.—Not later than 2 years after the date of the enactment of this Act, the Board shall make public a report on its findings with respect to the adequacy of existing protections afforded consumers with respect to unauthorized-use liability for debit cards and similar access devices. If the Board determines that such protections are inadequate, the Board, pursuant to its authority under the Electronic Funds Transfer Act, may issue regulations to address such inadequacy. Any regulations issued by the Board shall not be effective before 36 months after the date of the enactment of this Act.

SEC. 112. DISCOURAGING RECKLESS LENDING PRACTICES.

(a) LIMITING CLAIMS ARISING FROM IRRESPONSIBLE LENDING PRACTICES.—Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8) by striking ''or'' at the end,

(2) in paragraph (9) by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(10) the claim is for a consumer debt under an open end credit plan (as defined in section 103 of the Truth in Lending Act) and before incurring such debt under such plan the debtor was not informed in writing in a clear and conspicuous manner (or in the case of a worldwide web-based solicitation to open a credit card account under such plan, at the time of solicitation by the person making the solicitation to open such account)—

''(A) of the method of determining the required minimum payment amount, if a minimum payment is required that is different from the amount of any finance charge, and the charges or penalties, if any, which may be imposed for failure by the obligor to pay the required finance charge or minimum payment amount;

''(B) of repayment information that would apply to the outstanding balance of the consumer under the credit plan, including—

''(i) the required minimum monthly payment on that balance, represented as both a dollar figure and a percentage of that balance;

''(ii) the number of months (rounded to the nearest month) that it would take to pay the entire amount of that current balance if the consumer pays only the required minimum monthly payments and if no further advances are made;

''(iii) the total cost to the consumer, including interest and principal payments, of paying that balance in full if the consumer pays only the required minimum monthly payments and if no further advances are made; and

(iv) the following statement: 'If your current rate is a temporary introductory rate, your total costs may be higher.';

''(C) of the method for determining the required minimum payment amount to be paid for each billing cycle, and the charge or penalty, if any, to be imposed for any failure by the obligor to pay the required minimum payment amount;

''(D) of any charge that may be imposed due to the failure of the obligor to make payment on or before a required payment due date, the date that payment is due or, if different, the date on which a late payment fee will be charged, and that the terms and conditions of such charge will be stated prominently in a conspicuous location on each billing statement, together with the amount of the charge to be imposed if payment is made after such date; and

''(E) in any application or solicitation for a credit card issued under such plan that offers, during an introductory period of less than 1 year, an annual percentage rate of interest that—

''(i) is less than the annual percentage rate of interest which will apply after the end of such introductory period, of such rate in a statement that includes the following: 'The annual percentage rate of interest applicable during the introductory period is not the annual percentage rate which will apply after the end of the introductory period. The permanent annual percentage rate will apply after [insert applicable date] and will be [insert applicable percentage rate].' ; or

''(ii) varies in accordance with an index, which is less than the current annual percentage rate under the index which will apply after the end of such period, of such rate in a statement that includes the following: 'The annual percentage rate of interest applicable during the introductory period is not the annual percentage rate which will apply after the end of the introductory period. The permanent annual percentage rate will be determined by an index and will apply after [insert date]. If the index which will apply after such date were applied to your account today, the annual percentage rate would be [insert applicable percentage rate].' ;

''(11) such claim is for a debt that arose from a credit card account under an open end credit plan (as defined in section 103 of the Truth in Lending Act, for which account a creditor imposed a fee based on inactivity for the account during any period in which no advances were made if the obligor maintains any outstanding balance and is charged a finance charge applicable to such balance;

''(12) such claim is for a debt that arose from a credit card account for which a credit card that was issued to or on behalf of, any individual who has not attained 21 years of age except in response to a written request or application to the card issuer to open a credit card account containing—

''(A) the signature of the parent or guardian of such individual indicating joint liability for debts incurred by such individual in connection with the account before such individual reaches the age of 21; or

''(B) a submission by such individual of financial information indicating an independent means of repaying any obligation arising from the proposed extension of credit in connection with the account;

''(13) such claim is for a debt that arose on an account that a creditor cancelled, imposed a minimum finance charge for any period (including any annual period), imposed any fee in lieu of a minimum finance charge, or imposed any other charge or penalty with regard to such account or credit extended under such account solely on the basis that any credit extended has been repaid in full before the end of any grace period applicable with respect to the extension of credit, excluding a flat annual fee imposed on the consumer in advance of any annual period to cover the cost of maintaining a credit card account during such annual period without regard to whether any credit is actually extended under such account during such period, or the actual finance charge applicable with respect to any credit extended under such account during such annual period at the annual percentage rate disclosed to the consumer in accordance with this title for the period of time any such credit is outstanding;

''(14) such claim is for a debt that arose from an increase in any annual percentage rate of interest (other than an increase due to the expiration of any introductory percentage rate of interest or due solely to a change in another rate of interest to which such rate is indexed) applicable to any outstanding balance of credit under such plan may take effect before the beginning of the billing cycle which begins not less than 15 days after the obligor receives notice of such increase; and

''(15) that if an obligor referred to in paragraph (14) cancels the credit card account before the beginning of the billing cycle referred to in such paragraph—

''(A) if the an annual percentage rate of interest applicable after the cancellation with respect to such outstanding balance on such account as of the date of cancellation exceeds any annual percentage rate of interest applicable with respect to such balance under the terms and conditions in effect before the increase referred to in paragraph (14); and

''(B) the repayment of such outstanding balance after the cancellation is not subject to all other terms and conditions applicable with respect to such account before the increase referred to in such paragraph;

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (9) the following:

''(9A) 'credit card' includes any dual purpose or multifunction card, including a stored-value card, debit card, check card, check guarantee card, or purchase-price discount card, that is connected with an open end credit plan (as defined in section 103 of the Truth in Lending Act) and can be used, either on issuance or upon later activation, to obtain credit directly or indirectly.''.

SEC. 113. PROTECTION OF SAVINGS EARMARKED FOR THE POSTSECONDARY EDUCATION OF CHILDREN.

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

(1) in subsection (b)(2)—

(A) in subparagraph (A) by striking ''and'' at the end;

(B) in subparagraph (B) by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) except as provided in paragraph (n), funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not less than 365 days before the date of entry of the order of relief but only to the extent such funds—

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

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

(2) by adding at the end the following:

''(n) For purposes of subsection (b)(3)(C), funds placed in an education individual retirement account shall not be exempt under this subsection—

''(1) unless the designated beneficiary of such account was a dependent child of the debtor for the taxable year for which the funds were placed in such account; and

''(2) to the extent such funds exceed—

''(A) $50,000 in the aggregate in all such accounts having the same designated beneficiary; or

''(B) $100,000 in the aggregate in all such accounts attributable to all such dependent children of the debtor.''.

SEC. 114. EFFECT OF DISCHARGE.

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

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title (including a plan of reorganization confirmed under chapter 11 of this title) in the manner required by the plan (including crediting the amounts required under the plan) shall constitute a violation of any injunction under subsection (a)(2) which has arisen at the time of the failure.

''(j) An individual who is injured by the willful failure of a creditor to comply with the requirements for a reaffirmation agreement under subsections (c) and (d), or by any willful violation of the injunction under subsection (a)(2), shall be entitled to recover—

''(1) the greater of—

''(A) the amount of actual damages; or

''(B) $1,000; and

''(2) costs and attorneys' fees.''.

SEC. 115. LIMITING TRUSTEE LIABILITY.

(a) QUALIFICATION OF TRUSTEE.—Section 322 of title 11, United States Code, is amended—

(1) in subsection (a) by adding at the end the following:

''The trustee in a case under this title is not liable personally or on such trustee's bond for acts taken within the scope of the trustee's duties or authority as delineated by other sections of this title or by order of the court, except to the extent that the trustee acted with gross negligence. Gross negligence shall be defined as reckless indifference or deliberate disregard of the trustee's fiduciary duty.''; and

(2) in subsection (c) by inserting ''for any acts within the scope of the trustee's authority defined in subsection (a)'' before the period at the end.

(b) ROLE AND CAPACITY OF TRUSTEE.—Section 323 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting at the end the following: ''in the trustee's official capacity as representative of the estate'' before the period at the end; and

(2) by adding at the end the following:

''(c) The trustee in a case under this title may not be sued, either personally, in a representative capacity, or against the trustee's bond in favor of the United States—

''(1) for acts taken in furtherance of the trustee's duties or authority in a case in which the debtor is subsequently determined to be ineligible for relief under the chapter in which the trustee was appointed; or

''(2) for the dissemination of statistics and other information regarding a case or cases, unless the trustee has actual knowledge that the information is false.

''(d) The trustee in a case under this title may not be sued in a personal capacity without leave of the bankruptcy court in which the case is pending.''.

SEC. 116. REINFORCE THE FRESH START.

(a) RESTORATION OF AN EFFECTIVE DISCHARGE.—Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''by any court'',

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

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

SEC. 117. DISCOURAGING BAD FAITH REPEAT FILINGS.

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

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

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

(3) by adding at the end the following new paragraphs:

''(3) If a single or joint case is filed by or against an individual debtor under chapter 7, 11, or 13 (other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) of this title), and if a single or joint case of the debtor was pending within the previous 1-year period but was dismissed, the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease will terminate with respect to the debtor on the 30th day after the filing of the later case. Upon motion by a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

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

''(ii) a previous case under any of chapters 7, 11, or 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

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

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

''(4) If a single or joint case is filed by or against an individual debtor under this title (other than a case refiled under a chapter other than chapter 7 after a dismissal under section 707(b) of this title), and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, the stay under subsection (a) will not go into effect upon the filing of the later case. On request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect. If a party in interest requests within 30 days of the filing of the later case, the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed. A stay imposed pursuant to the preceding sentence will be effective on the date of entry of the order allowing the stay to go into effect. A case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(A) as to all creditors if—

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

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

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

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

SEC. 118. CURBING ABUSIVE FILINGS.

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

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

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

(3) by adding at the end the following:

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

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

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

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

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

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

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

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

''(B) if the bankruptcy case was filed in violation of a bankruptcy court order in a

prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case.''.

SEC. 119. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521—

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

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

(C) by adding at the end the following:

''(6) in an individual case under chapter 7 of this title, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless, in the case of an individual debtor, the debtor takes 1 of the following actions within 45 days after the first meeting of creditors under section 341(a)—

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

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

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

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

SEC. 120. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended as follows—

(1) in section 362—

(A) by striking ''(e), and (f)'' in subsection (c) and inserting in lieu thereof ''(e), (f), and (h)''; and

(B) by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following:

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

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

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

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

(2) in section 521, as amended by sections 603 and 604—

(A) in paragraph (2) by striking ''consumer'';

(B) in paragraph (2)(B)—

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

(ii) by striking ''forty-five day'' the second place it appears and inserting ''30-day'';

(C) in paragraph (2)(C) by inserting ''except as provided in section 362(h) of this title'' before the semicolon; and

(D) by inserting after subsection (b) the following:

''(c) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 121. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

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

''(i) the plan provides that the holder of such claim retain the lien securing such claim until the earlier of payment of the underlying debt determined under nonbankruptcy law or discharge under section 1328 of this title, and that if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

SEC. 123. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by adding at the end the following:

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

SEC. 124. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(2)(A) of title 11, United States Code, is amended—

(1) by striking ''180'' and inserting ''730''; and

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

SEC. 125. RESTRICTIONS ON CERTAIN EXEMPT PROPERTY OBTAINED THROUGH FRAUD.

Section 522 of title 11, United States Code, as amended by section 113, is amended—

(1) in subsection (b)(2)(A) by inserting ''subject to subsection (o),'' before ''any property''; and

(2) by adding at the end the following:

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

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

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

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

shall be reduced to the extent such value is attributable to any portion of any property that the debtor disposed of in the 730-day period ending of the date of the filing of the petition, with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b) if on such date the debtor had held the property so disposed of.''.

SEC. 126. ROLLING STOCK EQUIPMENT.

(a) IN GENERAL.—Section 1168 of title 11, United States Code, is amended to read as follows:

''§ 1168. Rolling stock equipment

''(a)(1) The right of a secured party with a security interest in or of a lessor or conditional vendor of equipment described in paragraph (2) to take possession of such equipment in compliance with an equipment security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court, except that the right to take possession and enforce those other rights and remedies shall be subject to section 362 of this title, if—

''(A) before the date that is 60 days after the date of commencement of a case under this chapter, the trustee, subject to the court's approval, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind described in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of commencement of the case and is an event of default therewith is cured before the expiration of such 60-day period;

''(ii) that occurs or becomes an event of default after the date of commencement of the case and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default or event of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in accordance with the terms of such security agreement, lease, or conditional sale contract, if cure is permitted under that agreement, lease, or conditional sale contract.

''(2) The equipment described in this paragraph—

''(A) is rolling stock equipment or accessories used on rolling stock equipment, including superstructures or racks, that is subject to a security interest granted by, leased to, or conditionally sold to a debtor; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, that is to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(3) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the court's approval, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(2), if at any time after the date of commencement of the case under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession of the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(2), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or prior to October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.

''(e) With respect to equipment first placed in service after October 22, 1994, for purposes of this section, the term 'rolling stock equipment' includes rolling stock equipment that is substantially rebuilt and accessories used on such equipment.''.

(b) AIRCRAFT EQUIPMENT AND VESSELS.—Section 1110 of title 11, United States Code, is amended to read as follows:

''§ 1110. Aircraft equipment and vessels

''(a)(1) Except as provided in paragraph (2) and subject to subsection (b), the right of a secured party with a security interest in equipment described in paragraph (3), or of a lessor or conditional vendor of such equipment, to take possession of such equipment in compliance with a security agreement, lease, or conditional sale contract, and to enforce any of its other rights or remedies, under such security agreement, lease, or conditional sale contract, to sell, lease, or otherwise retain or dispose of such equipment, is not limited or otherwise affected by any other provision of this title or by any power of the court.

''(2) The right to take possession and to enforce the other rights and remedies described in paragraph (1) shall be subject to section 362 of this title if—

''(A) before the date that is 60 days after the date of the order for relief under this chapter, the trustee, subject to the approval of the court, agrees to perform all obligations of the debtor under such security agreement, lease, or conditional sale contract; and

''(B) any default, other than a default of a kind specified in section 365(b)(2) of this title, under such security agreement, lease, or conditional sale contract—

''(i) that occurs before the date of the order is cured before the expiration of such 60-day period;

''(ii) that occurs after the date of the order and before the expiration of such 60-day period is cured before the later of—

''(I) the date that is 30 days after the date of the default; or

''(II) the expiration of such 60-day period; and

''(iii) that occurs on or after the expiration of such 60-day period is cured in compliance with the terms of such security agreement, lease, or conditional sale contract, if a cure is permitted under that agreement, lease, or contract.

''(3) The equipment described in this paragraph—

''(A) is—

''(i) an aircraft, aircraft engine, propeller, appliance, or spare part (as defined in section 40102 of title 49) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that, at the time such transaction is entered into, holds an air carrier operating certificate issued pursuant to chapter 447 of title 49 for aircraft capable of carrying 10 or more individuals or 6,000 pounds or more of cargo; or

''(ii) a documented vessel (as defined in section 30101(1) of title 46) that is subject to a security interest granted by, leased to, or conditionally sold to a debtor that is a water carrier that, at the time such transaction is entered into, holds a certificate of public convenience and necessity or permit issued by the Department of Transportation; and

''(B) includes all records and documents relating to such equipment that are required, under the terms of the security agreement, lease, or conditional sale contract, to be surrendered or returned by the debtor in connection with the surrender or return of such equipment.

''(4) Paragraph (1) applies to a secured party, lessor, or conditional vendor acting in its own behalf or acting as trustee or otherwise in behalf of another party.

''(b) The trustee and the secured party, lessor, or conditional vendor whose right to take possession is protected under subsection (a) may agree, subject to the approval of the court, to extend the 60-day period specified in subsection (a)(1).

''(c)(1) In any case under this chapter, the trustee shall immediately surrender and return to a secured party, lessor, or conditional vendor, described in subsection (a)(1), equipment described in subsection (a)(3), if at any time after the date of the order for relief under this chapter such secured party, lessor, or conditional vendor is entitled pursuant to subsection (a)(1) to take possession of such equipment and makes a written demand for such possession to the trustee.

''(2) At such time as the trustee is required under paragraph (1) to surrender and return equipment described in subsection (a)(3), any lease of such equipment, and any security agreement or conditional sale contract relating to such equipment, if such security agreement or conditional sale contract is an executory contract, shall be deemed rejected.

''(d) With respect to equipment first placed in service on or before October 22, 1994, for purposes of this section—

''(1) the term 'lease' includes any written agreement with respect to which the lessor and the debtor, as lessee, have expressed in the agreement or in a substantially contemporaneous writing that the agreement is to be treated as a lease for Federal income tax purposes; and

''(2) the term 'security interest' means a purchase-money equipment security interest.''.

SEC. 127. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5) of this title;

''(2) of the kind specified in paragraph (2), (4), (3)(B), (5), (8), or (9) of section 523(a) of this title;

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 128. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 1999''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following judgeship positions shall be filled in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judgeship for the eastern district of California.

(B) Four additional bankruptcy judgeships for the central district of California.

(C) One additional bankruptcy judgeship for the southern district of Florida.

(D) Two additional bankruptcy judgeships for the district of Maryland.

(E) One additional bankruptcy judgeship for the eastern district of Michigan.

(F) One additional bankruptcy judgeship for the southern district of Mississippi.

(G) One additional bankruptcy judgeship for the district of New Jersey.

(H) One additional bankruptcy judgeship for the eastern district of New York.

(I) One additional bankruptcy judgeship for the northern district of New York.

(J) One additional bankruptcy judgeship for the southern district of New York.

(K) One additional bankruptcy judgeship for the eastern district of Pennsylvania.

(L) One additional bankruptcy judgeship for the middle district of Pennsylvania.

(M) One additional bankruptcy judgeship for the western district of Tennessee.

(N) One additional bankruptcy judgeship for the eastern district of Virginia.

(2) VACANCIES.—The first vacancy occurring in the office of a bankruptcy judge in each of the judicial districts set forth in paragraph (1) that—

(A) results from the death, retirement, resignation, or removal of a bankruptcy judge; and

(B) occurs 5 years or more after the appointment date of a bankruptcy judge appointed under paragraph (1);

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary bankruptcy judgeship positions authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, the district of South Carolina, and the eastern district of Tennessee under section 3(a) (1), (3), (7), (8), and (9) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in

the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring—

(A) 8 years or more after November 8, 1993, with respect to the northern district of Alabama;

(B) 10 years or more after October 28, 1993, with respect to the district of Delaware;

(C) 8 years or more after August 29, 1994, with respect to the district of Puerto Rico;

(D) 8 years or more after June 27, 1994, with respect to the district of South Carolina; and

(E) 8 years or more after November 23, 1993, with respect to the eastern district of Tennessee.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 remain applicable to such temporary judgeship position.

(d) TECHNICAL AMENDMENT.—The first sentence of section 152(a)(1) of title 28, United States Code, is amended to read as follows: ''Each bankruptcy judge to be appointed for a judicial district as provided in paragraph (2) shall be appointed by the United States court of appeals for the circuit in which such district is located.''.

(e) TRAVEL EXPENSES OF BANKRUPTCY JUDGES.—Section 156 of title 28, United States Code, is amended by adding at the end the following new subsection:

''(g)(1) In this subsection, the term 'travel expenses'—

''(A) means the expenses incurred by a bankruptcy judge for travel that is not directly related to any case assigned to such bankruptcy judge; and

''(B) shall not include the travel expenses of a bankruptcy judge if—

''(i) the payment for the travel expenses is paid by such bankruptcy judge from the personal funds of such bankruptcy judge; and

''(ii) such bankruptcy judge does not receive funds (including reimbursement) from the United States or any other person or entity for the payment of such travel expenses.

''(2) Each bankruptcy judge shall annually submit the information required under paragraph (3) to the chief bankruptcy judge for the district in which the bankruptcy judge is assigned.

''(3)(A) Each chief bankruptcy judge shall submit an annual report to the Director of the Administrative Office of the United States Courts on the travel expenses of each bankruptcy judge assigned to the applicable district (including the travel expenses of the chief bankruptcy judge of such district).

''(B) The annual report under this paragraph shall include—

''(i) the travel expenses of each bankruptcy judge, with the name of the bankruptcy judge to whom the travel expenses apply;

''(ii) a description of the subject matter and purpose of the travel relating to each travel expense identified under clause (i), with the name of the bankruptcy judge to whom the travel applies; and

''(iii) the number of days of each travel described under clause (ii), with the name of the bankruptcy judge to whom the travel applies.

''(4)(A) The Director of the Administrative Office of the United States Courts shall—

''(i) consolidate the reports submitted under paragraph (3) into a single report; and

''(ii) annually submit such consolidated report to Congress.

''(B) The consolidated report submitted under this paragraph shall include the specific information required under paragraph (3)(B), including the name of each bankruptcy judge with respect to clauses (i), (ii), and (iii) of paragraph (3)(B).''.

SEC. 129. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

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

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

SEC. 131. APPLICATION OF THE CODEBTOR STAY ONLY WHEN THE STAY PROTECTS THE DEBTOR.

Section 1301(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) Notwithstanding subsection (c) and except as provided in subparagraph (B), in any case in which the debtor did not receive the consideration for the claim held by a creditor, the stay provided by subsection (a) shall apply to that creditor for a period not to exceed 30 days beginning on the date of the order for relief, to the extent the creditor proceeds against—

''(i) the individual that received that consideration; or

''(ii) property not in the possession of the debtor that secures that claim.

''(B) Notwithstanding subparagraph (A), the stay provided by subsection (a) shall apply in any case in which the debtor is primarily obligated to pay the creditor in whole or in part with respect to a claim described in subparagraph (A) under a legally binding separation or property settlement agreement or divorce or dissolution decree with respect to—

''(i) an individual described in subparagraph (A)(i); or

''(ii) property described in subparagraph (A)(ii).

''(3) Notwithstanding subsection (c), the stay provided by subsection (a) shall terminate as of the date of confirmation of the plan, in any case in which the plan of the debtor provides that the debtor's interest in personal property subject to a lease with respect to which the debtor is the lessee will be surrendered or abandoned or no payments will be made under the plan on account of the debtor's obligations under the lease.''.

SEC. 132. ADEQUATE PROTECTION FOR INVESTORS.

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

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission pursuant to section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission pursuant to section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 118, is amended—

(1) in paragraph (19) by striking ''or'' at the end;

(2) in paragraph (20) by striking the period at the end and a inserting ''; or''; and

(3) by inserting after paragraph (20) the following:

''(21) under subsection (a), of the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power; of the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or of any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements.''.

SEC. 134. GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.

Section 365 of title 11, United States Code, is amended by adding at the end the following:

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

''(2) In the case of an individual under chapter 7, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may, at its option, condition such assumption on cure of any outstanding default on terms set by the contract. If within 30 days of the notice from the creditor the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate. The stay under section 362 of this title and the injunction under section 524(a) of this title shall not be violated by notification of the debtor and negotiation of cure under this subsection. Nothing in this paragraph shall require a debtor to assume a lease, or a creditor to permit assumption.

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

SEC. 135. ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.

(a) IN GENERAL.—Chapter 13 of title 11, United States Code, is amended by adding after section 1307 the following:

''§ 1307A. Adequate protection in chapter 13 cases

''(a)(1)(A) On or before the date that is 30 days after the filing of a case under this chapter, the debtor shall make cash payments in an amount determined under paragraph (2), to—

''(i) any lessor of personal property; and

''(ii) any creditor holding a claim secured by personal property to the extent that the claim is attributable to the purchase of that property by the debtor.

''(B) The debtor or the plan shall continue making the adequate protection payments required under subparagraph (A) until the earlier of the date on which—

''(i) the creditor begins to receive actual payments under the plan; or

''(ii) the debtor relinquishes possession of the property referred to in subparagraph (A) to—

''(I) the lessor or creditor; or

''(II) any third party acting under claim of right, as applicable.

''(2) The payments referred to in paragraph (1)(A) shall be the contract amount and shall reduce any amount payable under section 1326(a) of the title.

''(b)(1) Subject to the limitations under paragraph (2), the court may, after notice and hearing, change the amount and timing of the dates of payment of payments made under subsection (a).

''(2)(A) The payments referred to in paragraph (1) shall be payable not less frequently than monthly.

''(B) The amount of payments referred to in paragraph (1) shall not be less than the amount of any weekly, biweekly, monthly, or other periodic payment scheduled as payable under the contract between the debtor and creditor.

''(c) Notwithstanding section 1326(b), the payments referred to in subsection (a)(1)(A) shall be continued in addition to plan payments under a confirmed plan until actual payments to the creditor begin under that plan, if the confirmed plan provides—

''(1) for payments to a creditor or lessor described in subsection (a)(1); and

''(2) for the deferral of payments to such creditor or lessor under the plan until the payment of amounts described in section 1326(b).

''(d) Notwithstanding sections 362, 542, and 543, a lessor or creditor described in subsection (a) may retain possession of property described in that subsection that was obtained in accordance with applicable law before the date of filing of the petition until the first payment under subsection (a)(1)(A) is received by the lessor or creditor.

''(e) On or before 60 days after the filling of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide each creditor or lessor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1307A. Adequate protection in chapter 13 cases.''.

SEC. 136. AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, as amended by sections 118 and 132, is amended—

(1) in paragraph (20), by striking ''or'' at the end;

(2) in paragraph (21), by striking the period at the end and inserting a semicolon; and

(3) by inserting after paragraph (21) the following:

''(22) under subsection (a) of any transfer that is not avoidable under section 544 of this title and that is not avoidable under section 549 of this title; or

''(23) under subsection (a)(3), of eviction actions based on endangerment to property or person or the use of illegal drugs.''.

SEC. 137. EXTEND PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8) by striking ''six'' and inserting ''7''; and

(2) in section 1328 by adding at the end the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for by the plan or disallowed under section 502 of this title if the debtor has received a discharge in any case filed under this title within 5 years of the order for relief under this chapter.''.

SEC. 139. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

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

(1) by striking paragraph (7);

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

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

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

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

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

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

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

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

''(1) First, allowed claims for domestic support obligations to be paid in the following order on the condition that funds received under this paragraph by a governmental unit in a case under this title be applied:

''(A) Claims that, as of the date of entry of the order for relief, are owed directly to a spouse, former spouse, or child of the debtor, or the parent of such child, without regard to whether the claim is filed by the spouse, former spouse, child, or parent, or is filed by a governmental unit on behalf of that person.

''(B) Claims that, as of the date of entry of the order for relief, are assigned by a spouse, former spouse, child of the debtor, or the parent of that child to a governmental unit or are owed directly to a governmental unit under applicable nonbankruptcy law.''.

SEC. 142. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

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

(1) in subsection (a), by striking paragraph (5) and inserting the following:

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

(2) in subsection (a)(15)—

(A) by inserting ''or'' after ''court of record,'';

(B) by striking ''unless—'' and all that follows through ''debtor'' the last place it appears; and

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

SEC. 143. CONTINUED LIABILITY OF PROPERTY.

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

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

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

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

SEC. 144. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

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

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

SEC. 145. CLARIFICATION OF MEANING OF HOUSEHOLD GOODS.

Section 101 of title 11, United States Code, is amended by inserting after paragraph (27) the following:

''(27A) 'household goods' includes tangible personal property normally found in or around a residence, but does not include motorized vehicles used for transportation purposes;''.

SEC. 147. MONETARY LIMITATION ON CERTAIN EXEMPT PROPERTY.

Section 522 of title 11, United States Code, as amended by section 125, is amended—

(1) in subsection (b)(2)(A) by striking ''subsection (o)'' and inserting ''subsections (o) and (p)'' before ''any property''; and

(2) by adding at the end the following:

''(p)(1) Except as provided in paragraphs (2) and (3), as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any interest that exceeds $250,000 in value, in the aggregate, in—

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

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

''(C) a burial plot for the debtor or a dependent of the debtor.

''(2) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

''(3) Paragraph (1) shall not apply to debtors if applicable State law expressly provides by a statute enacted after the effective date of this paragraph that such paragraph shall not apply to debtors.''.

SEC. 148. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

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

(2) by adding at the end the following:

''(f)(1) Pursuant to procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual debtor who is unable to pay such fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7 of title 11.

''(2) The district court or the bankruptcy court may also waive for such debtors other fees prescribed pursuant to subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed pursuant to such subsections for other debtors and creditors.''.

SEC. 149. 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) by inserting ''(a)'' before ''The trustee'',

(2) in paragraph (9) by striking ''and'' at the end,

(3) in paragraph (10) by striking the period and inserting ''; and'', and

(4) by adding at the end the following:

''(11) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (b).

''(b)(1) In any case described in subsection (a)(11), the trustee shall—

''(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and

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

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

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

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

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor; and

''(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.

''(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii)(III) the last known address of the debtor.

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

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

(1) in subsection (b)—

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

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

(C) by adding at the end the following:

''(6) if, with respect to an individual debtor, there is a claim for support of a child of the debtor or a custodial parent of such child entitled to receive priority under section 507(a)(1) of this title, provide the applicable notification specified in subsection (d).'', and

(2) by adding at the end the following:

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

''(A)(i) notify in writing the holder of the claim of the right of such holder to use the services of a State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which the holder resides; and

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

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

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

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

''(I) the granting of the discharge;

''(II) the last recent known address of the debtor; and

''(III) with respect to the debtor's case, the name of each creditor that holds a claim that is not discharged under paragraph (2), (4), or (14A) of section 523(a) of this title or that was reaffirmed by the debtor under section 524(c) of this title.

''(2)(A) If, after receiving a notice under paragraph (1)(B)(iii), a holder of a claim or a State child support agency is unable to locate the debtor that is the subject of the notice, such holder or such agency may request from a creditor described in paragraph (1)(B)(iii) the last known address of the debtor.

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

SEC. 150. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

(a) IN GENERAL.—Section 541(b) of title 11 of the United States Code is amended—

(1) by striking ''or'' at the end of paragraph (4)(B)(ii);

(2) by striking the period at the end of paragraph (5) and inserting ''; or''; and

(3) by inserting after paragraph (5) the following:

''(7) any amount or interest in property to the extent that an employer has withheld amounts from the wages of employees for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974, or to the extent that the employer has received amounts as a result of payments by participants or beneficiaries to an employer for contribution to an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974.''.

(b) APPLICATION OF AMENDMENT.—The amendment made by this section shall not apply to cases commenced under title 11 of the United States Code before the expiration of the 180-day period beginning on the date of the enactment of this Act.

SEC. 151. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate, including wages, salaries, or commissions for services rendered after the commencement of the case, and wages and benefits attributable to any period of time after commencement of the case as a result of the debtor's violation of Federal law, without regard to when the original unlawful act occurred or to whether any services were rendered;''.

SEC. 152. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) in subparagraph (B) by adding ''or'' at the end; and

(3) by adding at the end the following:

''(C) under subsection (a) of—

''(i) the withholding of income for payment of a domestic support obligation pursuant to a judicial or administrative order or statute for such obligation that first becomes payable after the date on which the petition is filed; or

''(ii) the withholding of income for payment of a domestic support obligation owed directly to the spouse, former spouse or child of the debtor or the parent of such child, pursuant to a judicial or administrative order or statute for such obligation that becomes payable before the date on which the petition is filed unless the court finds, after notice and hearing, that such withholding would render the plan infeasible;''.

SEC. 153. AUTOMATIC STAY INAPPLICABLE TO CERTAIN PROCEEDINGS AGAINST THE DEBTOR.

Section 362(b)(2) of title 11, United States Code, as amended by section 153, is amended—

(1) in subparagraph (B) by striking ''or'' at the end;

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

''(D) the commencement or continuation of a proceeding concerning a child custody or visitation;

''(E) the commencement or continuation of a proceeding alleging domestic violence; or

''(F) the commencement or continuation of a proceeding seeking a dissolution of marriage, except to the extent the proceeding concerns property of the estate;''.

SEC. 154. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

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

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

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

(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or that child's legal guardian; 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, without regard to whether such debt is expressly so designated;

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

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

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

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

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt.''.

SEC. 155. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

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

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

(2) in section 1325(a)—

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

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

(C) by adding at the end the following:

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

(3) in section 1328(a) in the matter preceding paragraph (1), by inserting '', after a debtor who is required by a judicial or administrative order to pay a domestic support obligation certifies that all amounts payable under such order that are due on or after the date the petition was filed have been paid, and after a debtor who is required by a judicial or administrative order to pay a domestic support obligation, certifies that all amounts payable under such order that are due before the date on which the petition was filed if such amounts are due solely to a spouse, former spouse or child of the debtor or the parent of such child pursuant to a judicial or administrative order, unless the holder of such claim agrees to a different treatment of such claim'' after ''completion by the debtor of all payments under the plan''.

SEC. 156. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, as amended by sections 104 and 606, is amended—

(1) amending paragraph (2) to read as follows:

''(2) under subsection (a)—

''(A) of the commencement or continuation of an action or proceeding for—

''(i) the establishment of paternity as a part of an effort to collect domestic support obligations; or

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

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

''(C) under subsection (a) of—

''(i) the withholding of income for payment of a domestic support obligation pursuant to a judicial or administrative order or statute for such obligation that first becomes payable after the date on which the petition is filed; or

''(ii) the withholding of income for payment of a domestic support obligation owed directly to the spouse, former spouse or child of the debtor or the parent of such child, pursuant to a judicial or administrative order or statute for such obligation that becomes payable before the date on which the petition is filed unless the court finds, after notice and hearing, that such withholding would render the plan infeasible;'';

(2) in paragraph (19), by striking ''or'' at the end;

(3) in paragraph (20), by striking the period at the end and inserting a semicolon; and

(4) by inserting after paragraph (20) the following:

''(21) under subsection (a) with respect to—

''(A) the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses pursuant to State law, as specified in section 466(a)(16) of the Social Security Act (42 U.S.C. 666(a)(16)) or with respect to the reporting of overdue support owed by an absent parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act (42 U.S.C. 666(a)(7)) if such debt is payable solely to a spouse, former spouse or child of the debtor or the parent of such child pursuant to a judicial or administrative order or statute, unless the holder of such claim agrees to waive such withholding, suspension or restriction;

''(B) the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act (42 U.S.C. 664 and 666(a)(3)) if such tax refund is payable solely to a spouse, former spouse or child of the debtor or the parent of such child pursuant to a judicial or administrative order or statute; or

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

SEC. 157. EXEMPTION FOR RIGHT TO RECEIVE CERTAIN ALIMONY, MAINTENANCE, OR SUPPORT.

Section 522(b)(3) of title 11, United States Code, as so redesignated and amended by sections 115 and 203, is amended—

(1) in subparagraph (C) by striking ''and'' at the end,

(2) in subparagraph (D) by striking the period at the end and inserting ''; and'', and

(3) by inserting after subparagraph (D) the following:

''(E) the right to receive—

''(i) alimony, maintenance , support, or property traceable to alimony, maintenance , support; or

''(ii) amounts payable as a result of a property settlement agreement with the debtor's spouse or former spouse; or of an interlocutory or final divorce decree;

to the extent reasonably necessary for the support of the debtor or a dependent of the debtor.''.

SEC. 158. AUTOMATIC STAY INAPPLICABLE TO CERTAIN PROCEEDINGS AGAINST THE DEBTOR.

Section 362(b)(2) of title 11, United States Code, as amended by section 156, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) by inserting after subparagraph (B) the following:

''(C) the commencement or continuation of a proceeding concerning a child custody or visitation;

''(D) the commencement or continuation of a proceeding alleging domestic violence; or

''(E) the commencement or continuation of a proceeding seeking a dissolution of marriage, except to the extent the proceeding concerns property of the estate;''.

TITLE II—DISCOURAGING BANKRUPTCY ABUSE

SEC. 201. REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—(1) Chapter 12 of title 11 of the United States Code, as in effect on September 30, 1999, is hereby reenacted.

(2) Paragraph (1) shall take effect on September 30, 1999.

(b) CONTENTS OF CHAPTER 12 PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

''(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

''(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

''(B) the holder of a particular claim agrees to a different treatment of that claim; and''.

(c) SPECIAL NOTICE PROVISIONS.—Section 1231(d) of title 11, United States Code, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

(d) EXPANDED DEFINITION OF FAMILY FARMER.—Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,000,000'';

(B) by striking ''80'' and inserting ''50''; and

(C) by striking ''the taxable year preceding the taxable year'' and inserting ''at least 1 of the 3 taxable years preceding the taxable year''; and

(2) in subparagraph (B)—

(A) in clause (i), by striking ''80'' and inserting ''50''; and

(B) in clause (ii), by striking ''$1,500,000'' and inserting ''$3,000,000''.

(e) MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.—Section 341 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 202. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

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

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 203. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, as amended by sections 113, 125, and 147 is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) by striking ''(2)(A)'' and inserting:

''(3) Property listed in this paragraph is—

''(A) subject to subsections (o) and (p),'';

(ii) in subparagraph (B), by striking ''and'' at the end;

(iii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(iv) by adding at the end the following:

''(D) 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) by striking paragraph (1) and inserting:

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

(C) in the matter preceding paragraph (2)—

(i) by striking ''(b)'' and inserting ''(b)(1)'';

(ii) by striking ''paragraph (2)'' both places it appears and inserting ''paragraph (3)'';

(iii) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)''; and

(iv) by striking ''Such property is—''; and

(D) by adding at the end of the subsection the following:

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

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

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

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

''(ii) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986.

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

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

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

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

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

(2) in subsection (d)—

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

(B) by adding at the end the following:

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

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, and 141 is amended—

(1) in paragraph (27), by striking ''or'' at the end;

(2) in paragraph (28), by striking the period and inserting ''; or'';

(3) by inserting after paragraph (28) the following:

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

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

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

(4) by adding at the end of the flush material following paragraph (29) the following: ''Paragraph (29) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (29) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, is amended—

(1) by striking ''or'' at the end of paragraph (17);

(2) by striking the period at the end of paragraph (18) and inserting ''; or''; and

(3) by adding at the end the following:

''(19) 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, pursuant to—

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

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

Paragraph (19) does not apply to any amount owed to a plan referred to in that paragraph that is incurred under a loan made during the 1-year period preceding the filing of a petition. Nothing in paragraph (19) may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.''.

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

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(29) of this title.''.

SEC. 204. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are amended by striking ''10'' each place it appears and inserting ''30''.

SEC. 205. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

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

''(4)(A) Subject to subparagraph (B), in any case under any chapter in this title, an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B)(i) The court may extend the period determined under subparagraph (A) for 120 days upon motion of the trustee or the 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.''.

SEC. 206. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

Section 1102(a)(2) of title 11, United States Code, is amended by inserting before the first sentence the following: ''On its own motion or on request of a party in interest, and after notice and hearing, the court may order a change in the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders.''.

SEC. 207. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended by inserting at the end thereof:

''(i) Notwithstanding section 545 (2) and (3) of this title, the trustee may not avoid a warehouseman's lien for storage, transportation or other costs incidental to the storage and handling of goods, as provided by section 7–209 of the Uniform Commercial Code.''.

SEC. 208. LIMITATION.

Section 546(c)(1)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''45''.

SEC. 209. AMENDMENT 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) in subparagraph (A) after ''awarded'', by inserting ''to an examiner, chapter 11 trustee, or professional person''; and

(B) by redesignating subdivisions (A) through (E) as clauses (i) through (iv), respectively; and

(2) by adding at the end the following:

''(B) In determining the amount of reasonable compensation to be awarded a trustee, the court shall treat such compensation as a commission based on the results achieved.''.

SEC. 210. POSTPETITION DISCLOSURE AND SOLICITATION.

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

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

SEC. 211. PREFERENCES.

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

(1) by amending paragraph (2) to read as follows:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

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

(2) in paragraph (7) by striking ''or'' at the end;

(3) in paragraph (8) by striking the period at the end and inserting ''; or''; and

(4) 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. 212. VENUE OF CERTAIN PROCEEDINGS.

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

SEC. 213. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

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

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (1), on''; and

(2) by adding at the end the following:

''(2)(A) Such 120-day period may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) Such 180-day period may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

SEC. 214. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

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

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

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

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

SEC. 215. CLAIMS RELATING TO INSURANCE DEPOSITS IN CASES ANCILLARY TO FOREIGN PROCEEDINGS.

Section 304 of title 11, United States Code, is amended to read as follows:

''§ 304. Cases ancillary to foreign proceedings

''(a) For purposes of this section—

''(1) the term 'domestic insurance company' means a domestic insurance company, as such term is used in section 109(b)(2);

''(2) the term 'foreign insurance company' means a foreign insurance company, as such term is used in section 109(b)(3);

''(3) the term 'United States claimant' means a beneficiary of any deposit referred to in subsection (b) or any multibeneficiary trust referred to in subsection (b);

''(4) the term 'United States creditor' means, with respect to a foreign insurance company—

''(A) a United States claimant; or

''(B) any business entity that operates in the United States and that is a creditor; and

''(5) the term 'United States policyholder' means a holder of an insurance policy issued in the United States.

''(b) The court may not grant relief under chapter 15 of this title 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.''.

SEC. 216. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

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

(1) in subsection (b)—

(A) in paragraph (1)(A) by striking the semicolon at the end and inserting the following:

''other than a default that is a breach of a provision relating to—

''(i) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret), if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption; or

''(ii) the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an executory contract, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption and if the court determines, based on the equities of the case, that this subparagraph should not apply with respect to such default;''; and

(B) by amending paragraph (2)(D) to read as follows:

''(D) the satisfaction of any penalty rate or penalty provision relating to a default arising from a failure to perform nonmonetary obligations under an executory contract (excluding executory contracts that transfer a right or interest under a filed or issued patent, copyright, trademark, trade dress, or trade secret) or under an unexpired lease of real or personal property.'';

(2) in subsection (c)—

(A) in paragraph (2) by adding ''or'' at the end;

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

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

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

(4) in subsection (f)(1) by striking ''; except that'' and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A) by inserting ''or of a kind that section 365(b)(1)(A) of this title expressly does not require to be cured'' before the semicolon at the end;

(2) in subparagraph (C) by striking ''and'' at the end;

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

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

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, 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. 217. SHARING OF COMPENSATION.

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

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

SEC. 218. PRIORITY FOR ADMINISTRATIVE EXPENSES.

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

(1) by deleting ''and'' at the end of paragraph (5);

(2) by striking the period at the end of paragraph (6) and inserting ''; and'';

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

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or penalty provisions, for the period of one year following the later of the rejection date or date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor; and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6).''.

TITLE III—GENERAL BUSINESS BANKRUPTCY PROVISIONS

SEC. 301. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

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

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

SEC. 302. MISCELLANEOUS IMPROVEMENTS.

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

''(h)(1) Subject to paragraphs (2) and (3) and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 90-day period preceding the date of filing of the petition of that individual, received credit counseling, including, at a minimum, participation in an individual or group briefing that outlined the opportunities for available credit counseling and assisted that individual in performing an initial budget analysis, through a credit counseling program (offered through an approved credit counseling service described in section 111(a)).

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

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

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

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

''(ii) states that the debtor requested credit counseling services from an approved credit counseling service, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request or that the exigent circumstances require filing before such 5-day period expires; and

''(iii) is satisfactory to the court.

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

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

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

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

(3) by adding at the end the following:

''(11) after the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111 unless the debtor resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved instructional courses are not adequate to provide service to the additional individuals who would be required to compete the instructional course by reason of the requirements of this section. Each United States trustee or bankruptcy administrator that makes such a determination shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, as amended by section 137, is amended by adding at the end the following:

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

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

''(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1

year after the date of that determination, and not less frequently than every year thereafter.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 604 and 120, is amended by adding at the end the following:

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

''(1) a certificate from the credit counseling service that provided the debtor services under section 109(h); and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the credit counseling service referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

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

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

''The clerk of each district shall maintain a list of credit counseling services that provide 1 or more programs described in section 109(h) and a list of instructional courses concerning personal financial management that have been approved by—

''(1) the United States trustee; or

''(2) the bankruptcy administrator for the district.''.

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

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

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

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

''(13A) 'debtor's principal residence' means a residential structure including incidental property when the structure contains 1 to 4 units, whether or not that structure is attached to real property, and includes, without limitation, an individual condominium or cooperative unit or mobile or manufactured home or trailer;'';

(2) by inserting after paragraph (27A), as added by section 318 of this Act, the following:

''(27B) 'incidental property' means property incidental to such residence including, without limitation, property commonly conveyed with a principal residence where the real estate is located, window treatments, carpets, appliances and equipment located in the residence, and easements, appurtenances, fixtures, rents, royalties, mineral rights, oil and gas rights, escrow funds and insurance proceeds;'';

(3) in section 362(b), as amended by sections 117, 118, 132, 136, 141 203, 818, and 1007,—

(A) in paragraph (28) by striking ''or'' at the end thereof;

(B) in paragraph (29) by striking the period at the end and inserting ''; or''; and

(C) by inserting after paragraph (29) the following:

''(30) under subsection (a), until a prepetition default is cured fully in a case under chapter 13 of this title by actual payment of all arrears as required by the plan, of the postponement, continuation or other similar delay of a prepetition foreclosure proceeding or sale in accordance with applicable nonbankruptcy law, but nothing herein shall imply that such postponement, continuation or other similar delay is a violation of the stay under subsection (a).''; and

(4) by amending section 1322(b)(2) to read as follows:

''(2) modify the rights of holders of secured claims, other than a claim secured primarily by a security interest in property used as the debtor's principal residence at any time during 180 days prior to the filing of the petition, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims;''.

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

''(j) If one case commenced under chapter 7, 11, or 13 of this title is dismissed due to the creation of a debt repayment plan administered by a credit counseling agency approved pursuant to section 111 of this title, then for purposes of section 362(c)(3) of this title the subsequent case commenced under any such chapter shall not be presumed to be filed not in good faith.''.

(g) RETURN OF GOODS SHIPPED.—Section 546(g) of title 11, United States Code, as added by section 222(a) of Public Law 103–394, is amended to read as follows:

''(h) Notwithstanding the rights and powers of a trustee under sections 544(a), 545, 547, 549, and 553 of this title, if the court determines on a motion by the trustee made not later than 120 days after the date of the order for relief in a case under chapter 11 of this title and after notice and hearing, that a return is in the best interests of the estate, the debtor, with the consent of the creditor, and subject to the prior rights, if any, of third parties in such goods, may return goods shipped to the debtor by the creditor before the commencement of the case, and the creditor may offset the purchase price of such goods against any claim of the creditor against the debtor that arose before the commencement of the case.''.

SEC. 303. EXTENSIONS.

Section 302(d)(3) of the Bankruptcy, Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended—

(1) in subparagraph (A), in the matter following clause (ii), by striking ''or October 1, 2002, whichever occurs first''; and

(2) in subparagraph (F)—

(A) in clause (i)—

(i) in subclause (II), by striking ''or October 1, 2002, whichever occurs first''; and

(ii) in the matter following subclause (II), by striking ''October 1, 2003, or''; and

(B) in clause (ii), in the matter following subclause (II)—

(i) by striking ''before October 1, 2003, or''; and

(ii) by striking '', whichever occurs first''.

SEC. 304. LOCAL FILING OF BANKRUPTCY CASES.

Section 1408 of title 28, United States Code, is amended—

(1) by striking ''Except'' and inserting ''(a) Except''; and

(2) by adding at the end the following:

''(b) For the purposes of subsection (a), if the debtor is a corporation, the domicile and residence of the debtor are conclusively presumed to be where the debtor's principal place of business in the United States is located.''.

SEC. 305. PERMITTING ASSUMPTION OF CONTRACTS.

(a) Section 365(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) The trustee may not assume or assign an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if—

''(A)(i) applicable law excuses a party to the contract or lease from accepting performance from or rendering performance to an assignee of the contract or lease, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties; and

''(ii) the party does not consent to the assumption or assignment; or

''(B) the contract is a contract to make a loan, or extend other debt financing or financial accommodations, to or for the benefit of the debtor, or to issue a security of the debtor.

''(2) Notwithstanding paragraph (1)(A) and applicable nonbankruptcy law, in a case under chapter 11 of this title, a trustee in a case in which a debtor is a corporation, or a debtor in possession, may assume an executory contract or unexpired lease of the debtor, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties.

''(3) The trustee may not assume or assign an unexpired lease of the debtor of nonresidential real property, whether or not the contract or lease prohibits or restricts assignment of rights or delegation of duties, if the lease has been terminated under applicable nonbankruptcy law before the order for relief.''.

(b) Section 365(d) of title 11, United States Code, is amended by striking paragraphs (5), (6), (7), (8), and (9), and redesignating paragraph (10) as paragraph (5).

(c) Section 365(e) of title 11, United States Code, is amended to read as follows:

''(e)(1) Notwithstanding a provision in an executory contract or unexpired lease, or in applicable law, an executory contract or unexpired lease of the debtor may not be terminated or modified, and any right or obligation under such contract or lease may not be terminated or modified, at any time after the commencement of the case solely because of a provision in such contract or lease that is conditioned on—

''(A) the insolvency or financial condition of the debtor at any time before the closing of the case;

''(B) the commencement of a case under this title; or

''(C) the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement.

''(2) Paragraph (1) does not apply to an executory contract or unexpired lease of the debtor if the trustee may not assume or assign, and the debtor in possession may not assume, the contract or lease by reason of the provisions of subsection (c) of this section.''.

(d) Section 365(f)(1) of title 11, United States Code, is amended by striking the semicolon and all that follows through ''event''.

TITLE IV SMALL BUSINESS BANKRUPTCY PROVISIONS

SEC. 401. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

(a) Section 1125(a)(1) of title 11, United States Code, is amended by inserting before the semicolon following:

''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''.

(b) Section 1125(f) of title 11, United States Code, is amended to read as follows:

''(f) Notwithstanding subsection (b)—

''(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted pursuant to section 2075 of title 28; and

''(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor

provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not less than 20 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 402. DEFINITIONS.

(a) DEFINITIONS. Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor; and

''(51D) 'small business debtor' means (A) a person (including affiliates of such person that are also debtors under this title) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief in an amount not more than $4,000,000 (excluding debts owed to 1 or more affiliates or insiders), except that if a group of affiliated debtors has aggregate noncontingent liquidated secured and unsecured debts greater than $4,000,000 (excluding debt owed to 1 or more affiliates or insiders), then no member of such group is a small business debtor;''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business'' .

SEC. 403. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

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

(2) economy and simplicity for debtors.

SEC. 404. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) Title 11 of the United States Code is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability, that is, approximately how much money the debtor has been earning or losing during current and recent fiscal periods;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports; and

''(4) whether the debtor is—

''(A) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(B) timely filing tax returns and paying taxes and other administrative claims when due, and, if not, what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(5) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

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

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed pursuant to section 2075, title 28, United States Code to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 405. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

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

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

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance 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 small business debtor to understand its financial condition and plan its future.

SEC. 406. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Title 11 of the United States Code is amended by inserting after section 1114 the following:

''§ 1115. Duties of trustee or debtor in possession in small business cases

''(a) In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file within 3 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its responsible individual, meetings scheduled by the court or the United States trustee, including initial debtor interviews and meetings of creditors convened under section 341 of this title;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2) of this title, maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns;

''(B) subject to section 363(c)(2) of this title, timely pay all administrative expense tax claims, except those being contested by appropriate proceedings being diligently prosecuted; and

''(C) subject to section 363(c)(2) of this title, establish 1 or more separate deposit accounts not later than 10 business days after the date of order for relief (or as soon thereafter as possible if all banks contacted decline the business) and deposit therein, not later than 1 business day after receipt thereof or a responsible time set by the court, all taxes payable for periods beginning after the date the case is commenced that are collected or withheld by the debtor for governmental units unless the court waives this requirement after notice and hearing; and

''(7) allow the United States trustee, or its designated representative, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) TECHNICAL AMENDMENT.—The table of sections of chapter 11, United States Code, is amended by inserting after the item relating to section 1114 the following:

''1115. Duties of trustee or debtor in possession in small business cases.''.

SEC. 407. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121(e) of title 11, United States Code, is amended to read as follows:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 90 days after the date of the order for relief, unless a trustee has been appointed under this chapter, or unless the court, on request of a party in interest and after notice and hearing, shortens such time;

''(2) the debtor shall file a plan, and any necessary disclosure statement, not later than 90 days after the date of the order for relief, unless the United States Trustee has appointed under section 1102(a)(1) of this title a committee of unsecured creditors that the court has determined, before the 90 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; and

''(3) the time periods specified in paragraphs (1) and (2) of this subsection and the time fixed in section 1129(e) of this title for confirmation of a plan, may be extended only as follows:

''(A) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions, cumulatively not to exceed 60 days, if the movant establishes—

''(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b) of this title; and

''(ii) that there is a reasonable possibility the court will confirm a plan within a reasonable time;

''(B) On request of a party in interest made within the respective periods, and after notice and hearing, the court may for cause grant one or more extensions in excess of those authorized under subparagraph (A) of this paragraph, if the movant establishes:

''(i) that no cause exists to dismiss or convert the case or appoint a trustee or examiner under subparagraphs (A) (I) of section 1112(b)(3) of this title; and

''(ii) that it is more likely than not that the court will confirm a plan within a reasonable time; and

''(C) a new deadline shall be imposed whenever an extension is granted.''.

SEC. 408. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the debtor shall confirm a plan not later than 150 days after the date of the order for relief unless—

''(1) the United States Trustee has appointed, under section 1102(a)(1) of this title, a committee of unsecured creditors that the court has determined, before the 150 days has expired, is sufficiently active and representative to provide effective oversight of the debtor; or

''(2) such 150-day period is extended as provided in section 1121(e)(3) of this title.''.

SEC. 409. PROHIBITION AGAINST EXTENSION OF TIME.

Section 105(d) of title 11, United States Code, is amended—

(1) in paragraph (2)(B)(vi) by striking the period at the end and inserting ''; and''; and

(2) by adding at the end the following:

''(3) in a small business case, not extend the time periods specified in sections 1121(e) and 1129(e) of this title except as provided in section 1121(e)(3) of this title.''.

SEC. 410. DUTIES OF THE UNITED STATES TRUSTEE.

(a) DUTIES OF THE UNITED STATES TRUSTEE.—

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G) by striking ''and at the end'';

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases'';

(2) in paragraph (5) by striking ''and at the end'';

(3) in paragraph (6) by striking the period at the end and inserting ''; and''; and

(4) by inserting after paragraph (7) the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11 at which time the United States trustee shall begin to investigate the debtor's viability, inquire about the debtor's business plan, explain the debtor's obligations to file monthly operating reports and other required reports, attempt to develop an agreed scheduling order, and inform the debtor of other obligations;

''(B) when determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(8) in cases in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly to the court for relief.''.

SEC. 411. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1) by striking '', may'';

(2) by amending paragraph (1) to read as follows:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''; and

(3) in paragraph (2) by striking ''unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure'', and inserting ''may''.

SEC. 412. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by section 302, is amended—

(1) in subsection (i) as so redesignated by section 122—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good-faith belief that subsection (h) applies to the debtor, then recovery under paragraph (1) against such entity shall be limited to actual damages.''; and

(2) by inserting after subsection (j), as added by section 302, the following:

''(k)(1) Except as provided in paragraph (2) of this subsection, the provisions of subsection (a) of thissection shall not apply in a case in which the debtor—

''(A) is a debtor in a case under this title pending at the time the petition is filed;

''(B) was a debtor in a case under this title which was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a case under this title in which a chapter 11, 12, or 13 plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has succeeded to substantially all of the assets or business of a debtor described in subparagraph (A), (B), or (C).

''(2) This subsection shall not apply—

''(A) to a case initiated by an involuntary petition filed by a creditor that is not an insider or affiliate of the debtor; or

''(B) after such time as the debtor, after notice and a hearing, demonstrates by a preponderance of the evidence, that the filing of such petition resulted from circumstances beyond the control of the debtor and not foreseeable at the time the earlier case was filed; and that it is more likely than not that the court will confirm a plan, other than a liquidating plan, within a reasonable time.''.

SEC. 413. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE OR EXAMINER.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112(b) of title 11, United States Code, is amended to read as follows:

''(b)(1) Except as provided in paragraphs (2) and (4) of this subsection, and in subsection (c) of this section, on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 of this title or dismiss a case under this chapter, or appoint a trustee or examiner under section 1104(e) of this title, whichever is in the best interest of creditors and the estate, if the movant establishes cause.

''(2) The court may decline to grant the relief specified in paragraph (1) of this subsection if the debtor or another party in interest objects and establishes by a preponderance of the evidence that—

''(A) it is more likely than not that a plan will be confirmed within a time as fixed by this title or by order of the court entered pursuant to section 1121(e)(3), or within a reasonable time if no time has been fixed; and

''(B) if the cause is an act or omission of the debtor that—

''(i) there exists a reasonable justification for the act or omission; and

''(ii) the act or omission will be cured within a reasonable time fixed by the court not to exceed 30 days after the court decides the motion, unless the movant expressly consents to a continuance for a specific period of time, or compelling circumstances beyond the control of the debtor justify an extension.

''(3) For purposes of this subsection, cause includes—

''(A) substantial or continuing loss to or diminution of the estate;

''(B) gross mismanagement of the estate;

''(C) failure to maintain insurance that poses a material risk to the estate or the public;

''(D) unauthorized use of cash collateral harmful to 1 or more creditors;

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

''(F) failure timely to satisfy any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) of this title;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or bankruptcy administrator;

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

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144 of this title;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan; and

''(O) termination of a plan by reason of the occurrence of a condition specified in the plan.

''(4) The court may grant relief under this subsection for cause as defined in subparagraphs C, F, G, H, or K of paragraph 3 of this subsection only upon motion of the United States trustee or bankruptcy administrator or upon the court s own motion.

''(5) The court shall commence the hearing on any motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion within 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE OR EXAMINER.—Section 1104 of title 11, United States Code, is amended by adding at the end the following:

''(e) If grounds exist to convert or dismiss the case under section 1112 of this title, the court may instead appoint a trustee or examiner, if it determines that such appointment is in the best interests of creditors and the estate.''.

SEC. 414. STUDY OF OPERATION OF TITLE 11 OF THE UNITED STATES CODE WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of the enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Administrative Office of United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

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

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

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

SEC. 415. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

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

(2) by amending subparagraph (B) to read as follows:

''(B) the debtor has commenced monthly payments (which payments may, in the debtor's sole discretion, notwithstanding section 363(c)(2) of this title, be made from rents or other income generated before or after the commencement of the case by or from the property) to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien), which payments are in an amount equal to interest at the then-applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

SEC. 416. PROTECTION OF JOBS.

The provisions of title 11 of the United States Code relating to small business debtors or to single asset real estate shall not apply in a case under such title if the application of any of such provisions in such case could result in the loss of 5 or more jobs.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by amending the last sentence to read as follows:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562'' after ''557,''.

TITLE VI—STREAMLINING THE BANKRUPTCY SYSTEM

SEC. 601. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting after the first sentence the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than one creditor) shall be permitted to appear at and participate in the meeting of creditors and activities related thereto in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 602. AUDIT PROCEDURES.

(a) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a) by amending striking paragraph (6) to read as follows:

''(6) make such reports as the Attorney General directs, including the results of audits performed under subsection (f); and''; and

(2) by adding at the end the following:

''(f)(1)(A) The Attorney General shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, and, if applicable, section 111 of title 11, in individual cases filed under chapter 7 or 13 of such title. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants.

''(B) Those procedures shall—

''(i) establish a method of selecting appropriate qualified persons to contract to perform those audits;

''(ii) 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;

''(iii) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed; and

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

''(2) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee according to the procedures established under paragraph (1).

''(3)(A) The report of each audit conducted under this subsection shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case where a material misstatement of income or expenditures or of assets has been reported, the clerk of the bankruptcy court shall give notice of the misstatement to the creditors in the case.

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

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18, United States Code; 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, United States Code.''.

(b) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as amended by section 603, is amended in paragraphs (3) and (4) by adding ''or an auditor appointed pursuant to section 586 of title 28, United States Code'' after ''serving in the case''.

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

(1) by deleting ''or'' at the end of paragraph (2);

(2) by substituting ''; or'' for the period at the end of paragraph (3); and

(3) by adding the following at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit performed pursuant to section 586(f) of title 28, United States Code; 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 conducted pursuant to section 586(f) of title 28, United States Code.''.

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

SEC. 603. GIVING CREDITORS FAIR NOTICE IN CHAPTER 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c)—

(A) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(B) by adding the following at the end: ''If the credit agreement between the debtor and the creditor or the last communication before the filing of the petition in a voluntary case from the creditor to a debtor who is an individual states an account number of the debtor which is the current account number of the debtor with respect to any debt held by the creditor against the debtor, the debtor shall include such account number in any notice to the creditor required to be given under this title. If the creditor has specified to the debtor an address at which the creditor wishes to receive correspondence regarding the debtor's account, any notice to the creditor required to be given by the debtor under this title shall be given at such address. For the purposes of this section, 'notice' shall include, but shall not be limited to, any correspondence from the debtor to the creditor after the commencement of the case, any statement of the debtor's intention under section 521(a)(2) of this title, notice of the commencement of any proceeding in the case to which the creditor is a party, and any notice of the hearing under section 1324 of this title.'';

(2) by adding at the end the following:

''(d) At any time, a creditor in a case of an individual debtor under chapter 7 or 13 may file with the court and serve on the debtor a notice of the address to be used to notify the creditor in that case. After 5 days following receipt of such notice, any notice the court or the debtor is required to give the creditor shall be given at that address.

''(e) An entity may file with the court a notice stating its address for notice in cases under chapters 7 and 13. After 30 days following the filing of such notice, any notice in any case filed under chapter 7 or 13 given by the court shall be to that address unless specific notice is given under subsection (d) with respect to a particular case.

''(f) Notice given to a creditor other than as provided in this section shall not be effective notice until it has been brought to the attention of the creditor. If the creditor has designated a person or department to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that bankruptcy notices received by the creditor will be delivered to such department or person, notice will not be brought to the attention of the creditor until received by such person or department. No sanction under section 362(h) of this title or any other sanction which a court may impose on account of violations of the stay

under section 362(a) of this title or failure to comply with section 542 or 543 of this title may be imposed on any action of the creditor unless the action takes place after the creditor has received notice of the commencement of the case effective under this section.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 604, 120, and 302, is amended—

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

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

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

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

''(ii) a schedule of current monthly income and current expenditures prepared in accordance with section 707(b)(2);

''(iii) a statement of the debtor's financial affairs and, if applicable, a certificate—

''(I) of an attorney whose name is on the petition as the attorney for the debtor or any bankruptcy petition preparer signing the petition pursuant to section 110(b)(1) of this title indicating that such attorney or bankruptcy petition preparer delivered to the debtor any notice required by section 342(b) of this title; or

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

''(iv) copies of any Federal tax returns, including any schedules or attachments, filed by the debtor for the 3-year period preceding the order for relief;

''(v) copies of all payment advices or other evidence of payment, if any, received by the debtor from any employer of the debtor in the period 60 days prior to the filing of the petition; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of filing;'';

(3) by adding at the end the following:

''(e)(1) At any time, a creditor, in the case of an individual under chapter 7 or 13, may file with the court notice that the creditor requests the petition, schedules, and a statement of affairs filed by the debtor in the case and the court shall make those documents available to the creditor who requests those documents at a reasonable cost within 5 business days after such request.

''(2) At any time, a creditor in a case under chapter 13 may file with the court notice that the creditor requests the plan filed by the debtor in the case, and the court shall make such plan available to the creditor who requests such plan at a reasonable cost and not later than 5 days after such request.

''(f) An individual debtor in a case under chapter 7 or 13 shall file with the court—

''(1) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, with respect to the period from the commencement of the case until such time as the case is closed;

''(2) at the time filed with the taxing authority, all tax returns, including any schedules or attachments, that were not filed with the taxing authority when the schedules under subsection (a)(1) were filed with respect to the period that is 3 years before the order for relief;

''(3) any amendments to any of the tax returns, including schedules or attachments, described in paragraph (1) or (2); and

''(4) in a case under chapter 13, a statement subject to the penalties of perjury by the debtor of the debtor's current monthly income and expenditures in the preceding tax year and current monthly income less expenditures for the month preceding the statement prepared in accordance with section 707(b)(2) that shows how the amounts are calculated—

''(A) beginning on the date that is the later of 90 days after the close of the debtor's tax year or 1 year after the order for relief, unless a plan has been confirmed; and

''(B) thereafter, on or before the date that is 45 days before each anniversary of the confirmation of the plan until the case is closed.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of income of the debtor;

''(B) the identity of any persons responsible with the debtor for the support of any dependents of the debtor; and

''(C) the identity of any persons who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in paragraph (1) shall be available to the United States trustee, any bankruptcy administrator, any trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

''(h)(1) Not later than 30 days after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include reasonable restrictions on creditor access to tax information that is required to be provided under this section to verify creditor identity and to restrict use of the information except with respect to the case.

''(3) Not later than 1 year after the date of enactment of the Consumer Bankruptcy Reform Act of 1999, the Director of the Administrative Office of the United States Courts shall prepare, and submit to Congress a report that—

''(A) assesses the effectiveness of the procedures under paragraph (1) to provide timely and sufficient information to creditors concerning the case; and

''(B) if appropriate, includes proposed legislation—

''(i) to further protect the confidentiality of tax information or to make it better available to creditors; and

''(ii) to provide penalties for the improper use by any person of the tax information required to be provided under this section.

''(i) If requested by the United States trustee or a trustee serving in the case, the debtor provide a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor and such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c) Section 1324 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''After''; and

(2) by inserting at the end thereof—

''(c) Whenever a party in interest is given notice of a hearing on the confirmation or modification of a plan under this chapter, such notice shall include the information provided by the debtor on the most recent statement filed with the court pursuant to section 521(a)(1)(B)(ii) or (f)(4) of this title.''.

SEC. 604. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by section 603 is amended by inserting after subsection (a) the following:

''(b)(1) Notwithstanding section 707(a) of this title, and subject to paragraph (2), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

''(2) With respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. The court shall, if so requested, enter an order of dismissal not later than 5 days after such request.

''(3) Upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.''.

SEC. 605. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

(a) HEARING.—Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

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

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days, and not later than 45 days, after the meeting of creditors under section 341(a) of this title.''.

SEC. 606. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, not less than the national median household income for 1 earner, the plan may not provide for payments over a period that is longer than 5 years. If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner, 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. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.'';

(2) in section 1325(b)(1)(B) as amended by section 130—

(A) by striking ''three year period'' and inserting ''applicable commitment period''; and

(B) by inserting at the end of subparagraph (B) the following: ''The 'applicable commitment period' shall be 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 the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size, or in the case of a household of 1 person, the national median household income for 1 earner. Notwithstanding the foregoing, the national median family

income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.''; and

(3) in section 1329—

(A) by striking in subsection (c) ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''; and

(B) by inserting at the end of subsection (c) the following:

''The duration period shall be 5 years if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, the national median household income for 1 earner, as of the date of the modification and shall be 3 years if the current monthly total income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than the highest national median family income last reported by the Bureau of the Census for a family of equal or lesser size or, in the case of a household of 1 person, less than the national median household income for 1 earner as of the date of the modification. Notwithstanding the foregoing, the national median family income for a family of more than 4 individuals shall be the national median family income last reported by the Bureau of the Census for a family of 4 individuals plus $583 for each additional member of the family.''.

SEC. 607. SENSE OF THE CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

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

SEC. 608. ELIMINATION OF CERTAIN FEES PAYABLE IN CHAPTER 11 BANKRUPTCY CASES.

(a) AMENDMENTS.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) in the 1st sentence by striking ''until the case is converted or dismissed, whichever occurs first''; and

(2) in the 2d sentence—

(A) by striking ''The'' and inserting ''Until the plan is confirmed or the case is converted (whichever occurs first) the''; and

(B) by striking ''less than $300,000;'' and inserting ''less than $300,000. Until the case is converted, dismissed, or closed (whichever occurs first and without regard to confirmation of the plan) the fee shall be''.

(b) DELAYED EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on October 1, 1999.

SEC. 609. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study regarding the impact that the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled in post-secondary educational institutions,

has on the rate of cases filed under title 11 of the United States Code; and

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

SEC. 610. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

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

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in the case of an individual filing under chapter 7, 11, or 13, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) that 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required by for good cause as described in findings made by the court.''.

SEC. 611. STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.

Section 348(f)(1) of title 11, United States Code, is amended—

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

(2) in subparagraph (B)—

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

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

(3) by adding at the end the following:

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

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

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

SEC. 612. BANKRUPTCY APPEALS.

Title 28 of the United States Code is amended by inserting after section 1292 the following:

''§ 1293. Bankruptcy appeals

''(a) The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from the following:

''(1) Final orders and judgments entered by bankruptcy courts and district courts in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, including final orders in proceedings regarding the automatic stay of section 362 of title 11.

''(2) Interlocutory orders entered by bankruptcy courts and district courts granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions in cases under title 11, in proceedings arising under title 11, and in proceedings arising in or related to a case under title 11, other than interlocutory orders in proceedings regarding the automatic stay of section 362 of title 11.

''(3) Interlocutory orders of bankruptcy courts and district courts entered under section 1104(a) or 1121(d) of title 11, or the refusal to enter an order under such section.

''(4) An interlocutory order of a bankruptcy court or district court entered in a case under title 11, in a proceeding arising under title 11, or in a proceeding arising in or related to a case under title 11, if the court of appeals that would have jurisdiction of an appeal of a final order entered in such case or such proceeding permits, in its discretion, appeal to be taken from such interlocutory order.

''(b) Final decisions, judgments, orders, and decrees entered by a bankruptcy appellate panel under subsection (b) of this section.

''(c)(1) The judicial council of a circuit may establish a bankruptcy appellate panel composed of bankruptcy judges in the circuit who are appointed by the judicial council, which panel shall exercise the jurisdiction to review orders and judgments of bankruptcy courts described in paragraphs (1)–(4) of subsection (a) of this section unless—

''(A) the appellant elects at the time of filing the appeal; or

''(B) any other party elects, not later than 10 days after service of the notice of the appeal;

to have such jurisdiction exercised by the court of appeals.

''(2) An appeal to be heard by a bankruptcy appellate panel under this subsection (b) shall be heard by 3 members of the bankruptcy appellate panel, provided that a member of such panel may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

''(3) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel.''.

SEC. 613. GAO STUDY.

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

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

TITLE VII—BANKRUPTCY DATA

SEC. 701. IMPROVED BANKRUPTCY STATISTICS.

(a) AMENDMENT.—Chapter 6 of part I of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of each district shall compile statistics regarding individual debtors with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a form prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Office').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than October 31, 2000, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current monthly income, and average income and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case;

''(E) for the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

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

''(III) of those cases, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders determining the value of property securing a claim issued;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case within the 6 years previous to the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's counsel and damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of 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. 702. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Title 28 of the United States Code is amended by inserting after section 589a the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees, as the case may be, in cases under chapter 11 of title 11.

''(b) REPORTS.—All reports referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at 1 or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system; and

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports.

''(d) FINAL REPORTS.—Final reports proposed for adoption by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General, shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—Periodic reports proposed for adoption by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General, in the discretion of the Attorney General, shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as at the date of the order for relief and at end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, in for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

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

''589b. Bankruptcy data.''.

SEC. 703. SENSE OF THE CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of the Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11 of the 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 the Judicial Conference of the United States may determine; and

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

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

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

TITLE VIII—BANKRUPTCY TAX PROVISIONS

SEC. 801. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

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

(2) in subsection (b)(2), after ''507(a)(1)'', insert ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c) of this title, recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens set forth in this section and subject to the requirements of subsection (e)—

''(1) claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(3) of this title; or

''(2) claims for contributions to an employee benefit plan entitled to priority under section 507(a)(4) of this title,

may be paid from property of the estate which secures a tax lien, or the proceeds of such property.''.

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

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

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

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 802. EFFECTIVE NOTICE TO GOVERNMENT.

(a) EFFECTIVE NOTICE TO GOVERNMENTAL UNITS.—Section 342 of title 11, United States Code, as amended by section 603, is amended by adding at the end the following:

''(g) If a debtor lists a governmental unit as a creditor in a list or schedule, any notice required to be given by the debtor under this title, any rule, any applicable law, or any order of the court, shall identify the department, agency, or instrumentality through which the debtor is indebted. The debtor shall identify (with information such as a taxpayer identification number, loan, account or contract number, or real estate parcel number, where applicable), and describe the underlying basis for the governmental unit's claim. If the debtor's liability to a governmental unit arises from a debt or obligation owed or incurred by another individual, entity, or organization, or under a different name, the debtor shall identify such individual, entity, organization, or name.

''(h) The clerk shall keep and update quarterly, in the form and manner as the Director of the Administrative Office of the United States Courts prescribes, and make available to debtors, a register in which a governmental unit may designate a safe harbor mailing address for service of notice in cases pending in the district. A governmental unit may file a statement with the clerk designating a safe harbor address to which notices are to be sent, unless such governmental unit files a notice of change of address.''.

(b) ADOPTION OF RULES PROVIDING NOTICE.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference shall, within a reasonable period of time after the date of the enactment of this Act, propose for adoption enhanced rules for providing notice to State, Federal, and local government units that have regulatory authority over the debtor or which may be creditors in the debtor's case. Such rules shall be reasonably calculated to ensure that notice will reach the representatives of the governmental unit, or subdivision thereof, who will be the proper persons authorized to act upon the notice. At a minimum, the rules should require that the debtor—

(1) identify in the schedules and the notice, the subdivision, agency, or entity in respect of which such notice should be received;

(2) provide sufficient information (such as case captions, permit numbers, taxpayer identification numbers, or similar identifying information) to permit the governmental unit or subdivision thereof, entitled to receive such notice, to identify the debtor or the person or entity on behalf of which the debtor is providing notice where the debtor may be a successor in interest or may not be the same as the person or entity which incurred the debt or obligation; and

(3) identify, in appropriate schedules, served together with the notice, the property in respect of which the claim or regulatory obligation may have arisen, if any, the nature of such claim or regulatory obligation and the purpose for which notice is being given.

(c) EFFECT OF FAILURE OF NOTICE.—Section 342 of title 11, United States Code, as amended by section 603 and subsection (a), is amended by adding at the end the following:

''(i) A notice that does not comply with subsections (d) and (e) shall not be effective unless the debtor demonstrates, by clear and convincing evidence, that timely notice was given in a manner reasonably calculated to satisfy the requirements of this section was given, and that—

''(1) either the notice was timely sent to the safe harbor address provided in the register maintained by the clerk of the district in which the case was pending for such purposes; or

''(2) no safe harbor address was provided in such list for the governmental unit and that an officer of the governmental unit who is responsible for the matter or claim had actual knowledge of the case in sufficient time to act.''.

SEC. 803. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended by striking ''Unless'' at the beginning of the second sentence thereof and inserting ''If the request is made substantially in the manner designated by the governmental unit and unless''.

SEC. 804. RATE OF INTEREST ON TAX CLAIMS.

(a) AMENDMENT.—Chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 511. Rate of interest on tax claims

''If any provision of this title requires the payment of interest on a tax claim or requires the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be as follows:

''(1) In the case of ad valorem tax claims, whether secured or unsecured, other unsecured tax claims where interest is required to be paid under section 726(a)(5) of this title, secured tax claims, and administrative tax claims paid under section 503(b)(1) of this title, the rate shall be determined under applicable nonbankruptcy law.

''(2) In the case of all other tax claims, the minimum rate of interest shall be the Federal short-term rate rounded to the nearest full percent, determined under section 1274(d) of the Internal Revenue Code of 1986, plus 3 percentage points.

''(A) In the case of claims for Federal income taxes, such rate shall be subject to any adjustment that may be required under section 6621(d) of the Internal Revenue Code of 1986.

''(B) In the case of taxes paid under a confirmed plan or reorganization, such rate shall be determined as of the calendar month in which the plan is confirmed.''.

(b) CONFORMING AMENDMENT.—The table of sections of chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 510 the following:

''511. Rate of interest on tax claims.''.

SEC. 805. TOLLING OF PRIORITY OF TAX CLAIM TIME PERIODS.

Section 507(a)(8)(A) of title 11, United States Code, as so redesignated, is amended—

(1) in clause (i) by inserting after ''petition'' and before the semicolon '', plus any time, plus 6 months, during which the stay of proceedings was in effect in a prior case under this title''; and

(2) amend clause (ii) to read as follows:

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

''(I) any time plus 30 days during which an offer in compromise with respect of such tax, was pending or in effect during such 240-day period;

''(II) any time plus 30 days during which an installment agreement with respect of such tax was pending or in effect during such 240-day period, up to 1 year; and

''(III) any time plus 6 months during which a stay of proceedings against collections was in effect in a prior case under this title during such 240-day period.''.

SEC. 806. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 807. CHAPTER 13 DISCHARGE OF FRAUDULENT AND OTHER TAXES.

Section 1328(a)(2) of title 11, United States Code, is amended by inserting ''(1),'' after ''paragraph''.

SEC. 808. CHAPTER 11 DISCHARGE OF FRAUDULENT TAXES.

Section 1141(d) of title 11, United States Code, is amended by adding at the end the following:

''(6) Notwithstanding the provisions of paragraph (1), the confirmation of a plan does not discharge a debtor which is a corporation from any debt for a tax or customs duty with respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax.''.

SEC. 809. STAY OF TAX PROCEEDINGS.

(a) SECTION 362 STAY LIMITED TO PREPETITION TAXES.—Section 362(a)(8) of title 11, United States Code, is amended by striking the period at the end and inserting '', in respect of a tax liability for a taxable period ending before the order for relief.''.

(b) APPEAL OF TAX COURT DECISIONS PERMITTED.—Section 362(b)(9) of title 11, United States Code, is amended—

(1) in subparagraph (C) by striking ''or'' at the end;

(2) in subparagraph (D) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(E) the appeal of a decision by a court or administrative tribunal which determines a tax liability of the debtor without regard to whether such determination was made prepetition or postpetition.''.

SEC. 810. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B) by striking ''and'' at the end; and

(2) in subparagraph (C)—

(A) by striking ''deferred cash payments, over a period not exceeding six years after the date of assessment of such claim,'' and inserting ''regular installment payments in cash, but in no case with a balloon provision, and no more than three months apart, beginning no later than the effective date of the plan and ending on the earlier of five years after the petition date or the last date payments are to be made under the plan to unsecured creditors,'';

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

(3) by adding at the end the following:

''(D) with respect to a secured claim which would be described in section 507(a)(8) of this title but for its secured status, the holder of such claim will receive on account of such claim cash payments of not less than is required in subparagraph (C) and over a period no greater than is required in such subparagraph.''.

SEC. 811. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by striking the semicolon at the end and inserting '', except where such

purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986 or similar provision of State or local law;''.

SEC. 812. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) Such taxes shall be paid when due in the conduct of such business unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable time after the lien attaches, by the trustee of a bankruptcy estate, pursuant to section 554 of title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11 if—

''(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

''(2) before the due date of the tax, the court has made a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as such tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B) of title 11, United States Code, is amended in clause (i) by inserting after ''estate,'' and before ''except'' the following: ''whether secured or unsecured, including property taxes for which liability is in rem only, in personam or both,''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a) of this section, a governmental unit shall not be required to file a request for the payment of a claim described in subparagraph (B) or (C);''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b) by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c) by inserting '', including the payment of all ad valorem property taxes in respect of the property'' before the period at the end.

SEC. 813. 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 ''on or before the earlier of 10 days after the mailing to creditors of the summary of the trustee's final report or the date on which the trustee commences final distribution under this section''.

SEC. 814. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a)(1)(B) of title 11, United States Code, is amended—

(1) by inserting ''or equivalent report or notice,'' after ''a return,'';

(2) in clause (i)—

(A) by inserting ''or given'' after ''filed''; and

(B) by striking ''or'' at the end;

(3) in clause (ii)—

(A) by inserting ''or given'' after ''filed''; and

(B) by inserting '', report, or notice'' after ''return''; and

(4) by adding at the end the following:

''(iii) for purposes of this subsection, a return—

''(I) must satisfy the requirements of applicable nonbankruptcy law, and 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 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 similar State or local law; and

''(II) must have been filed in a manner permitted by applicable nonbankruptcy law; or''.

SEC. 815. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b) of title 11, United States Code, is amended in the second sentence by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 816. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by section 140, is amended—

(1) in paragraph (6) by striking ''and'' at the end;

(2) in paragraph (7) by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(8) if the debtor has filed all Federal, State, and local tax returns as required by section 1308 of this title.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—(1) Chapter 13 of title 11, United States Code, as amended by section 135, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) On or before the day prior to the day on which the first meeting of the creditors is convened under section 341(a) of this title, the debtor shall have filed with appropriate tax authorities all tax returns for all taxable periods ending in the 3-year period ending on the date of filing of the petition.

''(b) If the tax returns required by subsection (a) have not been filed by the date on which the first meeting of creditors is convened under section 341(a) of this title, the trustee may continue such meeting for a reasonable period of time, to allow the debtor additional time to file any unfiled returns, but such additional time shall be no more than—

''(1) for returns that are past due as of the date of the filing of the petition, 120 days from such date;

''(2) for returns which are not past due as of the date of the filing of the petition, the later of 120 days from such date or the due date for such returns under the last automatic extension of time for filing such returns to which the debtor is entitled, and for which request has been timely made, according to applicable nonbankruptcy law; and

''(3) upon notice and hearing, and order entered before the lapse of any deadline fixed according to this subsection, where the debtor demonstrates, by clear and convincing evidence, that the failure to file the returns as required is because of circumstances beyond the control of the debtor, the court may extend the deadlines set by the trustee as provided in this subsection for—

''(A) a period of no more than 30 days for returns described in paragraph (1) of this subsection; and

''(B) for no more than the period of time ending on the applicable extended due date for the returns described in paragraph (2).

''(c) For purposes of this section only, a return includes a return prepared pursuant to section 6020 (a) or (b) of the Internal Revenue Code of 1986 or similar State or local law, or a written stipulation to a judgment entered by a nonbankruptcy tribunal.''.

(2) The table of sections of chapter 13 of title 11, United States Code, is amended by inserting after the item relating to section 1307 the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

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

''(e) Upon the failure of the debtor to file tax returns under section 1308 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interests of creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by striking the period at the end and inserting '', and except that in a case under chapter 13 of this title, a claim of a governmental unit for a tax in respect of a return filed under section 1308 of this title shall be timely if it is filed on or before 60 days after such return or returns were filed as required.''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference should, within a reasonable period of time after the date of the enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, a governmental unit may object to the confirmation of a plan on or before 60 days after the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a tax in respect of a return required to be filed under such section 1308 shall be filed until such return has been filed as required.

SEC. 817. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a) of title 11, United States Code, is amended in paragraph (1)—

(1) by inserting after ''records,'' the following: ''including a full discussion of the potential material Federal, State, and local tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor domiciled in the State in which the debtor resides or has its principal place of business typical of the holders of claims or interests in the case,'';

(2) by inserting ''such'' after ''enable''; and

(3) by striking ''reasonable'' where it appears after ''hypothetical'' and by striking ''typical of holders of claims or interests'' after ''investor''.

SEC. 818. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, and 203, is amended—

(1) in paragraph (29) by striking ''or'';

(2) in paragraph (30) by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (30) the following:

''(31) under subsection (a) of the setoff of an income tax refund, by a governmental unit, in respect of a taxable period which ended before the order for relief against an income tax liability for a taxable period which also ended before the order for relief, unless—

''(A) prior to such setoff, an action to determine the amount or legality of such tax liability under section 505(a) was commenced; or

''(B) where the setoff of an income tax refund is not permitted because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action.''.

TITLE IX—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 901. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''Sec.
''1501. Purpose and scope of application.
''SUBCHAPTER I—GENERAL PROVISIONS
''1502. Definitions.
''1503. International obligations of the United States.
''1504. Commencement of ancillary case.
''1505. Authorization to act in a foreign country.
''1506. Public policy exception.
''1507. Additional assistance.
''1508. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''1509. Right of direct access.
''1510. Limited jurisdiction.
''1511. Commencement of case under section 301 or 303.
''1512. Participation of a foreign representative in a case under this title.
''1513. Access of foreign creditors to a case under this title.
''1514. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''1515. Application for recognition of a foreign proceeding.
''1516. Presumptions concerning recognition.
''1517. Order recognizing a foreign proceeding.
''1518. Subsequent information.
''1519. Relief that may be granted upon petition for recognition of a foreign proceeding.
''1520. Effects of recognition of a foreign main proceeding.
''1521. Relief that may be granted upon recognition of a foreign proceeding.
''1522. Protection of creditors and other interested persons.
''1523. Actions to avoid acts detrimental to creditors.
''1524. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''1527. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''1528. Commencement of a case under this title after recognition of a foreign main proceeding.
''1529. Coordination of a case under this title and a foreign proceeding.
''1530. Coordination of more than 1 foreign proceeding.
''1531. Presumption of insolvency based on recognition of a foreign main proceeding.
''1532. Rule of payment in concurrent proceedings.

''§ 1501. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) United States courts, United States trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity identified by exclusion in subsection 109(b);

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

''(3) an entity subject to a proceeding under the Securities Investor Protection Act, 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.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 1502. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding taking place in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title; and

''(7) 'within the territorial jurisdiction of the United States' when used with reference to property of a debtor refers to tangible property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 1503. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with 1 or more other countries, the requirements of the treaty or agreement prevail.

''§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

''§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 1507. Additional assistance

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, upon recognition of a foreign proceeding, the court may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

''§ 1508. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 1509. Right of direct access

''(a) A foreign representative may commence a case under section 1504 of this title by filing with the court a petition for recognition of a foreign proceeding under section 1515 of this title.

''(b) If the court grants recognition under section 1515 of this title, and subject to any limitations that the court may impose consistent with the policy of this chapter—

''(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

''(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) A request for comity or cooperation by a foreign representative in a court in the United States shall be accompanied by a certified copy of an order granting recognition under section 1517 of this title.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510 of this title, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United State to collect or recover a claim which is the property of the debtor.''.

''§ 1510. Limited jurisdiction

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) must be accompanied by certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

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

''Upon recognition of a foreign proceeding, the foreign representative in that proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

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

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 1514. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letters rogatory or other similar formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, the notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for their filing;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a notification to creditors under this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

''§ 1515. Application for recognition of a foreign proceeding

''(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of the foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) must be translated into English. The court may require a translation into English of additional documents.

''§ 1516. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding as defined in section 101 and that the person or body is a foreign representative as defined in section 101, the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

''§ 1517. Order recognizing a foreign proceeding

''(a) Subject to section 1506, after notice and a hearing an order recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body as defined in section 101; and

''(3) the petition meets the requirements of section 1515.

''(b) The foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the granting of recognition. The case under this chapter may be closed in the manner prescribed under section 350.

''§ 1518. Subsequent information

''From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 1519. Relief that may be granted upon petition for recognition of a foreign proceeding

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is decided upon.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''§ 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 with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.''.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

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

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''§ 1522. Protection of creditors and other interested persons

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

''§ 1523. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 1524. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

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

''(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

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

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the supervision of the court, cooperate to the maximum extent possible with foreign courts or foreign representatives.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

''§ 1527. Forms of cooperation

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 1529. Coordination of a case under this title and a foreign proceeding

''Where a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) When the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

''(A) any relief granted under sections 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

''(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply.

''(2) When a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

''(A) any relief in effect under sections 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

''§ 1530. Coordination of more than 1 foreign proceeding

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

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

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

''§ 1532. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''15. Ancillary and Other Cross-Border Cases ..... 1501''.

SEC. 902. AMENDMENTS TO OTHER CHAPTERS IN TITLE 11, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: '', and this chapter, sections 307, 304, 555 through 557, 559, and 560 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(j) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

''(2) section 1509 applies whether or not a case under this title is pending.''.

(b) DEFINITIONS.—Paragraphs (23) and (24) of title 11, United States Code, are amended to read as follows:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of the foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15,'' after ''chapter''.

(4) Section 305(a)(2) of title 11, United States Code, is amended to read:

''(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''.

(5) Section 508 of title 11, United States Code, is amended by striking subsection (a) and by striking out the letter ''(b)'' at the beginning of the second paragraph.

TITLE X—FINANCIAL CONTRACT PROVISIONS

SEC. 1001. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR —RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(i)) is amended by inserting '', resolution or order'' after ''any similar agreement that the Corporation determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, loan, interest, group or index or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, but not limited to, a repurchase agreement, reverse repurchase agreement, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV).''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) mean an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V).

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement;

''(II) any agreement or transaction similar to any other agreement or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, or economic indices or measures of economic risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (I), (II), (III), or (IV).

Such term is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations promulgated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.''.

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institutions's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A), by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(2) in subparagraph (A)(i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration'';

(3) by amending subparagraph (A)(ii) to read as follows:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''; and

(4) by amending subparagraph (E)(ii) to read as follows:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States (12 U.S.C. 91) or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

SEC. 1002. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(2) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers'' after ''the appointment''.

SEC. 1003. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property pursuant to subparagraph (A)(i), the conservator or receiver for such depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property and credit enhancements pursuant to subparagraph (A)(i) and such contract is subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITION.—For purposes of this section, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution as determined by the Corporation by regulation to be a financial institution.''.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended by amending the flush material following clause (ii) to read as follows: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver, in the case of a receivership, or the business day following such transfer, in the case of a conservatorship.''.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is further amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(A) or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right such person has to terminate, liquidate, or net such contract under paragraph (8)(E) or sections 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this subsection, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A) of this subsection.

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of subsection (e)(9)—

''(i) a bridge bank; or

''(ii) a depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between such institution and the Corporation as receiver for a depository institution in default.''.

SEC. 1004. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is further amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively; and

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''.

SEC. 1005. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS 1 AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

SEC. 1006. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C) (as redesignated) to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(2) in paragraph (11), by adding before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(3) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or closeout values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(4) by adding at the end the following new paragraph:

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11) and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by amending subsection (a) to read as follows:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to 1 or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code) and shall not be stayed, avoided, or otherwise limited by any State or Federal law other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970.''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 408; and

(2) by adding after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS AND UNINSURED FEDERAL BRANCHES AND AGENCIES.

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency except—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator of an uninsured national bank or uninsured Federal branch or Federal agency appointed by the Comptroller of the Currency; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank or an uninsured Federal branch or Federal agency.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank or uninsured Federal branch or agency shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency, in consultation with the Federal Deposit Insurance Corporation, may promulgate regulations to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations to implement this section, the Comptroller of the Currency shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meaning as in section 1(b) of the International Banking Act.''.

SEC. 1007. BANKRUPTCY CODE AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B) or (C); or

''(E) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), but not to exceed the actual value of such contract, option, agreement, or transaction on the date of the filing of the petition;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and replacing it with ''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—

''(i) an agreement, including related terms, which provides for the transfer of 1 or more certificates of deposit, mortgage-related securities (as defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities; or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, loans, or interests; with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, loans, or interests of the kind described above, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) a security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;

and, for purposes of this paragraph, 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;'';

(D) in paragraph (48) by inserting ''or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a

spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or an equity swap, option, future, or forward agreement; a debt index or a debt swap, option, future, or forward agreement; a credit spread or a credit swap, option, future, or forward agreement; or a commodity index or a commodity swap, option, future, or forward agreement;

''(ii) any agreement or transaction similar to any other agreement or transaction referred to in this paragraph that—

''(I) is presently, or in the future becomes, regularly entered into in the swap market (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on 1 or more rates, currencies commodities, equity securities, or other equity instruments, debt securities or other debt instruments, or on an economic index or measure of economic risk or value;

''(iii) any combination of agreements or transactions referred to in this paragraph;

''(iv) any option to enter into an agreement or transaction referred to in this paragraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(B) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subparagraph (A); and

''(C) is applicable for purposes of this title only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, and the regulations prescribed by the Securities and Exchange Commission or the Commodity Futures Trading Commission.'';

(2) by amending section 741(7) to read as follows:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security certificate of deposit, loan, interest, group or index or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(vi) any combination of the agreements or transactions referred to in this paragraph;

''(vii) any option to enter into any agreement or transaction referred to in this paragraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this paragraph, except that such master agreement shall be considered to be a securities contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement, or other credit enhancement, related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan.''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master netting agreement, without regard to whether the master netting agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) a security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in this paragraph, but not to exceed the actual value of such contract on the date of the filing of the petition;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by amending paragraph (22) to read as follows:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, such customer; or

''(B) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means an entity that, at the time it enters into a securities contract, commodity contract or forward contract, or at the time of the filing of the petition, has 1 or more agreements or transactions that is described in section 561(a)(2) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of at least $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100,000,000 (aggregated across counterparties) in 1 or more such agreement or transaction with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period;''; and

(3) by amending paragraph (26) to read as follows:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity whose business consists in whole or in part of entering into forward contracts as or with merchants or in a commodity, as defined or in section 761 of this title, or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing or in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement' means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or closeout, under or in connection with 1 or more contracts that are described in any 1 or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to 1 or more of the foregoing. If a master netting agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), the master netting agreement shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any 1 or more of the paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 118, 132, 136, 142, 203 and 818, is amended—

(A) in paragraph (6), by inserting '', pledged to, and under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, and under the control of,'' after ''held by'';

(C) by amending paragraph (17) to read as follows:

''(17) under subsection (a), of the setoff by a swap participant of a mutual debt and claim under or in connection with 1 or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, and under the control of,

or due from such swap participant to margin guarantee, secure, or settle a swap agreement;'';

(D) in paragraph (30) by striking ''or'' at the end;

(E) in paragraph (31) by striking the period at the end and inserting ''; or''; and

(F) by inserting after paragraph (31) the following new paragraph:

''(32) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with 1 or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged or and under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 120, 302, and 412, is amended by adding at the end the following:

''(l) LIMITATION.—The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), or (17), or (31) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, as amended by sections 207 and 302, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(2) by adding at the end the following:

''(j) Notwithstanding sections 544, 545, 547, 548(a)(2)(B), and 548(b) of this title, the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) of this title, and except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'';

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

(3) by adding at the end the following new subparagraph:

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except, with respect to a transfer under any individual contract covered thereby, to the extent such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement''; and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement''; and

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of 1 or more swap agreements''; and

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of 1 or more swap agreements''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—(1) Title 11, United States Code, is amended by inserting after section 560 the following:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts

''(a) IN GENERAL.—Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts or other transfer obligations arising under or in connection with 1 or more (or the termination, liquidation, or acceleration of 1 or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b) EXCEPTION.—

''(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7 of this title—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent the party has positive net equity in the commodity accounts at the debtor, as calculated under subchapter IV; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(c) DEFINITION.—As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

(2) CONFORMING AMENDMENT.—The table of sections of chapter 9 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts.

(l) ANCILLARY PROCEEDINGS.—Section 304 of title 11, United States Code, as amended by section 215, is amended by adding at the end the following:

''(c) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case ancillary to a foreign proceeding under this section or any other section of this title, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(m) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

"§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, securities clearing agency, swap participant, repo participant, financial participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(o) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(3)(C), by inserting ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(19), 555, 556, 559, 560 or 561 of this title)'' before the period; and

(2) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(19), 555, 556, 559, 560, 561''.

(p) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant'';

(2) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(3) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by inserting before the period at the end '', a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice''; and

(5) in section 556, by inserting '', financial participant'' after ''commodity broker''.

(q) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) in the table of sections of chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.''; and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.''; and

(2) in the table of sections of chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''; and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 1008. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping with respect to qualified financial contracts (including market valuations) by insured depository institutions.''.

SEC. 1009. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION —REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) 1 or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

SEC. 1010. DAMAGE MEASURE.

(a) Title 11, United States Code, as amended by section 1007, is amended—

(1) by inserting after section 561 the following:

"§ 562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements

''If the trustee rejects a swap agreement, securities contract as defined in section 741 of this title, forward contract, commodity contract (as defined in section 761 of this title) repurchase agreement, or master netting agreement pursuant to section 365(a) of this title, or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date of such liquidation, termination, or acceleration.''; and

(2) in the table of sections of chapter 5 by inserting after the item relating to section 561 the following:

''562. Damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by designating the existing text as paragraph (1); and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 561 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

SEC. 1011. 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 after subparagraph (B) 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 Securities Investor Protection Corporation from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, each as defined in title 11, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with 1 or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor whether or not with respect to 1 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 securities collateral pledged by the debtor, whether or not with respect to 1 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 section, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

SEC. 1012. ASSET-BACKED SECURITIZATIONS.

Section 541 of title 11, United States Code, as amended by section 150, is amended—

(1) by redesignating paragraph (5) of subsection (b) as paragraph (6);

(2) by inserting after paragraph (4) of subsection (b) the following new paragraph:

''(5) any eligible asset (or proceeds thereof), to the extent that such eligible asset was transferred by the debtor, before the date of commencement of the case, to an eligible entity in connection with an asset-backed securitization, except to the extent such asset (or proceeds or value thereof) may be recovered by the trustee under section 550 by virtue of avoidance under section 548(a);''; and

(3) by adding at the end the following new subsection:

''(e) For purposes of this section, the following definitions shall apply:

''(1) the term 'asset-backed securitization' means a transaction in which eligible assets transferred to an eligible entity are used as the source of payment on securities, the most senior of which are rated investment grade by 1 or more nationally recognized securities rating organizations, issued by an issuer;

''(2) the term 'eligible asset' means—

''(A) financial assets (including interests therein and proceeds thereof), either fixed or

revolving, including residential and commercial mortgage loans, consumer receivables, trade receivables, and lease receivables, that, by their terms, convert into cash within a finite time period, plus any residual interest in property subject to receivables included in such financial assets plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders;

''(B) cash; and

''(C) securities.

''(3) the term 'eligible entity' means—

''(A) an issuer; or

''(B) a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and transferring eligible assets directly or indirectly to an issuer and taking actions ancillary thereto;

''(4) the term 'issuer' means a trust, corporation, partnership, or other entity engaged exclusively in the business of acquiring and holding eligible assets, issuing securities backed by eligible assets, and taking actions ancillary thereto; and

''(5) the term 'transferred' means the debtor, pursuant to a written agreement, represented and warranted that eligible assets were sold, contributed, or otherwise conveyed with the intention of removing them from the estate of the debtor pursuant to subsection (b)(5), irrespective, without limitation of—

''(A) whether the debtor directly or indirectly obtained or held an interest in the issuer or in any securities issued by the issuer;

''(B) whether the debtor had an obligation to repurchase or to service or supervise the servicing of all or any portion of such eligible assets; or

''(C) the characterization of such sale, contribution, or other conveyance for tax, accounting, regulatory reporting, or other purposes.''.

SEC. 1013. FEDERAL RESERVE COLLATERAL REQUIREMENTS.

The 3d sentence of the 3d undesignated paragraph of section 16 of the Federal Reserve Act (12 U.S.C. 412) is amended by striking ''acceptances acquired under the provisions of section 13 of this Act'' and inserting ''acceptances acquired under section 10A, 10B, 13, or 13A of this Act''.

SEC. 1014. EFFECTIVE DATE; APPLICATION OF — –AMENDMENTS.

(a) EFFECTIVE DATE.—This title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—The amendments made by this title shall apply with respect to cases commenced or appointments made under any Federal or State law after the date of enactment of this Act, but shall not apply with respect to cases commenced or appointments made under any Federal or State law before the date of enactment of this Act.

TITLE XI—TECHNICAL CORRECTIONS

SEC. 1101. DEFINITIONS.

Section 101 of title 11, United States Code, as amended by sections 102, 105, 132, 138, 301, 302, 402, 902, and 1007, is amended—

(1) by striking ''In this title—'' and inserting ''In this title:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A) and (38), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph;

(6) by amending paragraph (54) to read as follows:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) in each of paragraphs (1) through (35), in each of paragraphs (36) and (37), and in each of paragraphs (40) through (55) (including paragraph (54), as amended by paragraph (6) of this section), by striking the semicolon at the end and inserting a period; and

(8) by redesignating paragraphs (4) through (55), including paragraph (54), as amended by paragraph (6) of this section, in entirely numerical sequence.

SEC. 1102. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3), 707(b)(5),'' after ''522(d),'' each place it appears.

SEC. 1103. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 1104. TECHNICAL AMENDMENTS.

Title 11 of the United States Code is amended—

(1) in section 109(b)(2) by striking ''subsection (c) or (d) of''; and

(2) in section 552(b)(1) by striking ''product'' each place it appears and inserting ''products''.

SEC. 1105. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(3) of title 11, United States Code, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 1106. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1107. SPECIAL TAX PROVISIONS.

Section 346(g)(1)(C) of title 11, United States Code, is amended by striking '', except'' and all that follows through ''1986''.

SEC. 1108. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 1109. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 1110. PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 323, is amended in paragraph (4), as so redesignated by section 142, by striking the semicolon at the end and inserting a period.

SEC. 1111. EXEMPTIONS.

Section 522(g)(2) of title 11, United States Code, is amended by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 1112. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by section 146, is amended—

(1) in subsection (a)(3), by striking ''or (6)'' each place it appears and inserting ''(6), or (15)'';

(2) as amended by section 304(e) of Public Law 103–394 (108 Stat. 4133), in paragraph (15), by transferring such paragraph so as to insert it after paragraph (14A) of subsection (a);

(3) in subsection (a)(9), by inserting '', watercraft, or aircraft'' after ''motor vehicle'';

(4) in subsection (a)(15), as so redesignated by paragraph (2) of this subsection, by inserting ''to a spouse, former spouse, or child of the debtor and'' after ''(15)''; and

(5) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 1113. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1) of this title, or that''.

SEC. 1114. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 1115. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 1116. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer may 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. 1117. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'';

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 1118. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 1119. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 1120. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election. Upon the filing of a report under the preceding sentence—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

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

''(B) In the case of any dispute arising out of an election under subparagraph (A), the court shall resolve the dispute.''.

SEC. 1121. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1122. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1123. DISCHARGE UNDER CHAPTER 12.

Subsections (a) and (c) of section 1228 of title 11, United States Code, are amended by striking ''1222(b)(10)'' each place it appears and inserting ''1222(b)(9)''.

SEC. 1124. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 1125. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before ''`bankruptcy''; and

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

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before ''`document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 1126. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended—

(1) by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362 of this title.''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by section 140, is amended by adding at the end the following:

''(15) 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 1102, is amended by adding at the end the following:

''(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, except that the court shall not confirm a plan under chapter 11 of this title without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be deemed to require the court in which a case under chapter 11 is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1127. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(i) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

SEC. 1128. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1129. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11 of the United States Code may obtain judicial review of the final agency decision by commencing an action in the United States district court for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the United States district court for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the United States district court in the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

TITLE XII—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1201. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided otherwise in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11 of the United States Code before the effective date of this Act.

MODIFICATION OF AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 11 OFFERED BY MR. NADLER

Mr. NADLER. Mr. Chairman, I ask unanimous consent that the amendment in the nature of a substitute be modified in the form I have placed at the desk.

The CHAIRMAN. The Clerk will report the modification.

The Clerk read as follows:

Modification of amendment in the nature of a substitute No. 11 offered by Mr. NADLER:

Page 7, lines 19 and 24, strike ''less than or equal to'' each place it appears and insert ''greater than''.

Page 9, line 8, insert ''allowable'' after ''debtor's''.

Page 11, line 13, strike ''hall'' and insert ''shall''.

Page 16, lines 7 and 12, strike ''less than or equal to'' each place it appears and insert ''greater than''.

Page 17, line 6, strike ''less than or equal to'' and insert ''greater than''.

Mr. GEKAS (during the reading). Mr. Chairman, I ask unanimous consent that the modification be considered as read and printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The CHAIRMAN. Is there objection to the modification?

Mr. GEKAS. Mr. Chairman, reserving the right to object, I may object, but I probably will not.

The gentleman from New York has offered through his counsel in consultation with me that these are simply technical amendments. They do not, I trust, constitute sloppy work on the part of anybody, it is simply that we want to make sure that your amendment is technically correct. Is that correct, may I ask?

Mr. NADLER. Mr. Chairman, if the gentleman will yield, I am informed by distinguished counsel that they were typos and errors in drafting, that he made no substantive changes.

Mr. GEKAS. No way that that was sloppy handwork of any type, is that correct?

Mr. NADLER. I do not think I would call the work of the staff sloppy. I would think in view of the haste it was hasty because of the committee schedule.

Mr. GEKAS. Mr. Chairman, further reserving the right to object, we will engage in a spelling bee on ''sloppy'' some other time.

Mr. Chairman, I withdraw my reservation of objection.

The CHAIRMAN. Without objection, the modification is agreed to.

There was no objection.

The CHAIRMAN. Pursuant to House Resolution 158, the gentleman from New York (Mr. NADLER) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

(Mr. NADLER asked and was given permission to revise and extend his remarks.)

Mr. NADLER. Mr. Chairman, I am reluctantly offering this substitute in the hope that it will open the door to rational discussion and an eventual compromise that will ensure both that people will be unable to game the system and that all parties, debtors and creditors alike, will be treated fairly in our bankruptcy courts. It is an attempt to foster dialogue and compromise and I hope it will not be misconstrued as my idea of an ideal bankruptcy bill.

I certainly do not agree with everything in the substitute, and I hope no one will pull sections out of it and say that I think this is a good idea. But I certainly do agree with the main changes we make from the Gekas bill.

In its current form, this bill provides ample loopholes for the wealthy, well-advised debtor to escape his or her obligations in bankruptcy but sets numerous traps for the middle and low-income debtor who will face unnecessary litigation and costs, unrealistic legal requirements and legal presumptions which bear no relation to reality. The bill will destroy businesses, it will destroy families and it will destroy lives. America is better than that.

We can get at that small percentage of people. The ABI, the American Bankruptcy Institute, estimated 3 percent of debtors can afford to repay 20 percent or more of their debt. The creditors said oh, no, they are wrong, it is double that, 6 percent. We can get at that small percentage, 3 or 6 percent of people who are abusing the system, without making costs skyrocket and without violating the rights of small debtors and creditors.

The substitute I am offering makes several major changes in the bill before us. It makes two changes in the so-called means test. First, it would look at a debtor's real income rather than his past income. The bill would average the previous 6 months of income and create a legal presumption that this is what the debtor will receive every month for the next 5 years, but we know this is wrong.

For example, people are making $50,000 at middle management at IBM and they are laid off, now they are making a much less amount of money. That is why they are going bankrupt. One cannot presume that they are making $50,000. This amendment would look at their real income and it looks forward, it does not look back.

Second, the means test does not look at your actual expenses, it looks at what some IRS bureaucrat thinks that the average expense in your part of the country ought to be. The substitute makes the same change here as the Hyde-Conyers amendment we voted on a few minutes ago would have done.

In the last Congress, the majority declared the IRS to be the great Satan and held hearings designed to show that these guys could not be trusted. We even passed legislation to reform the IRS which specifically directed the IRS to drop these guidelines and to fashion new ones with greater leniency because we thought these guidelines were inaccurate and too harsh.

Yet this bill would require that those same guidelines that we judged last year to be inflexible, inaccurate and too harsh should now be applied without any flexibility at all. We have been told that you could just put the debtor through a home computer and find out how much bankruptcy relief they are entitled to. The gentleman from Illinois (Mr. HYDE) is right, the IRS should not be entrusted with this task.

If the real circumstances do not match your income from the last 6 months and what the IRS says your landlord should be charging you, never mind what he actually does charge you, the bill allows you to go to court and plead extraordinary circumstances. In other words, to get the court to look at your real situation, you have to hire a lawyer and litigate a motion.

It is right in the bill, and it is the first roadblock in the path of someone with no money who really needs bankruptcy relief. How many people who really have no money are going to be able to afford to litigate the question of whether their daughter's braces are extraordinary circumstances? Why should they have to?

Any reasonable means test would say, what are your real means, what is your real income, what are your real expenses? Not what does the IRS think the average rent or the average mortgage payment in the Northeast ought to be, what is your mortgage payment? You cannot take the IRS estimate to the bank.

The substitute has the court look at reality from the very beginning of the case, no Alice in Wonderland. The substitute allows the debtor to bring to the court's attention at the beginning of the case changes in his or her circumstances which would make the 6-month lookback for income unrealistic. No special motions, no litigation. Part of the filing.

Unlike the bill, in addition to allowing people to pay for private school and counting that as part of his expenses, our bill would allow expenses for public school, if any, and for home schooling. Private school should not get a special preference over public schools and over home schooling.

We have also heard a great deal about the effect nondischargeability will have on families and child support. Let us talk about what this bill adds, why it is a problem and what this substitute would do.

The first addition to nondischargeability would make nondischargeable purchases in the aggregate of $250 or more in the 90 days before the bankruptcy filing, it would assume that that is for luxury goods or services. But it presumes that that $250 is for purchase of luxury goods. If you put your groceries, your gas and your dry cleaning on a credit card for 3 months for your family, do you think that would be more than $250?

Now, the credit card company would get to drag you to court and you would have to prove that it is not a luxury good. The presumption would be that it is a luxury good and should be nondischargeable in bankruptcy. You bought a new dishwasher. Could the old one have been fixed? Can you not do it by hand? Go prove it, at the cost of litigation.

But the main point is that this is a litigation trap for people who are really broke and cannot afford a lawyer to defend the discharge action.

The same with the other section which makes nondischargeable debts on a credit card incurred to pay nondischargeable debts. We have seen today that banks are sending live checks and preapproved credit cards to people, even kids, and saying use it for whatever you want. Now the same banks want to say, ''Hey, wait a minute, you paid your tax bill with your credit card. We want our debt on the credit card that you used to pay your tax to survive bankruptcy because you should not have paid it with your credit card.''

They do not have to prove any improper intent. They simply make the debt nondischargeable. The result, these credit card debts would survive a bankruptcy discharge and would compete with other more important nondischargeable debts after the case is over.

Your ex-wife wants to collect child support. Too bad. Let her go and compete with a lawyer for Chemical Bank, which would now be made nondischargeable. That is why advocates for women, for families with kids, for crime victims, Mothers Against Drunk Driving have spoken out so consistently against this provision of the bill.

The substitute also includes improvements to Chapter 11 which protects family farms. The substitute raises, to keep pace with inflation, the limit on who can file for Chapter 12, and it assures that proceeds from the sale of farm equipment are used to help reorganize the farm and not to go only to taxes. Like the bill, it also makes Chapter 12 permanent. It is the same language that is in the bipartisan bill introduced by the gentleman from Michigan (Mr. SMITH) and the gentleman from Minnesota (Mr. MINGE).

We have played politics with family farms too long. There is a crisis in the farm belt. They need these improvements to the law and they need Chapter 12 to be permanent. We should do it whether the big banks that hold farm mortgages like it or not.

There are a number of provisions in this bill for credit card disclosure, the same provisions that were in the amendment that the gentleman from Massachusetts (Mr. DELAHUNT) offered in committee, that the Committee on Rules refused to make permanent. I will just mention one.

Under this bill, the credit card companies tell you the interest rate is X and your minimum payment is $10, but they do not tell you that if you pay the minimum, how long it will take you to repay. It will take you 200 years to repay your debt. And what percentage of income you will pay, 300 percent. They would have to tell you those kinds of disclosures so you would know that.

The last piece I want to discuss concerns a matter that is very important to me, child support enforcement. As a member of the New York State Assembly, I wrote most of the State's child support enforcement laws.

□ 1730

There have been a great many fig leafs placed on this bill to make it appear as if the bill is not anti-family and would not very greatly damage child support enforcement, but the truth is it most certainly would.

There are two ways in which this bill would hurt child support enforcement. In Chapter 7 we are making credit card debts or many of them, as I have already mentioned, nondischargeable. So mom, after the bankruptcy is finished now, now has to compete with the bill collector or the attorney from Chemical Bank to collect the nondischargeable debt, because there is more debt that is now nondischargeable. She has got to compete for it.

But the sponsors of the bill say, no, no, no. We are giving child support a priority so she will not have to compete. But of course, as any bankruptcy attorney knows, priorities only exist in bankruptcy court. Once one has the discharge, they are no longer in bankruptcy court, the priorities are wiped out, the Federal jurisdiction is wiped out, the bankruptcy proceeding is over, and now she is still stuck trying to compete in the real world out there, perhaps in State court with Chemical Bank's attorney or whoever, to collect her child support as against their nondischarged credit card debt, and priorities do not exist and do not help us.

Second, the bill defines debts owed to the government for past-due child support as domestic support. In a Chapter 13 repayment proceeding the bill says we cannot approve, the judge cannot approve, a Chapter 13 repayment plan to pay the debts unless the plan includes payment of all the child support due. Period. But it defines the child support as debts owed to the government for past-due support as well as debts owed to the custodial parent, to mom, to care for the child.

So if the means test that is inserted into Chapter 13 finds that there is enough disposable income to pay the child support to mom but there is not enough disposable income to pay the child support to mom and pay the government the debts that are owed, we cannot confirm the Chapter 13 plan, there is no Chapter 13, they cannot go bankrupt. They are too rich for Chapter 7, they are too poor for Chapter 13, they cannot get any bankruptcy protection, and mom is left out there trying to collect her child support against every other debtor, every other creditor, with no protection at all.

The last issue of debtor coercion I want to address involves something called reaffirmation agreements. There has been a great deal of publicity about people being coerced into signing away their rights to a discharge or agreeing to waive that right without fully understanding what they are signing. This amendment would require court review for reaffirmations of unsecured debts and of very small amounts. It would also require disclosure to the debtor so he knows, so he understands, what he is agreeing to. Placing some limits on reaffirmations, requiring some disclosure and some court oversight, not in every case but in those cases that are most likely to result in abuses, is important. To the extent that reaffirmation is like nondischargeable debts, limit a debtor's post-discharge resources, they interfere with child support.

The bill would abolish the right to bring a class action. We all remember a few years ago when Sears Roebuck cheated over a million people through fraud into fraudulent reaffirmations. A class action suit was brought, and $168 million in damages was paid to over a million people. The average recovery was $150 per person. Sixty million dollars criminal penalty was assessed.

This bill says: We want to crack down on the little guy, but the big guys, if they are crooks, we do not want them to be subject to class action lawsuits. They cannot maintain a class action lawsuit, and so Sears Roebuck would get away with it if they only had delayed until this bill has passed.

This substitute would remove this provision. The only way one can sue the little guys, can sue the big guys, is through a class action suit.

I hope that Members will support the substitute instead of H.R. 833. The substitute is supported by the administration. It is a giant step toward a fair and balanced bill and a giant step away from the gridlock we experienced in the last Congress. If my colleagues want real and fair bankruptcy reform, support the substitute. If they do not want a bill that will be vetoed and leaving us with nothing at the end of the session, support the substitute.

Mr. Chairman, I reserve the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I might consume.

I ask the Members to vote no on the Nadler substitute. What it does in its provisions one by one is erase the progress that we have made already indicated by the votes taken in this Chamber. For instance, one of the main objects, targets, of the Nadler substitute would be to eliminate the means test, the needs test which is so vital to a real reform in bankruptcy.

We have already voted on the Hyde-Conyers amendment. We indicated the will of the House of Representatives on that very same feature. Now the gentleman from New York (Mr. NADLER) asks us to repeat the consideration of that item. The vote naturally will be no. I ask for that repeat vote.

Mr. NADLER makes a big deal out of some of the provisions in his proposal that fly right in the face of what we have already accomplished and what we are trying to accomplish. For instance, we consulted for weeks and months with residential landlords who were vexed and are still vexed by the havoc, the absolute havoc that can be wreaked upon an investment by the automatic stay that would benefit debtors, and that is tenants who want to stay on, and on, and on without paying rent. The bill that we have gives relief to the residential landlords. That is a big step forward, and we really studied that provision and consulted with a lot of people and heard testimony to that effect. Mr. NADLER would wipe it out with this amendment. I think that is retrogressive, completely retrogressive, anti-reform.

Beyond that, the gentleman from New York makes a big cry out of the reaffirmation language that we have in the bill. He fails to note, and this is important for us to recall, that the credit unions who have supported our bill from the beginning to the end and who have lent their voices, loaned their voices to us on many different occasions on this bill, they like our language on reaffirmations.

If my colleagues like credit unions and the work they do and the loans they provide and the capitalization that they indulge, they will not support the Nadler substitute. They will be destroying the credit unions' reliance on our language on reaffirmations just for one item.

Mr. Chairman, there are 10 other flaws in this bill. I do not want to take up extra time. I will enumerate them for anyone who wants to corner me in the cloakroom for that purpose, but from time to time I will remind some of our Members of some of those flaws.

Mr. Chairman, I insert the following for the RECORD:

NATIONAL GOVERNORS ASSOCIATION,
GENERAL DEBATE NADLER
Washington, DC, May 5, 1999.

Hon. J. DENNIS HASTERT,
Speaker of the House,
House of Representatives, Washington, DC.
Hon. RICHARD A. GEPHARDT,
House Minority Leader,
House of Representatives, Washington, DC.

DEAR SPEAKER HASTERT AND MINORITY LEADER GEPHARDT: Our economy has been setting the right kind of records in the 1990s in terms of real economic growth, low inflation, declining welfare rolls, and falling unemployment rates. During the same period,

however, personal bankruptcy filings have repeatedly set the wrong kind of records, reaching new highs each of the last three years. Governors accordingly support revising federal bankruptcy laws to curb the increasing number of bankruptcy filings in our nation and to stem abuses to the bankruptcy system.

Specifically, Governors support efforts to prevent debtors from filing Chapter 7 bankruptcy in lieu of Chapter 13 when they are financially capable of repaying part or all of their unsecured debts. We also encourage Congress to place the highest possible priority on payment of domestic support obligations in bankruptcy proceedings. Preservation of states' existing rights to determine their own standards dealing with homestead exemptions is another important provision that needs to be included in any bankruptcy legislation that Congress passes this year.

We applaud the Judiciary Committee's recent efforts to address this issue. Passage of H.R. 833 by the House represents an important step to ensuring enactment of meaningful bankruptcy reform this year. We look forward to working with Congress to achieve this goal.

Sincerely,

GOVERNOR THOMAS R. CARPER.
GOVERNOR MICHAEL O. LEAVITT.
GOVERNOR GEORGE E. PATAKI,
Chairman,
Committee on Economic Development and Commerce.
GOVERNOR JEANNE SHAHEEN,
Vice Chair,
Committee on Economic Development and Commerce.

Mr. Chairman, I reserve the balance of my time.

Mr. NADLER. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I first want to commend the gentleman from New York (Mr. NADLER) who has worked indefatigably on this bill. No one has put in more time than him, and as a result we have crafted a democratic substitute that I am proud to urge my colleagues' consideration of.

This amendment retains the vast majority of the provisions in the underlying bill, but at the same time responds to the most egregious and one-sided provision in the legislation. In addition to fixing the problems with the use of IRS expense standards, which is an anathema, and the bill's impact on jobs also would be corrected, the substitute also eliminates many of the problems the bill creates for single mothers and their children as well as the problem of credit card abuse.

So here we are. Here is an amendment that deals with the IRS expense standards, the small business loss of jobs, the problems created for single mothers and their children and the problem of credit card abuse. These four items are so critical to any kind of reasonable bill.

As the bill presently stands, it is a disaster for single mothers and their children. There has been a lot of conversation that it is not, but that is the bare truth revealed now at the end of a day's debate.

In addition to the overall impact of the bill on women struggling to raise families and make ends meet, the legislation will have a particularly harsh impact on the payment of alimony and child support. The problem arises from the fact that bankruptcy and insolvency are, by definition, a zero sum gain. By design, this bill will increase the amount of funds being paid to unsecured creditors, and it therefore comes as no surprise that such payments will often come at the expense of other less aggressive creditors, those without lawyers such as women and children owed child support or alimony. This problem is by no means insignificant given that an estimated 243,000 maybe to 325,000 bankruptcy cases per year involve child support and alimony orders.

And so, Mr. Chairman, for these Members who want to support real and balanced bankruptcy reform without unnecessarily piling on the middle class, the mothers and their children and without giving the credit industry a complete pass, I urge a yes vote for the democratic substitute now being debated.

Mr. GEKAS. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. ROYCE).

Mr. ROYCE. Mr. Chairman, enacting a substitute bill on which there has been no hearings or public comment is no way to approach a task as important as reforming the Nation's bankruptcy system. Our bankruptcy laws play an important and necessary role in protecting Americans who really need these laws, and that is the key, need. But what our act intends to do is to make the existing bankruptcy system a needs-based system, addressing the flaw in the current system that encourages people to file for bankruptcy and walk away from debts regardless of whether they are able to repay any portion of what they owe, and it does this while protecting those who truly need protection.

Between September of 1997 and September of 1998 in my home State of California there were 203,000 personal bankruptcy petitions filed. This translates into one bankruptcy petition filed for every 56 households. Now that is almost three times the next highest State, New York. Moreover, the number of bankruptcies in California has more than doubled since 1990.

The cost to all of us is very great for the rest of the country. This is the cost borne not only by the business community but by the consumers who pay their bills responsibly and end up having these costs shifted to them.

Last year, the 55 of 56 households in my State who paid their bills on time were forced to pick up the $550 per household tab for those who walked away from their debts. That is a $550 bill that my colleagues and I pay when irresponsible spenders who can afford to pay all or some of their debt declare bankruptcy, and this is the problem that the Bankruptcy Reform Act addresses.

Therefore, Mr. Chairman, I rise today in strong support of the Bankruptcy Reform Act of 1999, of which I am a cosponsor, and in opposition to this substitute. The Bankruptcy Reform Act is almost identical to legislation passed by the House of Representatives last year by an overwhelming bipartisan vote. Unfortunately, that legislation ultimately stalled late in the year in the Senate. We have another opportunity today to pass this much-needed reform act and send the Senate a bill with strong bipartisan support, and I urge my colleagues to vote for this bill and defeat this substitute amendment.

□ 1745

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentleman from Massachusetts (Mr. MEEHAN).

Mr. MEEHAN. Mr. Chairman, I rise today in support of the Conyers-Nadler-Meehan-Berman substitute bankruptcy amendment. There have been debates on bankruptcy reform both last session and this year. I have been alarmed by the rise in the number of consumer bankruptcies in this country and have been convinced that changes need to be made in the bankruptcy system.

We can all agree that debtors should be obliged to pay more of their debts to their creditors. I fully support the concept of means testing to determine which debtors can pay at least some of their debts. In fact, last year I offered a means test amendment to the bankruptcy bill that would have done just that.

Today I am a cosponsor of this substitute bill, which includes a key provision, an improved means test, over the one used in the underlying bill.

The means test used in H.R. 833 uses an elaborate standard in tests to determine which debtors would be shifted to Chapter 13 and which would remain in Chapter 7. In all of those convoluted and exacting calculations, the test leaves out one fundamental element: Fairness.

The bankruptcy system was designed to provide a fresh start for those who have fallen on hard times, frequently through little fault of their own.

Let us look at who is declaring bankruptcy. In 1997, 280,000 older Americans filed for bankruptcy, two-thirds due to an unsuspected illness or job loss. 300,000 bankruptcy cases involved child support or alimony orders, as women could not collect what they were owed or tried to stabilize their post-divorce economic condition.

We can all agree that these debtors are entitled to a fresh start and should not be forced to repay their debts for

the rest of their lives and beyond by leaving debts for their heirs.

This substitute provides fairness by including a realistic means test which takes into account the real world circumstances of the debtor. Yet the amendment ensures that debtors who can repay their debts will repay their debts.

Unlike the underlying bill, this amendment also understands that blame should not be solely shouldered by the debtors. This amendment considers the fact that the increasing availability of consumer credit corresponds with the increased number of bankruptcy filings.

Moving more debtors into repayment plans, even if done correctly, is not the sole solution to the increased number of bankruptcies. Credit card applications with large limits are routinely sent to the poor, to college students, to family pets, and even dead people, and this significantly contributes to the number of bankruptcies.

In 1997, over 250,000 Americans filed for bankruptcy before their 25th birthday; 250,000. How can people so young have a line of credit so large that they cannot repay it? Because credit card companies are sending them all kinds of promises for spring break if they put it on a credit card.

Mr. Chairman, let us have fair bankruptcy reform.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Tennessee (Mr. BRYANT), a member of the committee.

(Mr. BRYANT asked and was given permission to revise and extend his remarks.)

Mr. BRYANT. Mr. Chairman, before I get into my remarks, I want to express my personal appreciation for the way the gentleman from Pennsylvania (Mr. GEKAS) has chaired the committee and has managed this bill throughout the years that I have been involved, especially over the last couple of weeks when we have been in markup with intense debate and good healthy debate on both sides; as well as thanking the ranking member, the gentleman from New York (Mr. NADLER) for the outstanding job that he has done certainly representing the view that he has and I think is exemplified by this amendment, which I must oppose.

This amendment effectively undermines many of the most important provisions of this Bankruptcy Reform Act that have been part of the House approach to bankruptcy reform since the last Congress.

This amendment should be opposed for many reasons. The Nadler amendment would do little, if anything, to address the abuse of the bankruptcy system that has become increasingly prevalent. For instance, this amendment would strike from the bill key provisions that aim to prevent debtors from loading up on debt just before declaring bankruptcy, thereby obtaining a discharge of this debt. Such loading up has occurred more frequently as bankruptcy planning becomes more common in this day and age.

In addition, this amendment would eliminate from the bill's needs-based test the use of clear, objective standards. By doing so, the Nadler amendment would reverse the bill's efforts to bring significant administrative efficiencies to the already overburdened U.S. bankruptcy system.

Moreover, by eliminating the clear objective standards for debtors to follow in applying the bill's needs-based formula, this amendment would harm debtors by subjecting them to endless litigation, and I might add expensive litigation, of which expenses may be taken into account in that formula.

Furthermore, H.R. 833 already contains provisions that address the vast majority of concerns that this amendment claims to address. For instance, H.R. 833 already addresses issues related to reaffirmation agreements and would impose significant new disclosure requirements on credit cards and other lenders.

Finally, there has been no prior congressional consideration of most, if not all, of the provisions of this amendment.

I would urge my colleagues to oppose this, since enacting a substitute bill on which there have been no hearings or public comment is no way to approach a task as important as reforming this Nation's bankruptcy code.

Mr. NADLER. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, the gentleman from Pennsylvania (Mr. GEKAS) talked about a provision in the bill, in his bill, which would allow landlords to evict debtors without obtaining permission of the bankruptcy court, and that that substitute would eliminate that provision, which it would do.

Every other creditor has to get permission of the bankruptcy court to have an exemption from the automatic stay. Advocates of battered women and those involved in rehabilitating debtors have expressed concerns that these unsupervised evictions would pose a threat to the debtor's safety and to the safety of his family, and would pose a threat to debtors' ability to remain productive wage earning citizens.

There is a fundamental question. Why should a property owner be in a different position to be exempt from an automatic stay, a different position than any other creditor? We do not see an answer to that question. Every creditor has the same provisions. There is no reason why one creditor should be in a preferred position, and that is why the provision is in the substitute.

Mr. GEKAS. Mr. Chairman, I yield 3 minutes to the gentleman from Arkansas (Mr. HUTCHINSON).

Mr. HUTCHINSON. Mr. Chairman, I thank the gentleman from Pennsylvania (Mr. GEKAS) for yielding and I want to congratulate him on the outstanding work that he has done on this particular bill and in the leadership he has provided in the committee.

I think we have had a very good process through the Committee on the Judiciary. This is not an example of where every amendment that was offered by the Democrats was defeated on a party line vote or vice versa. There was really an open debate and there were many amendments that my Democrat colleagues offered that were adopted, and I think that it is a good product that came through that bill. It is the kind of process I think we need to have more of in the Committee on the Judiciary.

As I look at this entire issue of bankruptcy reform, I believe that bankruptcy is important in America and that we should not do anything to destroy that system which was really a hallmark of our country, where people came to this country getting away from debtor's prison, moving to the United States of America for a fresh start. That is an important part of our country, to give debtors a fresh start when there is not any alternative.

I for one would not want to do anything to erode that important part of our country's history and our country's legal system. So I believe the fresh start is important. This bill, H.R. 833, preserves that important right.

I think we all have to concede that there has been some abuse in the system. Certainly the gentleman from New York (Mr. NADLER) agrees with that because he has offered a bill before this committee.

Look at the facts that historically bankruptcies have been filed because of a loss of job or extraordinary circumstances. We almost have full employment in America and yet bankruptcies still are going up at almost 20 percent. So this bill preserves the recourse of bankruptcy for those who truly need it.

Ernst & Young did a study that I thought was very significant, and in that study it looked at the 10 percent of the people who filed bankruptcy that would be impacted by a needs-based system, and the study indicated that those 10 percent of filers would have an average income of almost $52,000. So clearly we are looking at people who have an ability to pay a portion of their debt over a period of time based upon that income.

That study assured me that this approach is reasonable, that it is going after those who abuse the system and not those who are legitimately claiming to look to the system for their legitimate relief.

Also, the means test that is provided here gives something that is very important to the bankruptcy judge, and that is discretion. Again, I looked at the bill and on page 10 it says that the judge, under extraordinary circumstances, can revise the means test to make sure that the debtor would not be forced into repaying a portion of the debt when they have some special circumstance that would justify a complete discharge from bankruptcy.

Then finally, I think this bill is important because the claim is that perhaps we should have individual responsibility, but those have open-ended credit responsibilities; credit card companies should have more disclosure. It does require this, and so it balances individual responsibility with the recognition that there are legitimate circumstances that require bankruptcy.

Mr. NADLER. Mr. Chairman, I yield 2½ minutes to the distinguished gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Chairman, I want to first thank the gentleman from New York (Mr. NADLER) for this time and also for his very diligent and hard work on this issue, to really clarify these very important issues which are very complicated and very important to consumers in this country.

Mr. Chairman, I rise to support the Democratic substitute and in opposition to H.R. 833. I too am troubled by the increase in bankruptcy filings since 1980. I am very concerned about the rise in individual consumer debt, but I am disappointed that we are failing to bring legislation that is balanced between creditors and debtors.

As drafted, many of the provisions of H.R. 833 are unfair to middle- and low-income debtors. At the same time, the bill fails to close loopholes that currently protect the wealthiest debtors.

H.R. 833 focuses on the perceived abuse of the bankruptcy system by debtors without adequately addressing the abuses by creditors, and takes a rigid approach to a citizen's ability to discharge debt.

A majority of people surveyed by Consumer Federation of America believe credit card companies share the blame with debtors for the rising tide of personal bankruptcies, yet nowhere in H.R. 833 is there mention of preventing or curbing credit card companies from targeting people with low incomes.

Credit card companies are actively targeting vulnerable potential new members. We have seen an increase in the number of bank card mailings sent out to potential new members. From 1992 to 1998, the numbers mailed increased by 255 percent. It comes as no surprise that the amount of per person debt also increased 225 percent in 6 years.

When credit card companies consolidate, cardholders are left without any protection from rate increases. Credit cards are not like mortgages or car loans that may be resold but their rates do not change. Not credit cards. In fact, new owners of credit card businesses are free to impose whatever interest rates the traffic will bear and are subject to few remaining State fee ceilings.

□ 1800

With increased consolidation of credit card companies, payment periods have really been shortened, grace periods for late payments have been eliminated, and stiff penalties of up to $29 are now incurred by cardholders on a regular basis.

I strongly support the Democratic alternative offered by the gentleman from New York (Mr. NADLER), the gentleman from Michigan (Mr. CONYERS), and the gentleman from Massachusetts (Mr. MEEHAN), which is a moderate and balanced approach to behavior.

It offers a realistic means test, allows child support to precede other debts, requires credit card companies to provide information so borrowers may avoid bankruptcy, and eliminates new rules for making credit card debts nondischargeable. It leaves intact prebankruptcy debt run-ups and fraudulently-incurred debt nondischargeable, and includes bipartisan farm bankruptcy legislation.

Mr. GEKAS. Mr. Chairman, I am pleased to yield 6 minutes to the gentleman from Virginia (Mr. GOODLATTE), who has been extraordinarily helpful in every stage of the bankruptcy reform effort.

Mr. GOODLATTE. Mr. Chairman, I thank the gentleman from Pennsylvania for his kind words, and for his leadership in this excellent piece of legislation that I rise today to strongly support, H.R. 833, the Bankruptcy Reform Act, and to oppose the Nadler substitute, which would take us back to the current situation where we reward people who act irresponsibly and penalize hardworking consumers who make every effort to pay their bills on time; pay their own bills, and pay a portion of someone else's bills when that person files bankruptcy and does not take responsibility for their actions.

With a record high 1.4 million bankruptcy filings last year, every American must pay more for credit, goods, and services when others go bankrupt. I worked to pass H.R. 3150 last year, which passed the House by a vote of 300 to 125 in the final conference report, which this legislation is very similar to, and am pleased to cosponsor this legislation this year because it is high time that we relieve consumers from the burden of paying for the debts of others.

The Bankruptcy Reform Act of 1999 restores personal responsibility, fairness, and accountability to our bankruptcy laws, and will be of great benefit to consumers.

For too long our bankruptcy laws have allowed individuals to walk away from their debts, even though many are able to repay them. That is not fair to millions of hardworking families who pay their bills, mortgages, car loans, student loans, and credit card bills every month.

The loopholes in our bankruptcy laws have led to a 400 percent increase in personal bankruptcy filings since 1980, at a cost of $40 billion per year. These costs have been passed directly to consumers, costing the average household that pays its bills an average of $400 each year.

Under the current system, some irresponsible people filing for bankruptcy run up their credit card debt immediately prior to filing, knowing that their debts will soon be wiped away. These debts, however, do not just disappear, they are passed along to hardworking folks who play by the rules and pay their own bills on time.

The Bankruptcy Reform Act ends this practice by requiring bankruptcy filers to pay back nondischargeable debts made in the period immediately preceding their filing. In addition, new debts for luxury goods incurred during this period would be presumed nondischargeable.

While ending the abuses of our bankruptcy laws, the Bankruptcy Reform Act is strongly pro-consumer in other ways, as well. This legislation, for example, helps children by strengthening protections in the law that prioritize child support and alimony payments.

Additionally, the bill protects consumers from bankruptcy mills that encourage folks to file for bankruptcy without fully informing them of their rights and the potential harms that bankruptcy can cause.

Mr. Chairman, the gentleman from Pennsylvania (Mr. GEKAS) outlined some of the problems that we have with the Nadler substitute. I would like to point out some others. The so-called refinements of the gentleman from New York (Mr. NADLER) are simply inexplicable, or even worse, inane.

For instance, we allow the debtor's income to be adjusted upward in a fixed amount on an annual basis if the number of individuals in the debtor's household exceeds four. The substitute of the gentleman from New York (Mr. NADLER) takes that annual figure and converts it into a monthly figure.

As a result, he would allow an adjustment in that in an amount that is 12 times greater than the amount contemplated in our bill. Thus, for a family of let us say eight members, their income could be as high as $79,000 per year and still not be subject to their so-called needs-based test.

The substitute is also substantively flawed. We spent many months examining the current consumer bankruptcy law and crafting ways to reintroduce balance into the bankruptcy system.

One important principle that we wanted to achieve was to allow greater creditor participation in the system. The substitute in many respects undercuts that principle. One example is the provision on page 12 of the substitute that would prohibit a creditor from filing a Section 707(b) motion until the United States Trustee has acted. This provision is simply unfair to creditors, and effectively resuscitates current law, which prevents creditors from filing these motions.

Another substantive flaw in the substitute is its provision for determining a debtor's income. It excepts from the income side of the needs-based formula a series of items that, under current law, are considered as income. If we do not take into consideration all of the debtor's income, but we do take into

consideration all of the debtor's expenses, the result is a mathematical imbalance that frustrates the purpose of the formula.

The substitute contains what is in effect a back door effort to amend the Truth-in-Lending Act. Section 112 would disallow a claim for the creditor's failure to comply with any of a very long series of requirements spelled out in that section. Without even reading this section, one can simply tell from its near seven pages that the substitute essentially wants to establish an entire new set of requirements for lenders that do not even exist under the Truth-in-Lending Act.

This tactic is simply wrong. The Truth-in-Lending Act already imposes various penalties for violations of its provisions. The effect of this substitute would be to establish two sets of standards that lenders would have to comply with, one for purposes of the Truth-in-Lending Act and the other for purposes of establishing a claim in bankruptcy.

Mr. Chairman, bankruptcy should remain available to folks who truly need it, but those who can afford to repay their debts should not be able to stick other folks with the tab. Enactment of this carefully-crafted legislation by the gentleman from Pennsylvania (Mr. GEKAS) and opposition to the legislation by the gentleman from New York (Mr. NADLER) would send a big signal towards those who would abuse our bankruptcy system that the free ride is over.

I want to commend my colleague, the gentleman from Pennsylvania (Mr. GEKAS) for his outstanding work on this issue, and I urge my colleagues to support this fair and reasonable bill.

Mr. NADLER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from New York for yielding time to me, I thank him for his leadership.

Mr. Chairman, it fascinates me to hear this debate go in the direction that it is going. That is that this country is falling under the weight of debt, that we are a country of abusers of debt or debtors who do not want to pay their debt.

It is well known in hearings that we have had on the Committee on the Judiciary on this very topic that out of the credit card debt that this Nation has, only 4 percent of it is in default. People do pay their bills. Now, as those who score credit, they may pay their bills a little slower than the creditors may like, but they do pay their bills.

In the present bill, the underlying legislation unfortunately does not seek a level of bipartisanship. It has aspects of mean-spiritedness, and that is why I am supporting the Nadler-Conyers-Meehan substitute, because it fairly addresses the concerns we have. It provides a realistic means test which takes into account the debtor's actual income and expenses.

Frankly, Mr. Chairman, the National Bankruptcy Review Commission never supported the means test. The means test, of course, is a barrier, a bar, a closed door to those who are seeking debt relief. It suggests that everyone runs to the courthouse to try and file a Chapter 7 as opposed to a Chapter 13.

Knowing many people who tragically have had to file bankruptcy in light of the economic situation my State of Texas faced with the falling oil prices in the 1980s, I know that those people were not in any way championing running away from debt. They were, if you will, enormously saddened by losing their homes and other assets that they had, but they went to the bankruptcy court in order to get a fresh start, or in many instances, to try to find out how to repay their debt.

Mr. Chairman, this is a wrongheaded, misdirected piece of legislation, and the Nadler amendment helps to fix the dilemma between child support that should be paid to help the custodial parent versus having to have the custodial parent fight the government in order to get their monies, with some sort of misguided effort to pay back the government if that person was on welfare.

When we first started out with this legislation, we indicated how important it was for that woman who had that child to make sure she does not have to fight against big government or big corporations to get child support.

It also provides a balance by requiring credit card lenders to behave responsibly. It was a terrible shame that we did not allow an amendment in the rules process that would put the burden of responsibility on the solicitation or the oversolicitation on the credit card companies.

The Nadler-Conyers-Meehan substitute, Mr. Chairman, is a fair and direct response to the minimal concern that we have that some credit or debt use or lack of payment may be abused. I would offer that we support this, and that we vote no on the underlying bill.

As we reject this rule, I would like to voice my support for an amendment that was jointly offered by myself with Congressman NADLER to the Rules Committee.

We all know that this bill, as it currently reads, has garnered a great deal of negative commentary from women's and children's organizations, and appropriately so. That is because the provisions in this bill which change the rules on dischargeability, skew the delicate balance between creditors and debtors, and remain silent on consumer protection issues hurt families—especially those headed by a single parent.

Our amendment would make this bill more amenable to families. It is an omnibus child support amendment because it carries a full set of technical corrections and substantive revisions.

Our amendment would fix Section 1112, which under the current version of the bill, could be interpreted to require that all debts to a custodial parent and the government be paid before a trustee can approve a repayment plan. This amendment remedies that provision by allowing a repayment plan to be drafted that only provides funding for the custodial parent. The result is that funds can flow to children without being held up by government debt.

Our amendment also makes changes to Section 1113, eliminating its provision that allows residential landlords to escape the automatic stay provisions contained in this section. This was done at the request of women's advocacy groups, who feared that landlords would have too much discretion in times of alleged domestic violence and divorce. We must make sure in these delicate times that our courts do not completely abdicate their responsibility to ensure the safety and well-being of the people seeking their assistance.

This Omnibus Child Support amendment also contains other exceptions to the automatic stay mechanism that are aimed to make the bankruptcy process smarter in domestic support cases. It allows a continuation of an action, notwithstanding the automatic stay, in order to determine some facts vitally important in these cases, such as paternity. It also allows certain issues to be resolved that immediately pay dividends to women and children. These issues include: the establishment of modification of a domestic support order; wage garnishment; the interception of tax refunds; and the enforcement of medical obligations under the federal child support program. All of these issues are vitally important, and our system should allow them to move forward in these cases so as to prevent them from becoming part of the bankruptcy quagmire.

Finally, our amendment contains an important provision originally penned by Congressman SHAW last session. It provides that funds received by a creditor, which have been converted from dischargeable to non-dischargeable debt under the new provisions in this bill, be held in trust for five years. Furthermore, during that time, the creditor must make every effort to pay those funds to individuals who have a claim of domestic support against the debtor. Simply said, this provision makes sure that scarce funds that are being parsed by this bill will always be available to the women and children that deserve them rather than to the credit card companies. It is a common sense solution to a problem that needs to be addressed if we are to have an acceptable bankruptcy reform bill.

Mr. NADLER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have heard in the last few minutes echoes of the propaganda of the credit card industry. But the facts are, we have heard that lots of people can pay their bills and are not. The American Bankruptcy Institute, in the first nonbipartisan study that was not bought and paid for by the credit card industry, said and concluded earlier this year that 3 percent of bankruptcy filers could afford to pay 20 percent or more of their bills.

The creditors say that is not true, it is twice as much. All right, granted, maybe 6 percent, between 3 and 6 percent can afford to pay 20 percent or more of their bills. So let us not continue to hear this slander against American citizens as deadbeats.

We also heard that because all these people are not paying their bills to the credit card companies, the average American pays $400 or $500 more in credit card fees. The fact is, credit card fees 10 years ago were 16, 17, 18 percent. Interest rates have come down, mortgage rates have come down, the prime rate has come down, car loan fees have come down, but credit card rates are still 16, 17, 18, 19 percent, and they will stay there, no matter what we do with this bill.

This bill will not result in any pass-through to consumers. It will simply mean more profits for the credit card companies. If Members think differently, I have a few bridges in my home district I would like to sell to Members.

Secondly, we have heard about the means test. This substitute imposes a fairer means test, a means test that looks at real income; not what you used to make before you were fired and laid off, which is why you went bankrupt, but what you are making now and likely to make; and real expenses, not what the IRS thinks the rent ought to be, but what the rent actually is. That is the only fair means test.

Do not forget, the means test is used in Chapter 13 for everybody, not just in Chapter 7 with a safe harbor. The bill provides no class actions against the greatest malefactors. Let Sears Roebuck get away with stealing $168 million from people in bankruptcy. The substitute says no, if you are cracking down on the little guys, crack down on tort feasors and crooks who are big guys. Do not stop the class action.

The bill says we are going to, or it does not say so, but the effect is to murder child support enforcement. We know some people, that the supporters of this bill say they have fixed it, but they have not fixed it. The so-called priority does not survive the bankruptcy and the discharge, post-discharge. Mom still has to compete with Chemical Bank's attorney, because the priority does not survive the bankruptcy proceeding.

And in Chapter 13, if you cannot pay the government, if the means test says you do not have enough money to pay the government, then you cannot confirm the plan and you cannot pay the child support.

That is why the only people concerned with child support in any way who are supporting this bill are the people in charge of collecting money for the government, the Fort Dietrick people, the Attorneys General, not the people concerned with the women.

This bill murders small businesses. We have a way of saving that in this provision, and ditto for farmers. We heard the gentleman from Virginia (Mr. GOODLATTE) say it is a balanced bill. It is not a balanced bill. The substitute makes it more balanced. The administration says they will veto it because it is not a balanced bill.

The gentleman from Illinois (Mr. HYDE), who is not exactly a noted liberal, says this bill is imbalanced. He says, ''I asked staff to give me a list of what the creditors are getting out of this bill. I have pages and pages and pages of advantages that the creditor community is getting from this bill. I was going to read a list of what the creditors were getting under this bill. I will not do it, I assume you know, but there are 12 or 13 pages of single-spaced printed changes that benefit the creditors.''

□ 1815

Very imbalanced. That is why this bill is opposed. It is opposed by all the labor unions, by the Leadership Conference on Civil Rights, by the National Partnership for Women and Families, the National Women's Law Center, the consumer groups; and all the bankruptcy groups that know about bankruptcy, the Bankruptcy Conference, the Commercial Law League, and the National Association of Bankruptcy Trustees and Bankruptcy Attorneys.

Mr. Chairman, I urge support for the substitute to make this a more balanced bill, and I yield back the balance of my time.

Mr. GEKAS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, we have debated these issues very thoroughly, and the ultimate decision still rests with the Members of the House, of course. We have voted on several portions of this substitute amendment in different fashions starting from last year and ending with even the votes that were cast today. So we urge again that the Members vote ''no'' on the substitute amendment.

One thing that has rankled me in this whole debate from the beginning was the blitheness with which people who are opposed to the bankruptcy reform measure that we have produced criticize and bash and ridicule and attack the credit industry. Now, no one is an apologist or should be an apologist for the credit industry as such, but to make them the villain is really unfair and misleads the American public.

What we have got to understand is that this economy of ours that is so wonderful, that is the wonder of the world, actually the envy of the world, is based substantially on the extension of credit. Every household in our Nation is a beneficiary of the credit system. Every piece of merchandise, every automobile, every item that uplifts the life of even the lowest of the lowest household in our country has credit extension to thank for its uplifting in the economic sphere of our country. So when we consider the credit industry, recognize that they make things hum. They are the ones that have spread the American goods and services across the world.

So let us look at the good that our competitive free enterprise system has done through this global extension of credit of which we are the beneficiaries, and then look for abuses, perhaps by debtors and then by creditors, but do not, I beg of my colleagues, continue to vilify the creditors as being the cause of people going bankrupt. That is disingenuous, unfair and should be rejected out of hand.

I ask the Members to vote ''no'' on the Nadler amendment.

Mr. MEEKS of New York. Mr. Chairman, I rise today to support the Democratic Substitute—the Nadler amendment. Specifically, I would like to point out that this amendment eliminates a provision of H.R. 833 which would have allowed landlords to evict debtors once they have filed for bankruptcy. This provision is key because of the assistance it gives to battered women as they seek financial support for themselves and for their children.

Many times, battered women must file for bankruptcy in order to not get evicted from the homes they once shared with their spouses. They may have no financial means because they are not the sole providers of their family's income. When their spouse leaves the home, these women have no choice but to file for bankruptcy in order to delay eviction. We must not roll back provisions that have assisted women who are victims of domestic violence. We must help them reconstruct their life by first making certain they maintain a place to live.

Since the Bankruptcy code was enacted, the automatic stay that becomes effective upon the filing of a bankruptcy petition has always prohibited a landlord from evicting a tenant unless the landlord obtains permission from the bankruptcy court.

The stay serves several purposes: In chapter 13, a tenant has a right to assume a lease and to cure a default. In chapter 7, the debtor receives a short ''breathing spell''—which is very much needed in domestic violence cases.

The right to avoid eviction is extremely important to tenants who would suffer the hardships of moving and having to find new housing and to tenants in rent controlled or rent-subsidized apartments, who would lose valuable property rights.

I urge my colleagues to support the Nadler amendment because of provisions that will assist the helpless and the needy as in the case of battered women.

Mr. DELAHUNT. Mr. Chairman, I rise in support of the Nadler-Conyers-Meehan-Berman substitute.

I am particularly pleased to see that the substitute incorporates a series of consumer credit disclosure provisions which Mr. LAFALCE and I had attempted to offer as a free-standing amendment in an effort to bring some balance to this legislation.

We all know there are some individuals who abuse the bankruptcy system. And we all agree that people who let their financial affairs get out of control should take responsibility for the consequences of their actions.

But responsibility is a two-way street. And instead of encouraging responsible use of credit cards and reduction of credit card debt, the credit card lenders who have promoted this legislation have done all they can to induce consumers to take on ever-increasing amounts of debt. They have increased interest rates and fees on current accounts—often providing inadequate or misleading disclosures. They have imposed penalties on responsible

debtors who pay off their card balances without incurring interest charges. They have engaged in relentless marketing efforts that target students with no credit histories and consumers already heavily in debt.

We cannot deal with the rise in consumer bankruptcies if we ignore the causes. And there is a strong correlation between the bankruptcy rate and these kinds of irresponsible lending practices. If we are to fix the problem, we must demand greater responsibility not only from debtors but from creditors as well.

The substitute would do this by disallowing claims in bankruptcy arising from various reckless lending practices. Those practices include the failure to provide complete and conspicuous disclosure of credit terms—including low temporary ''teaser'' rates; the imposition of unjustifiable penalties and fees against cardholders who pay their monthly balances on time or who do not engage in account transactions that result in finance charges; the issuance of credit cards to minors without the signature of a parent or guardian or proof of independent means of repayment; the failure to highlight due dates and penalties for late payments in monthly billing statements, and to inform cardholders of the consequences of paying only the minimum due each month; and the failure to permit consumers to respond to interest rate increases by canceling their credit cards and paying off their balances under the old rate.

These are reasonable measures that would help sever the link between irresponsible credit card lending and the rise in bankruptcy filings. That is what needs to occur, Mr. Chairman, and I urge support for the substitute.

Mr. GEKAS. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time has expired.

The question is on the amendment in the nature of a substitute, as modified, offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. NADLER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 149, noes 272, not voting 12, as follows:

[Roll No. 114]

AYES—149

Abercrombie
Ackerman
Allen
Baird
Baldwin
Barrett (WI)
Berkley
Bishop
Blagojevich
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Capps
Capuano
Cardin
Carson
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Crowley
Cummings
Danner
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Gejdenson
Gonzalez
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hinojosa
Hoeffel
Holt
Inslee
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kildee
Kilpatrick
Kind (WI)
Kleczka
Klink
Kucinich
LaFalce
Lampson
Lantos
Larson
Lee
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Maloney (NY)
Markey
Martinez
Mascara
Matsui
McCarthy (MO)
McCarthy (NY)
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Millender-McDonald
Miller, George
Minge
Mink
Moakley
Nadler
Napolitano
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Payne
Pelosi
Phelps
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Rodriguez
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schakowsky
Scott
Serrano
Shows
Spratt
Stabenow
Stark
Stupak
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Udall (CO)
Udall (NM)
Velazquez
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Wise
Woolsey
Wu

NOES—272

Aderholt
Andrews
Archer
Armey
Bachus
Baker
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berry
Biggert
Bilbray
Bilirakis
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cox
Cramer
Crane
Cubin
Cunningham
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hobson
Hoekstra
Holden
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hutchinson
Hyde
Isakson
Istook
Jenkins
John
Johnson (CT)
Johnson, Sam
Jones (NC)
Kasich
Kelly
Kennedy
King (NY)
Kingston
Knollenberg
Kolbe
Kuykendall
LaHood
Largent
Latham
LaTourette
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
Manzullo
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Menendez
Metcalf
Mica
Miller (FL)
Miller, Gary
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Murtha
Myrick
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Ose
Oxley
Packard
Pastor
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pickett
Pitts
Pombo
Porter
Portman
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sanchez
Sandlin
Sanford
Saxton
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Stearns
Stenholm
Strickland
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Turner
Upton
Walden
Walsh
Wamp
Watkins
Weldon (FL)
Weldon (PA)
Weller
Weygand
Whitfield
Wicker
Wilson
Wolf
Young (AK)

NOT VOTING—12

Becerra
Berman
Brown (CA)
Cooksey
Gephardt
Luther
Scarborough
Simpson
Slaughter
Watts (OK)
Wynn
Young (FL)

□ 1837

Mr. TERRY and Mr. BALDACCI changed their vote from ''aye'' to ''no.''

Mr. DINGELL changed his vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute, as modified, was rejected.

The result of the vote was announced as above recorded.

Stated for:

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on the Nadler substitute due to a family emergency. However, had I been present, I would have voted ''aye.''

The CHAIRMAN (Mr. NETHERCUTT). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. KOLBE) having assumed the chair, Mr. NETHERCUTT, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 833) to amend title 11 of the United States Code, and for other purposes, pursuant to House Resolution 158, he reported the bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on any amendment to the committee amendment in the nature of a substitute, adopted by the Committee of the Whole? If not, the question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Speaker, I offer a motion to recommit the bill, H.R. 833, with instructions.

The SPEAKER pro tempore. Is the gentleman from Michigan opposed to the bill?

Mr. CONYERS. Yes, I am, in its present form, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. CONYERS moves to recommit the bill (H.R. 833) to the Committee on the Judiciary, with instructions to report the bill back to the House forthwith, with the following amendment:

Page 15, line 19, insert ''and benefits received under the Social Security Act'' after ''humanity''.

The SPEAKER pro tempore. The gentleman from Michigan (Mr. CONYERS) is recognized for 5 minutes in favor of his motion to recommit.

Mr. CONYERS. Mr. Speaker, my motion to recommit is simple. It excludes Social Security and Medicare benefits from the definition of ''income'' for purposes of the bill's means test.

As the law currently stands, any senior is eligible for bankruptcy relief. The bill, however, would force millions of seniors living on fixed incomes into mandatory repayment plans. This is because there is no exclusion from the definition of ''income'' for payments received for Social Security, retirement, for disability insurance, for supplemental security income, or for unemployment insurance.

As a matter of fact, there is no exclusion for third-party medical payments made on behalf of seniors. What does it mean? That anytime a senior becomes ill and receives substantial Medicare benefits, they could be denied basic bankruptcy relief.

□ 1845

This amendment has strong support among senior citizens. It is supported by the National Committee to Preserve Social Security and Medicare and the National Council of Senior Citizens. I have letters I would like to introduce into the RECORD.

This amendment by no means cures the worst problems in the bill, the use of IRS standards and its impact on child care and jobs, to name a few. But it does help fix a problem for seniors. I urge its adoption.

Mr. Speaker, I include the following material for the RECORD:

NATIONAL COMMITTEE TO PRESERVE SOCIAL SECURITY AND MEDICARE,
Washington, DC, May 3, 1999.

On behalf of the millions of members and supporters of the National Committee to Preserve Social Security and Medicare, I strongly urge you to oppose H.R. 833, the bankruptcy reform legislation, when it comes up for a vote this week. We, too, are concerned about the increase in bankruptcy filings since 1980 and the rise in consumer debt per household. However, in its current form H.R. 833 would seriously weaken bankruptcy protections for vulnerable older and disabled Americans, while doing nothing to prevent credit card companies from targeting people with low incomes.

Debtors would be subject to an income-based means test intended to steer people away from Chapter 7, which allows consumers to liquidate their assets and divide them among their creditors in exchange for being discharged from the majority of their debts. Instead, debtors who are projected to have $5,000 in disposable income over the next five years will have to file for Chapter 13 bankruptcy, which requires a repayment plan.

A debtor's disposable income would be determined by subtracting allowable expenses such as housing costs and taxes from an individual's overall income. As reported by the Judiciary Committee, Social Security, disability and veteran's benefits are not exempted from overall income. At the same time an amendment to include medical expenses and the costs of caring for an elderly parent in the list of allowable expenses also failed, although private school tuition was allowed.

In 1997, an estimated 280,000 older Americans filed for bankruptcy. Since 1993, more than a million people aged 50 and older have turned to the bankruptcy courts to receive help in dealing with financial catastrophes. Our nation's senior have worked hard and played by the rules. Most older American's filing for bankruptcy are not profligate spenders. Instead, the two major reasons why people over 50 are in financial difficulty are lost jobs and medical problems.

Many people in their late 50s and early 60s have serious medical conditions and no health insurance. Even among those eligible for Medicare, skyrocketing drug costs and other out-of-pocket medical expenses can spell economic disaster. Among bankruptcy filers age 65 and older, 37 percent are pushed into financial collapse by medical debts. Another 33 percent of those over 65 explain that losing a job has made this difference between getting by and bankruptcy.

If H.R. 833 is enacted, a senior who has just $100/per month in ''disposable income'' would meet the means test and be unable to file under Chapter 7. Since out-of-pocket medical costs would not generally be considered allowable expenses, this person could easily be placed in a situation of having to pay a credit card company instead of purchasing his blood-pressure medicine.

We believe that most Americans, particularly most seniors, want to pay their debts. Bankruptcy reform should not punish vulnerable older Americans who face financial catastrophe because of a job loss or medical crisis. I hope that you will oppose H.R. 833 when it is brought to the House floor this week.

Sincerely,

MARTHA A. MCSTEEN,
President.

NATIONAL COUNCIL OF SENIOR CITIZENS,
Silver Spring, MD, May 5, 1999.

Hon. JOHN CONYERS, JR.,
U.S. House of Representatives,
Washington, DC.

DEAR REPRESENTATIVE CONYERS: The National Council of Senior Citizens supports your motion to recommit H.R. 833. This legislation is pernicious and destructive of the core economic rights of seniors and working families. It would force millions of seniors to make mandatory payments based on a definition of income that would include payments for social security, disability, unemployment compensation, supplemental security income and other income security and welfare needs. We believe that such payments or resources should be excluded from a reasonable definition of income for Federal bankruptcy purposes.

For million of seniors, these payments are the difference between depravation and survival. They do not fit the definition of disposable income.

In recent years, fewer than a quarter of a million seniors have annually filed for bankruptcy protection. They are not noted as abusers of bankruptcy systems nor as profligate spenders using credit cards or other forms of credit purchasing.

However, persons between the ages of 55 and 65 represent the most rapidly growing group of Americans without health insurance. Medical crisis is the most important single cause of credit problems after job loss.

H.R. 833 would force seniors to put credit card debts ahead of housing needs, family needs, and costs associated with chronic or disabling illness or disease. No provision citing ''extraordinary circumstances'' claims or potential court relief will take away the sense of panic which will strike seniors if current reasonable protections are stripped away for the convenience of predatory financial organizations.

We urge the recommitment and defeat of H.R. 833.

Sincerely,

STEVE PROTULIS,
Executive Director.

Mr. GEKAS. Mr. Speaker, will the gentleman yield?

Mr. CONYERS. I yield to the gentleman from Pennsylvania.

Mr. GEKAS. Mr. Speaker, for the information of the Members, we are prepared to accept the motion to recommit with the change as to Social Security. It is a welcome change to the language already in the bill. We ask that the Members vote in favor of recommittal, and then vote ''yes'' on final passage.

Mr. CONYERS. Mr. Speaker, I thank the subcommittee chair.

Mr. Speaker, I yield to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, this was an amendment that I offered in committee. I thank the chairman for acknowledging the importance of the question of protecting Social Security. With that, I hope we will claim unanimous victory in protecting our senior citizens and making sure that they do not have to choose between medicine and food.

The SPEAKER pro tempore (Mr. KOLBE). Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The motion to recommit was agreed to.

Mr. GEKAS. Mr. Speaker, pursuant to the instructions of the House, I report the bill, H.R. 833, back to the House with an amendment.

The SPEAKER pro tempore. The Clerk will report the amendment.

The Clerk read as follows:

Amendment:

Page 15, line 19, insert ''and benefits received under the Social Security Act'' after ''humanity''.

The SPEAKER pro tempore. The question is on the amendment.

The amendment was agreed to.

The SPEAKER pro tempore. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. CONYERS. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 313, nays 108, not voting 13, as follows:

[Roll No. 115]

YEAS—313

Aderholt
Andrews
Archer
Armey
Bachus
Baird
Baker
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bentsen
Bereuter
Berkley
Berry
Biggert
Bilbray
Bilirakis
Bishop
Blagojevich
Bliley
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Boyd
Brady (TX)
Bryant
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cannon
Capps
Cardin
Castle
Chabot
Chambliss
Chenoweth
Clement
Coble
Coburn
Collins
Combest
Condit
Cook
Cooksey
Costello
Cox
Cramer
Crane
Crowley
Cubin
Cunningham
Danner
Davis (FL)
Davis (VA)
Deal
DeLay
DeMint
Deutsch
Diaz-Balart
Dickey
Dicks
Dooley
Doolittle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Etheridge
Everett
Ewing
Fletcher
Foley
Forbes
Fossella
Fowler
Frank (MA)
Franks (NJ)
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Goode
Goodlatte
Goodling
Gordon
Goss
Graham
Granger
Green (WI)
Greenwood
Gutknecht
Hall (TX)
Hansen
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Herger
Hill (IN)
Hill (MT)
Hilleary
Hinojosa
Hobson
Hoekstra
Holden
Holt
Hooley
Horn
Hostettler
Houghton
Hoyer
Hulshof
Hunter
Hyde
Inslee
Isakson
Istook
Jefferson
Jenkins
John
Johnson (CT)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Kaptur
Kasich
Kelly
Kennedy
Kind (WI)
King (NY)
Kingston
Kleczka
Knollenberg
Kolbe
Kuykendall
LaHood
Lampson
Largent
Larson
Latham
Lazio
Leach
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lucas (KY)
Lucas (OK)
Maloney (CT)
Maloney (NY)
Manzullo
McCarthy (MO)
McCarthy (NY)
McCollum
McCrery
McHugh
McInnis
McIntosh
McIntyre
McKeon
Meeks (NY)
Menendez
Metcalf
Mica
Miller (FL)
Miller, Gary
Minge
Mollohan
Moore
Moran (KS)
Moran (VA)
Morella
Myrick
Napolitano
Neal
Nethercutt
Ney
Northup
Norwood
Nussle
Ortiz
Ose
Oxley
Packard
Pallone
Pascrell
Pastor
Paul
Pease
Peterson (MN)
Peterson (PA)
Petri
Phelps
Pickering
Pickett
Pitts
Pombo
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Quinn
Radanovich
Ramstad
Rangel
Regula
Reyes
Reynolds
Riley
Rivers
Roemer
Rogan
Rogers
Rohrabacher
Ros-Lehtinen
Rothman
Roukema
Royce
Ryan (WI)
Ryun (KS)
Salmon
Sandlin
Sanford
Saxton
Scarborough
Schaffer
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shows
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Souder
Spence
Spratt
Stabenow
Stearns
Stenholm
Strickland
Stump
Sununu
Sweeney
Talent
Tancredo
Tanner
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thornberry
Thune
Tiahrt
Toomey
Turner
Upton
Velazquez
Walden
Walsh
Wamp
Watkins
Weldon (FL)
Weldon (PA)
Weller
Weygand
Whitfield
Wicker
Wilson
Wise
Wolf
Wu
Young (AK)

NAYS—108

Abercrombie
Allen
Baldacci
Baldwin
Barrett (WI)
Bonior
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Capuano
Carson
Clay
Clayton
Clyburn
Conyers
Coyne
Cummings
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dingell
Dixon
Doggett
Doyle
Edwards
Engel
Eshoo
Evans
Farr
Fattah
Filner
Ford
Gejdenson
Green (TX)
Gutierrez
Hall (OH)
Hastings (FL)
Hilliard
Hinchey
Hoeffel
Jackson (IL)
Jackson-Lee (TX)
Jones (OH)
Kanjorski
Kildee
Kilpatrick
Klink
Kucinich
LaFalce
Lantos
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Markey
Martinez
Mascara
Matsui
McDermott
McGovern
McKinney
McNulty
Meehan
Meek (FL)
Millender-McDonald
Miller, George
Mink
Moakley
Murtha
Nadler
Oberstar
Obey
Olver
Owens
Payne
Pelosi
Rahall
Rodriguez
Roybal-Allard
Rush
Sabo
Sanchez
Sanders
Sawyer
Schakowsky
Scott
Serrano
Stark
Stupak
Thompson (MS)
Thurman
Tierney
Towns
Traficant
Udall (CO)
Udall (NM)
Vento
Visclosky
Waters
Watt (NC)
Waxman
Weiner
Wexler
Woolsey

NOT VOTING—13

Ackerman
Becerra
Berman
Brown (CA)
Gephardt
Hutchinson
LaTourette
Luther
Simpson
Slaughter
Watts (OK)
Wynn
Young (FL)

□ 1907

Mr. HILLIARD changed his vote from ''yea'' to ''nay.''

Mr. MEEKS of New York and Mr. LAMPSON changed their vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. LATOURETTE. Mr. Speaker, if I were present, I would have voted ''yea'' on final passage of H.R. 833, the Bankruptcy Reform Act.

Stated against:

Mr. BERMAN. Mr. Speaker, I was unable to cast a vote on final passage of H.R. 833 due to a family emergency. However, had I been present, I would have voted ''nay.''

PERSONAL EXPLANATION

Ms. SLAUGHTER. Mr. Speaker, I was unable to be present for rollcall votes 108, 109, 110, 111, 112, 113, 114, and 115.

Had I been present, I would have voted ''yes'' or ''aye'' on rollcall votes 108, 110, 111, 112, 113, and 114 and ''no'' or ''nay'' on rollcall votes 109 and 115.

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN THE ENGROSSMENT OF H.R. 833, BANKRUPTCY REFORM ACT OF 1999

Mr. GEKAS. Madam Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 833, the Clerk be authorized to correct section numbers, cross-references, and punctuation, and to make such stylistic, clerical, technical, conforming, and other changes as may be necessary to reflect the actions of the House in amending the bill.

The SPEAKER pro tempore (Mrs. NORTHUP). Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

SUPPORT A RESOLUTION CONCERNING THE CONFLICT IN THE BALKANS AND HOW THAT CONFLICT SHOULD BE CONDUCTED

(Mr. BATEMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BATEMAN. Madam Speaker, we have stumbled through, I think, inept decision-making into a conflict in the Balkans. Last Wednesday we debated that issue. At the end of the day we had declared no policy, approved no policy, condemned no policy. I think that is an evasion of our moral, if not constitutional, responsibility.

So today, I will introduce a resolution which seeks to declare a policy with reference to that conflict and how it should be conducted, as well as how the cost of it should be borne and shared among our allies, and how we should deal with the question of indicted war criminals as a part of any agreement, and termination of that conflict. I solicit the review and hopefully the co-patronage of this resolution by my colleagues.

The United States Congress has been debating whether and to what extent our country should be involved in the conflict between NATO and the Federal Republic of Yugoslavia. I cannot find words strong enough to condemn the miserable performance of the Congress thus far. No American to date knows whether the Congress of the United States approves or condemns the policy of the Commander in Chief. Our fellow citizens will not know, because we as their collective national leadership have steadfastly refused to either approve or disapprove, condemn or condone, any policy. We have done this even in the context of a solemn debate by some about our constitutional responsibility and the War Powers Act.

Last week we ensured that the House of Representatives would bear no responsibility